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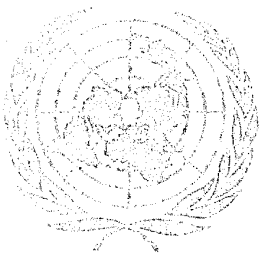

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RESOURCE MATERIAL

SERIES No. 32

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CONTENTS

Introductory Note

The editor is pleased to present No. 32 in the Resource Material Series including materials from the 74th International Seminar and the 75th International Training Course.

Part I contains materials produced during the 74th International Seminar on Advancement of Fair and Humane Treatment of Offenders and Victims in Criminal Justice Administration which began on 9 February and ended on 14 March 1987.

Section 1 of Part I consists of papers contributed by four visiting experts.

Mr. B.J. George, Jr., Professor of Law, New York Law School, U.S.A., in his paper entitled, "New Developments in Victim and Witness Protection in the United States," describes the recent developments in victim and witness protection through the introduction of new federal legislation and state statutes.

Mr. Karl-Heinz Kunert, Head of the Department of Criminal Justice, Ministry of Justice, Dusseldorf, the Federal Republic of Germany, in his paper entitled "The Prosecution System in the Federal Republic of Germany," dwells on his country's prosecution system which is characterized by the principle of compulsory prosecution and a trend toward the lenient treatment of offenders.

Mr. Nor Shahid bin Mohd. Nor, Director of Prisons, Head of Security and Regime, Prisons Headquarters, Kajang, Malaysia, in his paper entitled "Protection of Human Rights at the Stage of Treatment," addresses a number of problems plaguing the criminal justice administration system and introduces the attempts made by the prisons administration to preserve and protect human rights at the stage of treatment.

Dr. Yolande Diallo, Principal Human Rights Officer, Secretary of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, United Nations Centre for Human Rights, Geneva, in her paper, "International Co-operation, Training and Research," presents the crucial aspects of the implementation of international instruments protecting human rights, the roles of the United Nations and other international agencies in the protection of rights of offenders and victims, and training and research.

Section 2 contains papers submitted by three participants of the 74th International Seminar, and Section 3 contains the Report of the Seminar.

Part II presents materials produced during the 75th International Training Course on Non-Institutional Treatment of Offenders. Its Role and Improvement for More Effective Programmes. The Course commenced on 20 April and was concluded on 20 June 1987.

Section 1 of Part II consists of papers presented by two visiting experts.

Mr. John Eryl Hall Williams, Professor of Criminology with Special Reference to Penology, the London School of Economics and Political Science, United Kingdom, in his paper, "New Kinds of Non-Custodial

Measures – The British Experience –," reviews in detail the new kinds of non-institutional treatment methods for offenders in England and Wales, and provides valuable guidelines for future developments.

Mr. Atthaniti Disatha-Amnarj, Judge, Secretary-General of the Office of the Judicial Affairs, Ministry of Justice, Thailand, in his paper entitled "Non-Institutional Treatment of Offenders in Thailand," focuses on the function of the Central Probation Office, Office of the Judicial Affairs, Ministry of Justice. He also describes the role of the Juvenile Court and the Department of Corrections, Ministry of Interior, in his country.

Section 2 contains four papers written by participants of the 75th International Training Course, and Section 3 contains the Report of the Course which presents the First Draft of Proposed United Nations Standard Minimum Rules for the Non-Institutional Treatment of Offenders. These draft rules offer a good statement of general principles and practices in the non-institutional treatment of offenders, and incorporate the minimum circumstances that should be accepted as suitable by the United Nations. The first draft will constitute the theme for further discussion by the participants of a future Seminar Course at UNAFEI. The results of the contributions and recommendations of participants in such future courses will enable UNAFEI to formulate a final version of the rules to be transmitted to the United Nations for further consideration.

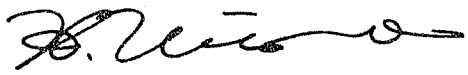
Part III presents materials produced during other UNAFEI activities which contain the report of the Asia and Pacific Region International Experts Meeting on Protection of Human Rights in Criminal Justice held at UNAFEI on 17 February 1987. On the occasion of the 74th International Seminar, in which many distinguished participants and visiting experts with eminent careers participated, UNAFEI convened this Meeting. Its participants reviewed the current circumstances affecting the protection of human rights in criminal justice in the Asia and Pacific region and then explored more effective measures to promote the protection of human rights of offenders as well as victims of crime. The Meeting also was designed to achieve the ambitious goal of providing the first institutional response from the Asia and Pacific region to the recently adopted actions and recommendations of 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.

Many participants submitted papers of quality and substance to the Institute during both the 74th and 75th International Courses, and it is deeply regretted that limitations of space precluded the publication of all papers received. The editor would like to add that, owing to lack of time, necessary editorial changes had to be made without referring the manuscripts back to their authors. The editor requests the indulgence and understanding of this necessity which was required to meet editorial deadlines.

In concluding the introductory note, the editor would like to express his gratitude to those who so willingly contributed to the publication of this

volume by attending to the typing, printing and proofreading, and by assisting in various other ways.

December 1987



Hideo Utsuro
Editor
Director of UNAFEI

PART I

Material Produced during the 74th International Seminar on Advancement of Fair and Humane Treatment of Offenders and Victims in Criminal Justice Administration

SECTION 1: EXPERTS' PAPERS

New Developments in Victim and Witness Protection in the United States

*by B. J. George, Jr.**

The protection of victims and witnesses, at least in a formal way, is in most of its aspects a relatively recent development in the United States. However, as will be touched upon in the following pages, new federal legislation has addressed a number of important issues, and state statutes also are increasingly encountered. Thus, what has been called the "criminal injustice system"[1] may, one hopes, be phased out of existence in the next few years, at least as far as the formal law is concerned.

Restitution from Convicted Offenders

The oldest response to victims' needs has been the judicial order of restitution or reparation as a condition of probation or parole.[2] Although American law, unlike the law in some Roman law countries, has never recognized the right of private individuals to participate in criminal prosecutions for the purpose of financial recovery, when American states came to recognize suspended sentences and probation, judges began to include an obligation to pay restitution as a probation condition; a number of jurisdictions enacted this expressly into law.[3]

The principal current federal legislation appeared in the federal Victim and Witness Protection Act of 1982,[4] augmented by the Comprehensive Crime Control Act of 1984.[5] Federal courts may order restitution in federal criminal cases[6] and in setting probation on a felony conviction must order either a fine, restitution or community service work (or some or all of those alternatives).[7]

An order may include several alternative remedies:[8] (1) If property has been taken, a court may require its return to its owner or someone designated by its owner. (2) If the property cannot be returned at all or in substantially unimpaired condition, the court may require payment of an amount equal to the greater of either the value of the property at the time of its damage, loss or destruction or the value at the date of sentencing, less any residual value in the property if it is returned.[9] (3) If bodily injury has been caused, a restitution order can cover the amount necessary for treatment or therapy, occupational therapy and rehabilitation, and lost income. (4) If the criminal act causing physical injury also resulted in the victim's death, a court order may extend beyond ante-mortem expenses to include funeral and related expenses; such restitution will be paid to the victim's estate.

In any of these instances, restitution will not be ordered paid to the victim to whatever extent the victim has already received or will receive compensation, but the order of restitution can benefit a third party who provided the original compensation. Amounts paid in compensation to victims also should be set off against later damages recovered in any federal civil proceeding and in any state proceeding where state law provides for the offset.[10] The sentencing court may set a time schedule for payment of restitution, but must fix the maximum time for completion of the restitution payment at the end of the probation period (if probation has been ordered), the expiration of five years after a sentence of imprisonment has been served,[11] or within five years from the date of sentencing if neither of the other alternatives applies. If the sentencing court does not allow an extended period for payment, restitution must be paid immediately. Restitution also becomes a condition of pa-

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role following imprisonment.

A restitution order may be enforced in the same manner as a judgment in a civil action, by either the United States or by the victim named in the court order to receive restitution. If restitution has been set as a condition of probation or parole, and payment is not forthcoming, revocation of release may be ordered after an evaluation of the defendant's employment status, earning ability, financial resources, the willfulness of the failure to pay, and any other special circumstances having a bearing on the defendant's default.

The latter point raises the question of the constitutional implications of an imposition of imprisonment on one who has not paid a fine or restitution. The United States Supreme Court addressed that matter in *Bearden v. Georgia.*[12] In *Bearden*, a first offender was placed on probation and required to pay a fine and restitution within four months. He managed the first installment, but lost his job and defaulted on the second payment. Despite the fact that he had informed the court of his plight and of his ongoing efforts to find new employment, the court revoked probation and sentenced him to imprisonment. The Supreme Court found the procedure unconstitutional. However, it seemed to abandon the equal protection basis of some of its earlier decisions disallowing the substitution of imprisonment for a fine when a defendant was indigent,[13] selecting in its stead a due process analysis.

The Court set forth guidelines for determining whether probation can be revoked because of a failure to pay a fine or make restitution:[14]

1. If a probationer wilfully fails to pay or to make good faith efforts to acquire the necessary financial resources, a court may revoke probation based on nonpayment.
2. If, despite good faith efforts to pay, a probationer fails to do so the court should consider alternative measures of punishment other than imprisonment.
3. Only if alternative measures are inadequate to meet a state's interest in punishment and deterrence may a court imprison a probationer who has made sufficient good faith efforts to pay.

Thus, although Bearden had been summarily and unfairly dealt with, other defendants, although without funds, might be imprisoned if no alternative sanction were available to vindicate a government's interest in enforcing its criminal law policy. On this basis, it would appear that the federal restitution statute, as well as its state counterparts, are constitutional on their face, if fairly applied in individual cases.

The remaining constitutional dimension of restitution provisions has to do with the procedures through which the amount of restitution is determined.[15] The federal statute[16] appears to meet due process requirements:

1. The sentencing court, in deciding whether to order restitution, must consider the amount of loss suffered by a victim as a result of the offense, the defendant's financial resources, financial needs and earning ability, the defendant's dependents, and any other factors the court believes appropriate.
2. The court may direct the probation service to obtain needed background information and transmit it to the court in a report separate from the presentence report.
3. The sentencing court must disclose the presentence data bearing on restitution to both the defendant and the government attorney.
4. Disputes over the proper amount or form of restitution must be resolved by the court after any necessary hearing, with the burden of persuasion being the preponderance or greater weight of the evidence. The government bears the burden of establishing the amount of loss sustained by the victim as a result of the offense, while the defendant must demonstrate his or her financial resources, needs and dependents. Burdens of persuasion on other matters can be allocated by the court as justice requires.

5. A criminal conviction for an offense giving rise to a claim to restitution estops the defendant from denying the essential allegations of that offense in any federal civil action and in any state civil proceeding to the extent state law recognizes the estoppel.

Two other procedural details are of practical significance in this context. One is that the Federal Rules of Criminal Procedure[17] now require a presentence report to include information concerning any harm, including financial, social, psychological and physical harm done to or loss suffered by any victim, as well as any other information bearing on the restitution needs of any victim of an offense. The second is that a new federal provision[18] allows a sentencing court to require a defendant convicted of fraud or other intentionally deceptive practices to give reasonable notice, in a form approved by the court, to victims of the offense[19] so that they may pursue any mode of redress (including restitution) they wish.

Victim Compensation Legislation

Restitution ancillary to a criminal conviction is one way of aiding victims, but is not the only way. An alternative, as yet little explored in the United States and probably not destined to flourish, granted contemporary public attitudes toward crime and criminals, is a mediation service for victims and criminals, as a consequence of which there may be restitution or compensation.[20] The device may be a useful ancillary to screening and diversion,[21] but has little or no utility in the setting of postconviction remedies.

The most significant alternative for victims, however, is under legislation allowing them to obtain compensation from a publicly-administered fund.[22] These statutes have appeared within the past twenty years, and are now to be found in at least forty-two American jurisdictions, including the federal. There are a number of policy issues which legislatures have tried to resolve, although not uniformly throughout the United States.

One concern relates to the scope of criminal activity giving rise to claims for compensation. Generally, only crimes which cause death or bodily injury support a claim; property damage is not covered, probably because the cost of compensation for property loss would be more than such programs could underwrite.

A second is the assignment within government of the responsibility to receive and process claims. The standard allocation of the power to adjudicate claims is to a special administrative board or agency and not to the courts, although the actions of such bodies are subject to judicial review under an administrative procedures act like any other agency ruling.

A third is the delimitation of eligibility to apply. The New York statute[23] is representative as it sets forth seven categories of eligible applicants:

1. Victims of violent crimes.
2. A surviving spouse or dependent child of a victim of a violent crime who died as a result of that crime.
3. Any other legal dependent of a deceased victim of a violent crime.
4. A "good Samaritan" injured or killed while trying to prevent a violent crime or apprehend a violent offender.
5. A surviving spouse or dependent child of a "good Samaritan" killed under the circumstances described in 4.
6. A person legally dependent for support on a slain "good Samaritan".
7. A person injured or killed while aiding a law enforcement officer in the performance of duties or fire personnel who are at the time being obstructed in the performance of their duties.

There are, however, significant exclusions from the classes of those otherwise eligible, particularly offenders, accomplices and family members of either. The definition of a "family member" can be sweeping: a person within the third degree of consanguinity or affinity with an offender or accomplice, any person maintaining a sexual relationship with such a person, or any person living within the same house-

hold.[24] Without some allowance for relief against these strictures, however, a compensation system can work unjustly by disallowing compensation for, by way of illustration, a dependent child criminalized by a parent.[25] Some statutes also allow a denial or reduction of an award if a victim contributed to his or her own injury or death – a comparative negligence doctrine strayed from its usual habitat.

A fourth policy concern is over the residence status of a claimant. Most state legislation requires that a victim be a resident of the state, in addition to basing his or her claim on a crime committed within that state. This, however, is questionable policy. Granted the pervasiveness of victim compensation legislation in the United States, victims resident in other states should be allowed to maintain claims in the state of injury, at least as long as there is reciprocity in the legislation of the stage of a claimant's residence.

A fifth relates to procedural prerequisites. Compensation legislation usually requires prompt reports of crimes, a relatively swift commencement of the compensation claim proceeding and perhaps a showing of exhaustion of other modes of redress (although that should not include litigation, granted the relatively brief period within which administrative action must be commenced).

A sixth is the nature of the injuries for which compensation may be sought. Usually, actual expenses reasonably incurred because of bodily injury or death, loss of income resulting directly from bodily injury, pecuniary loss to dependents of slain victims, and other actual expenses generated by death or injury are included. Limited emergency benefits may be available.[26] However, the legislation may impose minimum loss requirements, so that anyone experiencing less than that amount cannot apply. That can narrow the size of the class of potential claimants, since many do not experience grave enough injury to meet the threshold requirement. At the other extreme, maximum recoveries are generally quite limited – $10,000 to $15,000 is the common upper limit, although New York imposes no limit on medical expenses flowing from criminal activity.[27]

Federal legislation in 1984[28] took a significant step toward aiding victim compensation plans. Under the statute, a Crime Victims Fund has been created into which certain deposits are made. One source is a special assessment on convicted federal defendants of $25 on individual misdemeanants, $100 on other (essentially corporate) misdemeanants, $50 on individual felons and $200 on other felons.[29]

A second is a special forfeiture of the collateral profits of a crime of physical violence, in the form of proceeds from a contract for the sale or literary and entertainment rights to the depiction of the crime, or expressions of the defendant's opinions or thoughts about that crime.[30] Forfeited sums are held in escrow for five years for the satisfaction of judgments obtained by victims against a defendant or for the payment of a federal fine and costs of providing defense counsel; if a sum remains after that time, the court that entered the judgment of forfeiture will direct the disposition to be made. This embodies a federal use of the so-called "Son of Sam" statutes[31] that are widely in force and that have been upheld as constitutional.[32]

The third source is the proceeds of forfeited appearance bonds, bail bonds and collateral posted to secure release,[33] while the final source is fines paid by defendants convicted for all but a handful of specifically exempted offenses.[34]

The primary object of expenditures from the fund is support of state victim compensation grants, in an amount not to exceed thirty-five percent of compensation awards made during the year preceding a federal block grant.[35] However, to be eligible, state programs must offer compensation for medical expenses (including mental health counseling), lost wages and funeral expenses, and must compensate victims of exclusively federal crimes committed in the state, in the same manner as victims of state crimes.[36] Depending on the size of the fund, this should promote uniformity in, as well as extension of, state victim compensation programs.

Assistance for Victims and Witnesses

Matters of restitution and reparation aside, victims of and witnesses to crimes usually have been treated with a callousness from which criminal defendants are exempt. That has been particularly true of victims of rape and other violent sexual crimes,[37] although changes in substantive law[38] and ancillary procedural and evidentiary rules[39] in recent years have reduced considerably the marked disparity between the treatment of rape victims and that accorded other crime victims and witnesses.

The complaints voiced by victims and witnesses take a number of forms.[40] One is a lack of a voice in decisions whether to prosecute or settle criminal cases. A second is a general failure on the part of police and prosecutors to keep them apprised of the progress of a case after it has been commenced. A third is the inconvenience of going to court, perhaps only to find that the case has been adjourned, coupled with unreimbursed expenses like transportation or parking fees, child care charges, and loss of income only minimally offset by witness fees (if they are paid at all). If adjournments or continuances are granted freely at the request of the parties, these inconveniences can be multiplied several-fold. A fourth relates to the physical surroundings in which witnesses must wait, which frequently are inadequate and dirty, and open to passers-by who can include friends and relatives of defendants. Finally, when witnesses take the witness stand, often they are treated as if they were the defendants or suspects, and rarely is their status as indispensable participants in criminal justice administration acknowledged by the courts.

Does a failure to respond to these concerns damage the administration of criminal justice? Clearly it does. In the United States, an estimated eighty-seven percent of all crimes come to the attention of the police because victims or witnesses report them.[41] If the consequences of reporting are unpleasant and inconvenient, citizens simply will not report many crimes and offenders will go "unwhipped of justice." Beyond that, if the direct loss suffered by victims is compounded by repeated expense and inconvenience caused by the justice system and not by criminal defendants, victims and witnesses can become alienated and hostile, and can impede a just determination of criminal cases.[42] Concerns of this nature are beginning to be recognized in judicial decisions as important to the effective administration of criminal justice.[43]

Some problems can be met through improved judicial administration.[44] Judicial training emphasizing the needs and legal interests of crime victims and witnesses is important, because many judges have been insensitive to such concerns. Judges can institute a system according to which witnesses are "on call," that is, present where they can be reached by telephone shortly before they will be required to appear, and thus spared the extreme inconvenience of spending long hours (and sometimes days) waiting for the case to be called concerning which they will testify. Court calendars should make efficient use of both mornings and afternoons, thus identifying more precisely the time segment in which individual cases will be reached. Separate, well-appointed waiting rooms should be provided for defense and prosecution witnesses. In ruling on requests for adjournments or continuances, judges should listen to the concerns of victims and witnesses just as attentively as they do those of counsel and defendants. Moreover, victims have as great an interest as the government in seeing that criminal prosecutions are swiftly disposed of. Courts should allow victims and at least one member of their families to be present in the courtroom even though all of them may be called as witnesses.[45] If a victim's property has been impounded for use as prosecution evidence, courts should invoke their discretion to have it photographed for the record and order it returned to the victim. Courts can prepare and distribute handbooks on the court process for the benefit of all witnesses including victims. They can promote, perhaps in cooperation with police authorities, a "hotline" through which victims and witnesses may obtain the information they need, as well

as information services from which victims and witnesses can learn the current status of criminal prosecutions. It might be possible, as well, to provide court-related or community-based counseling or supportive services for victims and witnesses.[46] All these devices, and many more, may require no authorizing legislation and thus can be achieved through local initiative.

Several states, however, have gone beyond these administrative responses to legislate a so-called "victims' bill of rights";[47] some of these statutes have drawn heavily from an American Bar Association model statute.[48] The Washington statute[49] is representative. It requires officials to make a "reasonable effort" to assure that victims and witnesses have the following "rights":

1. To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim or witness is involved.
2. To be notified that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court.
3. To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution authorities, and to be provided with information about the level of protection available.
4. To be informed of the procedure to be followed to apply for and receive witness fees to which they are entitled.
5. To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants.
6. To have stolen or other personal property expeditiously returned by law enforcement agencies when no longer needed as evidence. If feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis and property the ownership of which is disputed, should be photographed and returned to the owner within ten days after being taken into official custody.
7. To be provided with appropriate employer intercession services to ensure that employers of victims and witnesses of crime will cooperate with the criminal justice system and thus minimize an employee's loss of pay and other benefits resulting from court appearances.
8. To have access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered.[50]
9. To accord to family members of homicide victims the rights covered in 1 through 4, 6 and 7.

Wisconsin adds a right to a speedy disposition of the criminal case in which victims or witnesses are to testify, in order to minimize the "length of time they must endure the stress of their responsibilities in connection with the matter."[51] On occasion, legislation authorizing local assistance centers for victims and witnesses is to be encountered.[52]

There has been advocacy of a revival from English common law of the right of private prosecution, as a means of assuring that the voices of victims will be heard in the criminal justice system.[53] It is unlikely, however, that such a system will be adopted, granted the two-centuries-old American tradition of public prosecution only; in many states, a constitutional amendment probably would be required to enable a system of private prosecutions to be instituted. Nevertheless, some states have begun to require prosecuting officials to listen to the views of victims concerning the disposition of criminal cases by dismissal, guilty plea or trial.[54] This is a pre-adjudication counterpart to the requirement, already discussed, that victims be allowed to express opinions and supply information when data bearing on sentencing are gathered.[55] One may surmise, though, that to allow semiformal input by crime victims will be as far as the American criminal justice system is likely to go during the foreseeable future.

The federal crime victims fund men-

tioned earlier[56] should contribute to the development of programs of this nature, because it provides that whatever monies are not used for victim compensation grants are to be available to assist states in providing services to victims of crime, particularly victims of domestic violence and sexual assault.[57] Services include crisis intervention, emergency transportation to court, short-term child care services, temporary housing and security measures, assistance in participating in criminal proceeding, and payment for forensic rape examinations.[58] Five percent of the fund can be devoted to the development of similar federal programs.[59] How ample the funding under the statute will prove to be has yet to be determined, but Congress at least has placed its imprimatur on the desirability of such programs.

Protection against Witness Tampering and Intimidation

The intimidation of witnesses, which can range from minor harassment like random telephone calls or cruising in cars or on motorcycles in front of a victim's or witness's house, through physical injury to death, is a major problem, particularly in gang- or organized crime-related cases.[60] Traditional criminal statutes prohibiting the tampering with witnesses or obstruction of justice seem inadequate to cope with the problem.[61] Therefore, legislative attention increasingly is being paid to new definitions of crime and sanctions against those who have intimidated or may intimidate victims and witnesses.

Congress addressed the problem comprehensively in 1982 in the federal Victim and Witness Protection Act.[62] Expanded criminal legislation[63] punishes anyone who knowingly uses intimidation or physical force[64] against another person, who threatens another person or attempts to do so, or who engages in misleading conduct[65] toward another person, with the intent to (1) influence the testimony of any person in an official proceeding;[66] (2) cause or induce any person to (a) withhold testimony or a record, document or other object from an official proceeding, (b) alter, destroy, mutilate or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding; (c) evade legal process summoning the person to appear as a witness or to produce a record, document or other object in an official proceeding; or (d) be absent from an official proceeding to which the person has been summoned by legal process; or (3) hinder, delay or prevent the communication to a federal law enforcement officer[67] or judge of information relating to federal crimes or violations of conditions of probation, parole or pre-adjudication release. The punishment prescribed is a maximum fine of $250,000, ten years' imprisonment or both.[68]

The federal law likewise prohibits the intentional harassment of another person that hinders, delays, prevents or dissuades any person from (1) attending or testifying in an official proceeding;[69] (2) reporting a federal offense or violation of release conditions to a federal law enforcement officer or judge; (3) arresting or seeking to arrest another person in connection with a federal offense; or (4) causing a federal criminal prosecution or a probation or parole revocation proceeding from being sought or instituted, or assisting in such a prosecution or proceeding. The punishment for that offense is a maximum fine of $25,000, one year's imprisonment or both.[70]

A third federal crime forbids the infliction of bodily injury[71] or damage to tangible property of another (or threats or attempts to do so) with the intent to retaliate against any person for (1) attendance as a witness or party at an official proceeding, or testimony given or any record, document or other object produced by a witness in an official proceeding; or (2) any information relating to a federal offense or revocation of conditional release given to a federal law enforcement officer. The punishment is a fine of not more than $250,000, ten years' imprisonment or both.[72]

These criminal provisions may be more comprehensive than earlier federal legislation, but hardly constitute an innovation. The real expansion of federal law to protect victims and witnesses came in a com-

panion provision[73] that allows a federal district court, on application of a United States Attorney or other government counsel, to issue a temporary restraining order (TRO) or injunction prohibiting harassment[74] of an identified victim or witness in a federal criminal case. The applicant attorney must advance specific facts in affidavits or a verified complaint to establish reasonable grounds to believe that harassment will occur, or that the federal crime of tampering or retaliation will be committed.[75] A TRO may issue without written or oral notice to the adverse party or that party's attorney if the court finds, on written certification of facts by the applicant government attorney, that notice should not be required and that there is a reasonable probability the government will prevail on the merits.

A TRO is valid for a maximum of ten days, but can be extended on the basis of cause shown for up to an additional ten days, or longer if the adverse party agrees. An expedited adversary hearing must be held after the TRO has been issued, after which the district court can issue a protective order prohibiting the harassment of a victim or witness.[76] A protective order must set forth the underlying reasons, be specific in its terms, and describe in reasonable details the act or acts to be restrained. A maximum period of three years' duration for protective orders is established by law, but the government within ninety days before an order is to expire can initiate proceedings to obtain a new protective order, based on the same showing required to secure an original order. The federal legislation has been used frequently by federal prosecutors, and seemingly has served as a pattern for counterpart legislation in some states.

An indirect measure of victim and witness protection has been achieved through the recognition in federal law[77] of preventive detention of a person under charges of a crime of violence, an offense punishable by life imprisonment or death, certain serious controlled substances crimes, or as a recidivist,[78] if a showing is made that the defendant's release will pose either a serious risk that the defendant will flee or "will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror."[79] Detention orders have been issued by federal courts rather frequently since the new statute went into effect in October, 1984, most usually to protect victims and witnesses in organized crime cases. The constitutionality of preadjudication detention of defendants, whose future appearance in court is in no doubt, has been sustained.[80] Preventive or protective detention clearly can serve to protect federal victims and witnesses; approval in the *Salerno* decision of the constitutionality of such measures almost certainly will encourage adoption by state legislatures of counterpart statutes where state constitutional language allows.

The Federal Witness Protection Program

For over a decade, the United States Department of Justice has implemented a federal witness relocation and protection system, in which endangered witnesses can be relocated, given new identities, and provided with subsidies.[81] Because a number of problems had been encountered in the administration of the program, Congress instituted in 1984 comprehensive legislation covering the practice.[82]

Under the new statute, the Attorney General has authority to protect potential witnesses by relocating them and their families, in connection with an official proceeding concerning organized criminal activity or other serious offenses, if he determines that a crime of violence, obstruction of justice or a similar state or local offense directed at a witness is "likely to be committed."[83] Relocation of family members is based on the same likelihood of danger to them. As an aid to state law enforcement, the Attorney General can order protection for state or local witnesses on the same grounds, if the federal government is reimbursed the cost. The statute recognizes that serious offenses with no organized crime connection nevertheless can generate intimidating or retaliatory actions, and that retaliation is possible against family members as well as a witness

personally.

Protective measures embrace any action necessary to safeguard the health, safety and welfare of a witness or family member and can continue as long as necessary to maintain the protection.[84] This might be a very brief protection for a few days at the situs of an official proceeding, but could be for a lengthy time. In the latter event, the statute contemplates such measures as (1) documentation to enable a person to establish a new identity or otherwise achieve protection; (2) housing; (3) transportation of household and other personal property to a new residence; (4) a subsidy for living expenses; (5) assistance in obtaining employment; (6) other services necessary to assist the individual in becoming self-sustaining; and (7) a refusal to disclose the person's location or new identity if there is danger that disclosure would endanger the protected individual and work to the detriment of the witness protection program to a greater extent than it would benefit the public and the person requesting disclosure.

The latter, however, pinpoints what had been a problem under the original protection program, namely, the fact that many protected witnesses committed new crimes within the jurisdiction of local law enforcement officials and courts, but could not be identified and proceeded against because of federal efforts to maintain confidentiality. The new statute specifically recognizes the Attorney General's authority to disclose to state or local law enforcement officials at their request, or to do so pursuant to a court order, a protected witness's identity, location, criminal records and fingerprints, if the individual is under investigation or charged with a felony or any crime of violence.[85] As a further measure to prevent a witness protection arrangement from becoming a haven for criminals, the Attorney General, before authorizing protective measures, is required to assess in writing the risks and benefits inherent in a protective measure, including the danger of further criminal acts by the protected individual.[86]

Relocation likewise has interfered with the claims and rights of family members of a protected witness. The revised federal law addresses several of these problems. Thus, if a witness receives subsistence payments after relocation, but is subject to a court order for payment of family support, the government is to deduct and pay over the decreed amounts.[87] In the memorandum of understanding which he or she is required to execute with the Department of Justice, a protected individual must agree to comply with legal obligations and civil judgments against him or her and to designate another person to serve as agent for service of process, and must submit a sworn statement covering all outstanding obligations, including those concerning child custody and visitation.[88]

If a protected person is named as a civil defendant, the Attorney General is to make a reasonable effort to transmit the process commencing the action to the civil defendant/protected person and notify the civil plaintiff whether process has been served. If the protected individual has not made reasonable efforts to comply with a civil judgment entered against him or her, the Attorney General, after considering the danger it may pose to the protected person/civil defendant, may honor the request of the person holding the judgment to disclose the identity and location of the civil defendant. However, the recipient is not to make any further disclosure of that information unless it is essential to a recovery under the civil judgment.[89]

The matter of child custody is addressed from different aspects. In deciding whether to place a witness under protection, the Attorney General is to consider whether such protection may substantially infringe upon the relationship between a child who will be relocated with the protected witness and a parent who will not be relocated.[90] The Attorney General is specifically admonished not to relocate a child if a person other than the protected witness has legal custody.[91] If the relocated witness has custody but the other parent has visitation rights, the Attorney General is to obtain copies of all orders and evaluate whether the protected parent with custody must obtain a modification of the visitation order before relocation can be

implemented.[92] After protective relocation, the Attorney General must notify the nonrelocated parent or other person with court-approved visitation rights that the child is under protection, that the person's visitation rights under state court order are not affected, that the Department of Justice will pay all reasonable costs of transportation and security necessary for visits, and that the Department will ensure that visits are conducted in a secure manner at a secure location.[93]

Detailed legislative regulation of the federal witness protection program is a needed and welcome development. It is possible that some states will develop counterpart legislation. However, granted the expense inherent in establishing and administering programs of that nature, it probably will prove more cost-effective for states to contract with the United States Department of Justice for the accommodation within the federal witness protection program of their key endangered witnesses.

Conclusion

The need of victims and witnesses for protection and assistance is not new; it has existed for generations and exists today. However, in less complicated times, local officials and family members usually could afford the necessary protections for harassed or endangered witnesses, and a slower pace of life usually meant that the inconvenience of being a witness was not excessive. With the advent of urbanization and the rise of mobile local gangs and interstate and international organized crime groups, victims and witnesses have become endangered species in great need of protection and assistance. The largely statutory measures developed in the United States to aid them, although not yet as comprehensive and prevalent as they ought to be, certainly have wrought marked improvements in the status of victims and witnesses as indispensable components of the American criminal justice system. Whether other nations require some or all of these sorts of legislation can be determined only through an assessment of the contemporary circumstances and needs of victims and witnesses in those nations. Should legislative revision appear desirable, however, perhaps the content of modern American statutes may provide a pattern for the requisite laws and administrative regulations.

NOTES

1. *See* Turpen, *The Criminal Injustice System: An Overview of the Oklahoma Victims' Bill of Rights,* 17 Tulsa L.J. 253, 254 (1981).
2. *See generally* Harland, *Monetary Remedies for the Victims of Crime: Assessing the Role of the Criminal Courts,* 30 U.C.L.A.L. Rev. 52 (1982) [hereinafter cited as *Harland*].
3. Not all courts recognized an inherent power in the judiciary to order restitution; from the outset, some required specific legislative authorization. *See id.* at 57–58.
4. P.L. No. 97–291 (Oct. 12, 1982), § 5(a), adding a new 18 U.S.C. § 3579 (1982) [hereinafter cited as VWPA]. *See generally* Project, *Congress Opens a Pandora's Box – The Restitution Provisions of the Victim and Witness Protection Act of 1982,* 52 Fordham L. Rev. 507 (1984). The statute has been upheld as constitutional, usually against assertions that restitution is civil in character and that judicial assessment of restitution amounts violates the seventh amendment guarantee of jury trial in civil matters. *See e.g.,* United States v. Brown, 744 F. 2d 905, 908–11 (2d Cir.), *cert. denied,* 469 U.S. 1089 (1984); United States v. Satterfield, 743 F.2d 827, 836–39 (11th Cir. 1984). Objections based on due process and equal protection have been equally unsuccessful. United States v. Satterfield, *supra,* 743 F.2d at 839–43.
5. P.L. No. 98–473,98 Stat. 1976 (Oct. 12, 1984).
6. 18 U.S.C.A. § 3556 (Supp. 1987) (added by the Comprehensive Crime Control Act of 1984, § 212[a][2], P.L. No. 98–473, 98 Stat. 1976 [ap-

proved Oct. 12, 1984] [hereinafter cited as CCCA]).

Without a specific condition in an order of probation, a requirement of restitution is invalid. United States v. Elkin, 731 F.2d 1005 (2d Cir. 1984).

For representative federal cases awarding restitution, see United States v. Barringer, 712 F.2d 60 (4th Cir. 1983), *cert. denied,* 105 S. Ct. 97 (1984); United States v. Hendey, 585 F. Supp. 458 (D. Colo. 1984); United States v. McLaughlin, 512 F. Supp. 907 (D. Md. 1981). *Cf.* United States v. Missouri Valley Const. Co., 741 F.2d 1542 (8th Cir. 1984) (court invalidated a consensual condition of probation, in lieu of a fine, that the defendant corporation would contribute $1.4 million to a university for use either to endow a professorship in ethics or to construct an addition to an engineering building and establish in it a permanent program of seminars on ethics in business and engineering).

The loss reflected in restitution orders may have been inflicted indirectly. *See* United States v. Richard, 738 F.2d 1120 (10th Cir. 1984).

Restitution can be imposed on co-defendants in different amounts, based on ability to pay. United States v. Anglian, 784 F.2d 765 (6th Cir.), *cert. denied,* 107 S. Ct. 148 (1986); United States v. Wyzynski, 581 F. Supp. 1550 (E.D. Pa. 1984).

Under both federal and state law, sentences and probation conditions mandating payment of restitution must rest on specific findings of liability and amount. *See, e.g.,* United States v. Serhant, 740 F.2d 548 (7th Cir. 1984); People v. Canseco, 689 P.2d 673 (Colo. App. 1984) (court could not order restitution to one who had not been named as a victim in the counts of an indictment); People v. Chacon, 125 Ill. App. 3d 649, 466 N.E.2d 374 (1984) (record supported award of restitution in amount fixed by court); Walker v. State, 467 N.E.2d 1248 (Ind. App. 1984) (court must fix amount of restitution and manner of performance).

State law may allow restitution orders against adjudicated juvenile delinquents. *See, e.g.,* J.S.H. v. State, 455 So.2d 1143 (Fla. Dist. Ct. App. 1984), *approved,* 472 So.2d. 737 (Fla. 1985). Payments received from the state under an AFDC program for care of a minor delinquent's infant are not to be considered in determining her financial ability to pay. M.P. v. State, 443 So.2d 482 (Fla. Dist. Ct. App. 1984).

7. 18 U.S.C.A. § 3563(a)(2), (b)(2), (3), (13) (Supp. 1987) (added by CCCA, *supra* note 6, §212 [a] [2]). If a plea agreement is silent on the matter of restitution, entry of a restitution order does not violate the agreement. *See, e.g.,* United States v. Koenig, 813 F.2d 1044 (9th Cir. 1987); United States v. Mischler, 787 F.2d 240 (7th Cir. 1986); United States v. Pivirotto, 775 F.2d 82 (3d Cir. 1985); *cf.* Pollock v. Bryson, 450 So.2d 1183 (Fla. Dist. Ct. App. 1984) (defendant who accepted condition as part of guilty plea bargain was estopped to attack legality of condition); Doherty v. State, 448 So. 2d 624 (Fla. Dist. Ct. App.), *review denied,* 458 So.2d 272 (1984) (same); People v. Culp, 127 Ill. App. 3d 916, 468 N.E.2d 1328 (1984) (restitution could not be ordered if defendant did not agree to that as part of plea bargain).
8. *Id.* § 3663 (renumbered by CCCA, *supra* note 6, § 212[a] [1], from § 3579 added by VWPA). The government bears the burden of persuasion on the amount of restitution. *See, e.g.,* United States v. Bales, 813 F.2d 1289, 1298 (4th cir. 1987).
9. The amount determined in a restitution order need bear no affirmative relationship to amounts specified in counts of an indictment bearing on guilt, *see, e.g.,* United States v. Pivirotto, 775 F. 2d 82 (3d Cir. 1985), or to the amount of personal benefit an offender realized through the crime, United States v. Anglian, 784 F.2d 765 (6th Cir.), *cert. denied,* 107 S. Ct.

148 (1986). Restitution may be ordered paid to a corporation or other private legal entity, United States v. Shackleford, 777 F.2d 1141 (6th Cir. 1985), *cert. denied sub nom.* Brooks v. United States, 106 S. Ct.1981 (1986); United States v. Durham, 755 F.2d 511 (6th Cir. 1985), a local unit of government, United States v. Ruffen, 780 F.2d 1493 (9th Cir. 1986) (country social services agency), or the fedety social services agency), or the federal government, United States v. 1984).

10. The amount ordered cannot exceed the actual loss incurred by the person or entity to whom restitution is to be paid. *See, e.g.,* United States v. Hill, 798 F.2d 402 (10th Cir. 1986); United States v. Serhant, 740 F.2d 548 (7th Cir. 1984); Robinson v. State, 169 Ga. App. 763, 315 S.E.2d 277 (1984).
11. On the validity of the provision requiring payment of restitution within five years after release from imprisonment, see United States v. Richard, 738 F.2d 1120 (10th Cir. 1984).
12. 461 U.S. 660 (1983).
13. Tate v. Short, 401 U.S. 395 (1971); Williams v. Illinois, 399 U.S. 235 (1970).
14. 461 U.S. at 672–73. *See also* United States v. Brown, 744 F.2d 905, 911 (2d Cir.), *cert. denied,* 469 U.S. 1089 (1984) (*Bearden* controls); United States v. Ruffen, 780 F.2d 1493 (9th Cir. 1986) (*Bearden* controls); People v. Eads, 123 Ill. App.3d 113, 462 N.E.2d 819 (1984) (claimed error in court's failure to inquire into defendant's ability to pay was waived through a failure to object at the sentencing hearing); Sales v. State, 464 N.E.2d 1336 (Ind. App. 1984) (court must inquire into defendant's ability to pay before ordering restitution); State v. Harrison, 351 N.W.2d 526 (Iowa 1984) (trial court had to inquire into ability to pay restitution); State v. Storrs, 351 N.W.2d 520 (Iowa 1984) (trial court found defendant to have sufficient assets to pay restitution); State v. Pope, 107 Wis.2d 726, 321 N.W.2d 359 (Wis. App. 1982) (court must inquire into financial ability).

    In United States v. Koenig, 813 F.2d 1044 (9th Cir. 1987), the court rejected a defendant's claim that a restitution order requiring him to pay 65 percent of his salary in restitution up to a maximum of five million dollars was not improper and unduly harsh; the order allowed the defendant to contribute to his family's support.
15. *See generally* Note, *Victim Restitution in the Criminal Process: A Procedural Analysis,* 97 Harv. L. Rev. 931 (1984); Note, *Restitution in the Criminal Process: Procedures for Fixing the Offender's Liability,* 93 Yale L.J. 505 (1984).
16. 18 U.S.C. § 3664 (renumbered by CCCA, *supra* note 6, § 212[a][1], from the former § 3580).

    The provision, discussed in the text below at (5), invoking collateral estoppel against defendants in later federal and state civil litigation, does not convert the sentencing hearing into a civil action covered by the right to jury trial. *See* United States v. Satterfield, 743 F.2d 827, 833–43 (11th Cir. 1984); United States v. Brown, 587 F. Supp. 1005 (E.D. Pa. 1984). Similar rulings appear in state litigation. *See, e.g.,* Cannon v. State, 246 Ga. 754, 272 S.E.2d 709 (1980).
17. Fed. R. Crim. P. 32(c)(2)(D) (as amended by CCCA, *supra* note 6, § 215[a]). *See* Note, *Victim Impact Statements and Restitution: Making the Punishment Fit the Crime,* 50 Brooklyn L. Rev. 301, 304–10 (1984).

    The Supreme Court ruled that the use of a victim impact statement during the death-penalty phase of the trial of a capital case was unconstitutional, because it could improperly divert a jury's attention away from the defendant and the crime, would be difficult or impossible for the defendant to rebut without a similar shift in focus, and might serve to inflame the jury against the defendant; the Court thought such use inconsistent with the

reasoned decision making required in capital cases. Booth v. Maryland, 107 S. Ct. 2529 (1987). That does not affect the propriety of the use of such statements in noncapital cases. *See, e.g.*, United States v. Bales, 813 F.2d 1289 (4th Cir. 1987); United States v. Serhant, 740 F.2d 548 (7th Cir. 1984).

18. 18 U.S.C.A. § 3555 (Supp. 1987) (added by CCCA, *supra* note 6, § 211[a][2]).
19. The notice may be given by mail or through advertising. The court should consider the costs involved in advertising in relation to the loss caused by the crime, and is not to require a defendant to bear publicity costs beyond $20,000. *Id.*
20. *See* Zehr & Umbreit, *Victim Offender Reconciliation: An Incarceration Substitutes?*, 46 Fed. Prob. 63 (1982).
21. *See* George, *Screening, Diversion and Mediation in the United States*, 29 N. Y.L. Sch. L. Rev. 1, 28–29 (1984); 54 R. Int'l D.P. 995, 1004 (1984); *Harland, supra* note 2, at 68.
22. *See generally* Anderson & Woodard, *Victim and Witness Assistance: New State Laws and the System's Response*, 68 Judicature 221, 223–26 (1985) [hereinafter cited as *Anderson & Woodard*]; Clark & Webster, *Indiana's Victim Compensation Act: A Comparative Perspective*, 14 Indiana L. Rev. 751 (1981) [hereinafter cited as *Clark & Webster*]; Friedsam, *Legislative Assistance to Victims of Crime: The Florida Crimes Compensation Act*, 11 Fla. St. U.L. Rev. 859 (1984); Note, *Forgotten Victims: The Missouri Solution*, 50 U.M.K.C.L. Rev. 533 (1982); Note, *State Appellate Court Interpretations of Victim Compensation Statutes*, 10 New Eng. J. on Crim. & Civ. Confinement 87 (1984) [hereinafter cited as *Appellate Interpretations*]; Note, *The 1981 Oklahoma Crime Victim Compensation Act*, 17 Tulsa L.J. 260 (1981).

    Administrative compensation proceedings are totally separate from a related criminal prosecution, so that defendants cannot call the attention of jurors to pending compensation claims in an effort to attack a victim/witness's credibility. Lyons v. State, 384 So.2d 982 (Fla. Dist. Ct. App. 1980).

    There is no constitutional requirement that claims be honored for injuries incurred before the effective date of a compensation law, if the statute does not specify retroactivity. Gillespie v. State, 619 S.W.2d 128 (Tenn. App. 1981) (appeal denied, *id*). For litigation under a retroactive law, see Bruner v. Kops, 105 Wis.2d 614, 314 N.W.2d 892 (Wis. App. 1981).
23. N.Y. Exec. Law § 624(1)(b) (McKinney 1982).
24. *Id.* § 621(4). On questions of affinity, etc., *see, e.g.*, Ocasio v. Bureau of Crimes Compensation Div., 408 So. 2d 751 (Fla. Dist. Ct. App. 1982) ("affinity" does not include spousal relationship)
25. Exclusion of a claim on behalf of a two-year old daughter of a mother murdered by the father did not infringe the child's fourteenth amendment equal protection rights. Hollis v. State, 468 N.E.2d 553 (Ind. App. 1984). *See also Clark & Webster, supra* note 19, at 760–61.
26. N.Y. Exec. Law § 630 (McKinney 1982). Claims based on injury before death do not survive the death of the victim. Matter of Bryziec v. Zweibel, 74 A.D.2d 9, 426 N.Y.S.2d 616 (1980).
27. N.Y. Exec. Law § 631(2) (McKinney 1982).
28. CCCA, *supra* note 6, § 1401.
29. 18 U.S.C.A. § 3013 (Supp. 1987). The statute appears to apply to each count of a multiple-count indictment, which could escalate the amounts considerably in many federal criminal cases.

    Some states have similar provisions. *See, e.g.*, N.Y. Penal Law § 60.35(1), (2) (McKinney 1975). Claims of hardship can be made after an incarcerated defendant has been released and efforts are made to collect an unpaid surcharge, but not before release. Peo-

ple v. West, 124 Misc.2d 622, 477 N. Y.S.2d 276 (County Ct., 1984).

30. 18 U.S.C.A. §§ 3671–3672 (Supp. 1987).
31. *See Appellate Interpretations, supra* note 22, at 114–15. The name stems from the 1977 trial of David Berkowitz for murders committed in New York City, he claimed that his spiritual father, "Sam," had ordered the acts. He had signed lucrative contracts for publication of his memoirs. The New York legislature responded by authorizing forfeiture of contract proceeds for purposes of victim compensation. N.Y. Exec. Law § 632-a (McKinney 1982).
32. *See generally* Note, *Publication Rights Agreements in Sensational Criminal Cases: A Response to the Problem,* 68 Cornell L. Rev. 686 (1983).
33. CCCA, *supra* note 6, § 1402(b)(3) (referring to 18 U.S.C.A. § 3146 [Supp. 1987]).
34. *Id.* § 1402(b)(1).
35. *Id.* § 1404(a).
36. *Id.* § 1403(b). States cannot use federal funds to supplant state funds otherwise available for victim compensation. *Id.*
37. *See* Gittler, *Expanding the Role of the Victim in a Criminal Action,* 11 Pepperdine L. Rev. 117, 118–25 (1984) [hereinafter cited as *Gittler*]; Kelly, *Delivering Legal Services to Victims: An Evaluation and Prescription,* 9 Just. Sys. J. 62 (1984).
38. For example, eliminating traditional requirements that a woman manifest "utmost resistance" to rape but not to other crimes, replacing traditional rape and sodomy statutes with a unified sexual assault statute covering all forms of sexually aggressive conduct, and the recognition of marital rape.
39. For example, the elimination of special corroboration requirements in rape cases not found in relation to other crimes, the repudiation of the "Lord Hale instruction" that rape charges are easily made but disproved only with difficulty, and so-called "rape shield" laws forbidding cross-examination of a rape victim about unrelated sexual activities.
40. *See generally Anderson & Woodard, supra* note 22, at 228, 229–31; Hudson, *The Crime Victim and the Criminal Justice System: Time for a Change,* 11 Pepperdine L. Rev. 23, 28–36 (1984) [hereinafter cited as *Hudson*]; Kelly, *Victims' Perceptions of Criminal Justice,* 11 Pepperdine L. Rev. 15 (1984); Note, *State Legislation in Aid of Victims and Witnesses of Crime,* 10 J. Legis. 394, 395–97 (1983) [hereinafter cited as *State Legislation Note*].
41. *See* Kelly, *Victims of Crime. What Do Victims Want? Why Should Their Concerns be Considered?,* 23 Judges J. No. 2, pp. 4, 52 (Spring 1984).
42. *Id.*
43. For example, in Morris v. Slappy, 461 U.S. 1 (1983), the Supreme Court castigated a panel of the Ninth Circuit Court of Appeals for having instituted a requirement of a "meaningful relationship" between a defendant and defense counsel, because in doing so it "wholly failed to take into account the interest of the victim of these crimes in not undergoing the ordeal of yet a third trial," particularly "when the crime is one calling for public testimony about a humiliating and degrading experience such as was involved here." *Id.* at 14.
44. *See generally* Herrington, *Victims of Crime: What the Government Can Do,* 23 Judges J. No. 2, pp. 18–20 (Spring 1984).
45. This would require a departure from the tradition of "invoking the rule," according to which all witnesses but the tradition of "invoking the rule," be sequestered from the courtroom at least until they have testified and been excused.
46. Detailed suggestions of these sorts were made in ABA Criminal Justice Section Committee on Victims, Reducing Victim/Witness Intimidation: A Package 29–32 (1980) [hereinafter cited as ABA Victim/Witness Report]. *See also* ABA Criminal Justice Section, Bar Leadership on Victim Witness Assistance 39–44 (1980).
47. *See State Legislation Note, supra* note 40, at 404–06.
48. *See* ABA Victim/Witness Report, *supra* note 46, at 6–12.
49. Wash. Rev. Code Ann. § 7.69.030

(*West* Supp. 1985). *See also* N.Y. Exec. Law § 642 (McKinney 1982); Okla. Stat. Ann. tit. 19, § 215.33 (West Supp. 1985).

50. However, the statute allows a law enforcement officer to accompany the individual to a medical facility if necessary to question the person about the criminal incident, if that does not hinder the receipt of medical assistance. Wash. Rev. Code Ann. § 7.69.030(8) (West Supp. 1985).
51. Wis. Stat. Ann. § 950.04(9) (West 1982). There is also a special supplementary list of rights benefiting child victims and witnesses. *Id.* § 950.55
52. *E.g.*, Cal. Penal Code §§ 13835–13835.9 (West 1982).
53. *See Gittler, supra* note 37, at 150–63.
54. *See, e.g.*, N.Y. Exec. Law § 642(1) (McKinney 1982) (but the failure to consult cannot be grounds for delaying proceedings against a defendant and cannot affect the validity of a conviction, judgment or order).
55. *See supra* notes 17–18 and accompanying text.
56. *See supra* notes 28–36 and accompanying text.
57. CCCA, *supra* note 6, § 1404(a).
58. *Id.* § 1404(d).
59. *Id.* § 1404(c).
60. *See generally* Graham *Witness Intimidation*, 12 Fla. St. L. Rev. 239, 240–45 (1984).
61. *See Hudson, supra* note 40, at 53–55.
62. VWPA, *supra* note 4. *See generally* Jeffries, *The New Federal Witness Tampering Statute*, 22 Am. Crim. L. Rev. 1 (1984); Note, *Defining Witness Tampering Under 18 U.S.C. Section 1512*, 86 Column. L. Rev. 1417 (1986).
63. 18 U.S.C. § 1512 (1982). Some or all of the acts alleged must have been committed within the federal district where trial occurs. United States v. Moore, 582 F. Supp. 1575 (D.D.C. 1984).
64. Defined in 18 U.S.C.A. § 1515(2) (Supp. 1987) to include confinement.
65. Defined in *id.* § 1515(3) to include knowingly made false statements, knowingly omitted information, forged or altered statements, misleading specimens, maps, etc., and use of trick, scheme or device with intent to mislead.
66. Defined in *id.* § 1515(1) as a proceeding before a federal judge, court, magistrate, bankruptcy judge or grand jury, a proceeding before Congress, or a proceeding before a federal agency authorized by law to conduct the particular proceeding.
67. Defined in *id.* § 1515(4) to include a probation or pretrial services officer.
68. *Id.* § 1512(a). The statute replaced the earlier legislation dealing with obstruction of justice, 18 U.S.C. § 1503 (1982), so that the latter provision no longer can be utilized in intimidation cases. United States v. Hernandez, 730 F.2d 895,899 (2d Cir. 1984).
69. The statute creates an affirmative defense, which a defendant must establish by the preponderance of the evidence, that the conduct was lawful and was motivated exclusively to encourage, induce or cause the other person to testify truthfully. 18 U.S. C.A. § 1512(c) (Supp. 1987).
70. *Id.* § 1512(b). Congress declared extraterritorial federal jurisdiction over the two crimes, *id.* § 1515(f), which means that the tampering activity can take place outside the territorial or special maritime and other jurisdiction of the United States.
71. Defined in *id.* § 1515(5) as (a) a cut, abrasion, bruise, burn or disfigurement; (b) physical pain; (c) illness; (d) impairment of the function of a bodily member, organ or mental faculty; or (e) any other injury to the body, no matter how temporary.
72. *Id.* § 1513(a). Extraterritorial jurisdiction is provided for the offense. *Id* § 1513(b).
73. *Id.* § 1514.
74. Defined in this context as a course of conduct directed at a specific person that (a) causes substantial emotional distress in such person; and (b) serves no legitimate purpose. *Id.* § 1514(c)(1). "Course of conduct" means "a series of acts over a period of time, however short, indicating a continuity of purpose." *Id.* § 1514(c)(2).
75. *Id.* § 1514(a)(1). However, this cannot include an offense consisting of misleading conduct alone. *Id.*
76. The adverse party has the right to present evidence and cross-examine

government witnesses. *Id.* § 1514(b)(2).

77. CCCA, *supra* note 6, §§ 202–203 (entitled the Bail Reform Act of 1984).
78. The statute covers a federal defendant charged with any felony if he or she has two or more prior felony convictions which qualify under any of the first three alternatives. 18 U.S.C.A. § 3142(f)(1)(D) (Supp. 1987).
79. *Id.* § 3142(f)(2)(B).
80. United States v. Salerno, 107 S. Ct. 2095 (1987).
81. The basis for the program was a provision in the Organized Crime Control Act of 1970. *See* H.R. Rep. No. 98–767 Part 1, 98th Cong., 2d Sess., May 15, 1984, on the United States Marshals Service and Witness Security Reform Act of 1984 (H.R. 4249), at 11.

    The predecessor legislation had been sustained as constitutional. United States v. Wilson, 565 F. Supp. 1416 (S.D.N.Y. 1983).
82. CCCA, *supra* note 6, § 1208 (entitled the Witness Security Reform Act of 1984).
83. 18 U.S.C.A. § 3521(a)(1) (Supp. 1987). This includes authority to establish "safe sites" in new or existing buildings without the usual requirements of competitive bidding, etc. on public construction projects. *Id.* § 3521(b)(1)(H).

    If a state has a witness relocation program based on administrative practice and a witness rejects protection, he or she cannot claim privilege or assert any other legal basis to refuse to testify when called. People v. Gumbs, 124 Misc.2d 564, 478 N.Y.S.2d 513 (Sup. Ct., 1984).
84. 18 U.S.C.A. § 3521(b)(1) (Supp. 1987).
85. *Id.* § 3521(b)(1)(G). It is a federal felony, punishable by a fine of $5,000, imprisonment for five years, or both for anyone knowingly to make unauthorized disclosure of the information obtained from the Attorney General. *Id.* § 3521 (b)(3).

    A protected witness can be placed under probation or parole supervision in connection with a state criminal matter if the state consents to federal supervision. *Id.* § 3522(a). If restitution is a condition to the state probation or parole order, it can be enforced by the Attorney General as if it were a federal civil judgment, with amounts so recovered to be distributed to victims identified in the state court order. *Id.* § 3522(d).

    The failure to prevent protected witnesses from committing new crimes does not give rise to liability under the Federal Tort Claims Act. Bergmann v. United States, 689 F.2d 789 (8th Cir. 1982).
86. 18 U.S.C.A. § 3521(c) (Supp. 1987). Among other things, a protected person must agree not to commit any crime. *Id.* § 3521(d)(1)(B).
87. *Id.* § 3521(b)(2).
88. *Id.* § 3521(d)(1)(D), (F), (G).
89. *Id.* § 3523(a). Procedures for handling civil matters, including appointment of a guardian for purposes of enforcing a judgment, are detailed in *Id.* § 3523(b).

    A civil plaintiff whose efforts to enforce a judgment against a protected witness fail, cannot sue the government for the amount under a theory of taking property without just compensation. Melo-Tone Vending v. United States, 666 F.2d 687 (1st Cir. 1981).
90. 18 U.S.C.A. § 3521(c) (Supp. 1987).
91. *Id.* § 3524(a).
92. *Id.* § 3524(b).
93. *Id.* § 3524(c). Because of federal court of appeals decisions, Franz v. United States, 707 F.2d 582 (D.C. Cir. 1983); Ruffalo v. Civiletti, 702 F.2d 710 (8th Cir. 1983); Leonhard v. United States. 633 F. 2d 599 (2d Cir. 1980), *cert. denied*, 451 U.S. 908 (1981), the United States Marshals Service in fact notifies nonrelocated persons having visitation rights of the proposed relocation before rather than after relocation. U.S. Dep't of Justice, Handbook on the Comprehensive Crime Control Act and Other Criminal Statutes Enacted by the 98th Congress 167–68 (1984).

    The Government is not obligated to pay for more than twelve visits a year, cumulating to not more than thirty days, but can augment that allocation in "extraordinary circumstances." 18 U.S.C.A. § 3524(c) (Supp. 1987). If visits not required by court order are frustrated by the protected witness,

the nonrelocated parent can obtain a federal district court order authorizing amended rights to custody or visitation. *Id.* § 3524(f). Elaborate provisions are made for the litigation of issues arising from state custody and visitation decrees. *Id.* § 3524(d). It a protected person is dissatisfied with an order, the Attorney General can bring an action on his or her behalf for modification of the order. *Id.* § 3524(e). In all these instances, the federal government is responsible for litigation costs. *Id.* § 3524(h)(1).

The Prosecution System in the Federal Republic of Germany

*By Karl-Heinz Kunert**

The prosecution system in the Federal Republic of Germany is characterised by the principle of compulsory prosecution but also by a growing tendency to refrain from prosecuting in cases of minor guilt and in certain other cases. The second tendency is, beside other effects which it has, also a contribution to the lenient treatment of offenders.

Before plunging into the depths and the legal intricacies of the prosecution system in the FRG, I shall first outline the outer framework in which the system works,[1] secondly, I shall draw a rough sketch of the historical conditions on which it is based.

1) The FRG is a federative state, roughly comparable in its constitutional structure to the USA. Each of its eleven states has its own judiciary and its own prosecutorial staff that is loosely attached to the judiciary court but by no means a part of the respective state criminal court. The federation as such has its own federal criminal court and its own prosecutorial staff. The federal criminal court is the nationwide supreme appellate court for criminal cases. Insofar, the federal prosecutors are attached to the federal criminal court and act before it. In state crime cases, for instance in cases of espionage, high treason or terrorism, they are moreover attached to and act before the high courts of the states which function as trial courts in these matters. All other criminal cases are dealt with by state prosecutors and state courts. All criminal courts and all prosecutors follow an identical substantive criminal law and an identical code of criminal procedure. Legislation in these matters is up to the federation. The eleven states have about 4,000 prosecutors, the federation has about 50 federal prosecutors. The structure of the prosecutorial offices in the federation and in the states is bureaucratic and hierarchical. Prosecutors are mostly fully trained lawyers, appointed by the federal or state ministers of justice, and holding life tenure after some training years.

As to my role in the system: I come from the most populous of the states – North-Rhine-Westphalia. You may forget the name but let me mention that it comprises almost one-third of the total population of the federation and that the federal capital, Bonn, lies in that state, so that what happens in Bonn is dealt with by its prosecutors, with the exceptions that I have mentioned. In the ministry of justice of that state, I am the head of the criminal justice bureau. The function of this department is to guide and supervise, in the minister's name and under his political responsibility, and within the legal framework, the prosecutorial staff and to take part in the preparation of federal legislation in criminal matters.

2) In addition to these organizational remarks, a few historical remarks seem appropriate.[2] They will unobtrusively lead to some more systematic remarks. German law – and this is a feature that stems from its Roman, medieval and ecclesiastical origins – has for several centuries taken the view that criminal sanctions are imposed for public rather than private purposes, such as revenge or recompensation, and that, therefore, it is the state and, with a few exceptions, only the state, that should have the power to conduct the proceedings that lead to these sanctions. For centuries, this power was focused on the judge alone.

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It was the judge's task to gather and scrutinize first suspicions, to follow them up and to pursue this process to the point of final adjudication and sentencing. This was called the inquisitorial system. Now, in the middle of the 19th century, under the influence of the English and via the French legal system that had earlier adopted some of the English traits, the criminal process, while still remaining strictly a public or state affair, was divided or bifurcated, as it were, into two separate branches: the first stage of the proceedings, that of investigating the facts and of instituting a formal charge, or accusation, was entrusted to the newly-established office of the state prosecutor. The court was restricted to the second stage, that of taking formal proofs, of adjudicating and of sentencing, thereby being barred from the initiative to institute criminal proceedings itself, as it had done before. The idea was to create a balance of powers between court and prosecutor and to strengthen the impartiality of the court's adjudicative work.

On the other hand, the prosecutor was to be prevented from becoming a bloodhound who could and would concentrate all his might on running down and harassing the offender. Therefore the prosecutor was, and indeed still is, required to gather not only inculpating but also exculpating evidence. Further, he was given the right and the duty to appeal to a higher court not only *against* the accused in the case of his acquittal but also *on behalf of the accused* if there was reason to believe that the lower court had erred to the detriment of the latter. The prosecutor thus was to be the "watchman of the law," a model of impartiality and of evenhandedness who is still proud to be called the "most objective authority in the world." This is perhaps a superhuman task if you consider that it is he after all who has to set forth the prima facie case against the accused by raising the formal charge against him. By the way, this superhuman burden is, in our system, also laid on the shoulders of the judge who has, at the same time, to conduct the trial and to perform the task of impartial adjudication, to be his own umpire, so to speak. The Anglo-American legal system tries to avoid these difficulties by the distribution of the functions of attack and defence among two separate and partisan persons and by reducing the judge to the role of the neutral umpire.

Now, back to our public prosecutor as he stands today and to the distinctive features of his function: His work is guided by two fundamental principles:

1. his monopoly over the preferring of criminal charges,
2. the rule of compulsory prosecution, or the celebrated principle of legality,

the second of which is the more distinctive one. I shall now explain these principles in greater detail:

1. *Monopoly over the Preferring of the Criminal Charges*

This principle is set forth in two sections of the Code of Criminal Procedure that read as follows:

§151: The covening of a judicial investigation (meaning primarily the commencement of a trial) is conditioned upon the preferring of a formal charge.

§152 I: The public prosecutor is responsible for preferring the official charge.

The first section means that the court cannot take proofs and adjudicate until a preliminary investigation has been carried out by the prosecutor that culminates in a formal, written criminal charge. The second section makes the preferring of this formal charge the sole responsibility of the public prosecutor, thus barring others, not only the court but also the police or the victim, from doing so. There are, it is true, a few exceptions from this monopoly of the public prosecutor on behalf of the victim but they can be disregarded, all the more so since when the victim may exceptionally prefer the charge, the prosecutor has the right to step in, pick up the case and make it his own.

2. *The Principle of Legality or the Rule of Compulsory Prosecution Set Forth in § 152 C.C.P.*

The public prosecutor is required to take action against all prosecutable offences, to the extent that there is a suf-

ficient factual basis.

Should the prosecutor intentionally violate his obligation to prosecute or, vice versa, not to prosecute and to dismiss the case instead, he commits a crime himself.[3] This is regarded as the strongest safeguard of the principle of legality. Though this criminal liability of the prosecutor is only very seldom brought to bear in practice (and in cases where he failed to prosecute rather than in cases where he falsely prosecuted) it works as an effective deterrent. On the other hand, and what is perhaps even more important, it shields the prosecutor from pressure and undue influence that might be exercised by his superiors and ultimately by the government to whom he is responsible as a public official. Before I can explain this very important aspect in greater detail I have to describe the hierarchical structure that characterizes the proseutorial office:[4] Each of the roughly 90 prosecutorial offices in the FRG and the federal prosecutorial office are organized after a bureaucratic fashion, with a chief prosecutor at the head of the office. In the states – not in the federal system – there is moreover a supervisory prosecutorial office that has to see to it that the functions of the lower office are carried out properly. The jurisdiction of these higher offices comprises between one and ten lower offices. Again, they have each a chief at their head. From these offices orders can be given to and must be obeyed by the lower offices. Orders may refer either to the factual basis of a case and its evaluation (sufficient grounds for a charge or not?) or to the legal evaluation, or both. Accordingly, the order may be to dismiss the case or to prefer a charge, according to the evaluation of the higher office.[5] Citizens who are not content with the lower office's decision may put in a formal or an informal complaint, depending on whether they have a personal interest in the case.[6] These are strong safeguards against prosecutorial malpractice, since no prosecutor wants successful citizen complaints on his personal record: they will impair his career chances, for promotion is on a meritocratic basis. So far, the built-in control and supervision is of a purely professional nature. This may become or merely seem to become different where the ministerial control sets in.

Both prosecutorial offices are subordinated to the ministry of justice. The minister is a political officer and a member of the state or federal government and is, in his turn, politically responsible to the state or federal parliament. The ministers of justice are by law endowed with the power and the duty to supervise all prosecutorial offices below them and to give orders to that effect. They do both largely through their officials who are not political but professional officers. The justice ministers and their officials are bound by the same laws and, eventually, the same criminal liabilities that rule the work of the prosecutors below. In other words, they are also governed by the principle of legality and its safeguards that I have mentioned. Now it is in the nature of things that there is often a certain amount of discretion in answering the question whether the factual basis is sufficient for a formal charge or not. And questions of law are also often far from simple and unequivocal among lawyers. It is through these gaps – and hopefully only through them! – that a minister of justice or a government may try to exert political pressure on the prosecutor. This could become dangerous for a flawless functioning of the rule of law – if the principle of legality had not been invented! At this point it displays its real worth as a means of resisting political pressure from above: the prosecutor who, for instance, as ordered by one of his superiors to prosecute or not to prosecute against his own will can point out that the order is against the principle of legality and therefore against the law, and that the superior giving the order is himself criminally liable. This is a very strong weapon in the hands of the prosecutors against pressure from above and particularly against political pressure. This weapon greatly limits the possibilities of undue influence. In other words: though at first glance the rule of compulsory prosecution or the principle of legality seems to *limit* the power of the public prosecutor, it is really a fundamental *protection* for

himself and, what is more, for the due process of law, since it shields the carrying out of his duties from improper interference.[7]

This description, in abstract terms, may create the impression that there is a gigantic machinery of supervision and control working day and night to control every move of the prosecutor working in the front line. But this is not so.

In the first place, the manpower and thereby the means of control of the higher supervisory office and of the ministry are naturally limited. Their control and supervision must therefore be restricted to cases of greater importance. This implies that the duty of the lower offices is to report on such cases so that control can be brought into effect.[8] In the second place, it is mostly not by orders that the built-in control is exercised but by professional argumentation and persuasion in the course of which the controller convinces rather than bullies the controlled – and vice versa, for that matter. Thus, head-on collision cases between the prosecutor and his superiors and particularly those at the ministerial level happen very rarely. I myself have not seen more than half a dozen of the latter type in my life-time.

The chief realm of the justice ministries is not the given specific case but the propounding of general rules, since the controlling power implies also a rule-making power. These general rules which are rather numerous concern the criminal procedure. The most important of them are uniform not only in the sense that they regulate the everyday work in one separate state but in the sense that they are co-ordinated between the ministries of justice in all states and in the federation, and are put into effect simultaneously and synchronically.[9] By these uniform rules an attempt is made to equalize the administration of justice by the prosecutors and thereby to render it more just. It is thought to be intolerable, for instance, that the principles according to which penal orders (of which I shall speak of later) are moved for by the prosecutors vary from state to state. Instead it is deemed preferable that these principles be unified at least to a certain extent.

What I have so far told you about the fundamental nature of the rule of compulsory prosecution or the principle of legality needs some qualifications. Broadly speaking, the rule applies in all its vigour only to more serious violations and notably to all felonies, whereas for misdemeanours and for petty infractions it has been eroded by a great number of exceptions. Some exceptions have even been introduced where serious crime is concerned.

First I will deal with the exception for misdemeanours and petty misdemeanours. Violations of the lowest order in this category,[10] such as traffic violations and certain violations of economic regulations, are no longer considered as criminal offences at all and were therefore eliminated from the criminal statute books and from the criminal procedure. Instead, these petty infractions are dealt with by administrative agencies such as the police.[11] The procedure is informal, the sanction is a purely monetary one. Here, the rule of compulsory prosecution does not apply at all. If the violator pays up the so-called penance money, the order imposing it becomes final. If he chooses to contest the order, the case is transferred to the lower criminal court. The prosecutor's role in the court proceedings is only marginal. By this method of de-criminalisation a vast load has been taken off the shoulders of the judiciary staff and the prosecutors.

Misdemeanours of the next highest order that are nevertheless considered as criminal and that carry criminal sanctions, chiefly fines, are ordinarily dealt with according to the rule of compulsory prosecution but in a rather simplified type of proceedings: the prosecutor moves in the local court for the issuance of a so-called penal order,[12] by which fines and the suspension of a driver's license and the like can be imposed, but not imprisonment. The court, after a summary review of the files, issues the order in writing, without holding a trial. It becomes final if not contested, otherwise the case goes to court and is dealt with as if a formal charge had been made, and a trial is held, with the prosecutor taking full part in the proceedings. About one sixth of all cases that the pros-

ecutors handle is dealt with in this cursory fashion that spares the offender the hardships of a public trial and is therefore another contribution to leniency towards offenders.

So far the exception from the general pattern is merely a procedural one and has nothing to do with the question of compulsory prosecution. But it is in this group of cases that the code of criminal procedure provides for the most important and most numerous exceptions from that rule. It does so by setting forth an explicit counterprinciple, namely that of discretionary non-prosecution or the principle of expediency or advisability. This principle has steadily expanded over the last years, and it governs now about 10%, in juvenile cases even about 30% of all cases. The underlying philosophy is this:

The rapid growth of indictable misdemeanours in the statute books and the rapid increase of reported cases owing to more police and citizen control brings an ever-increasing number of citizens within the reach of the criminal law and of the stigma of criminalisation. On the other hand, most of the citizens concerned will respond not only to criminal sanctions proper but also to a mere criminal procedure that they are made objects of. Finally, if the rule of compulsory prosecution were strictly applied also to all minor cases of crime, the prosecutors and the criminal courts would soon be swamped and flooded by their case-loads, and there would be no resources left for fighting more serious crimes such as white-collar crime, terrorism and serious violations of environmental regulations. Therefore, according to § 153 C.C.P, the prosecutor may refrain from prosecuting with the consent of the court competent to try the case or, in minor cases, even without that consent of the court, if the guilt of the actor would be regarded as minor, and if there is no public interest in prosecuting.

In some cases, all these considerations may apply, particularly that of minor guilt rendering prosecution unnecessary, and yet there may be a public interest in prosecuting left, albeit for reasons of deterrence or of atonement. For these cases, the code of criminal procedure makes a special provision by which the prosecutor is authorized to neglect that public interest, if the offender

- compensates the victim,
- volunteers to make a payment to a charitable organization,
- or restores property.[13]

Such conditional non-prosecution (which bears a certain resemblance to probation in substantive criminal law) has been widely criticized because it does constitute a form of plea-bargaining that is theoretically abhorred in our legal system. But to make use of this method of flexible response to crime of minor dimensions is absolutely necessary out of sheer self-defence of the criminal administration system, for it would otherwise fall to pieces. For these reasons, the ministries of justice have, over the recent years, encouraged their prosecutors to make use of these code provisions granting discretionary non-prosecution, be it with or without payments to charitable organizations etc. to eliminate the public interest in prosecuting. The nation-wide uniform rules give some broad outlines, the state regulations that have so far been additionally propounded vary in their generosity and their broadmindedness. Let me stress again the fact that the ministries have the pertinent rule-making authority in this field only because the code itself constitutes exceptions from the rule of compulsory prosecution insofar. The ministerial rules are nothing but binding interpretations of the broad and very abstract code provisions. Their intention is to bring it about through these practices, by lightening the load of the prosecutor in cases of lesser crime, that the rule of compulsory prosecution in cases of serious crime is not frustrated or perhaps even annihilated for want of resources. And let me stress it once more that all these practices are in accordance with the law.

What I have described is, in the net result, not much different from what is done in other parts of the world, though it may be given different names and labels such as "diversion strategies" or the like. What is perhaps interesting in our system is that it *is* a system, since it tries to give these di-

version strategies a recognizable shape by the legislature and by ministerial rule-making. The intention of this shaping is to make the practices less arbitrary than they would otherwise be. Quoting from my favourite author William Shakespeare, I'd say that "though this be madness, yet there's method in't."

In addition to the exceptions from the rule of compulsory prosecution that I have discussed so far, applicable to cases of minor guilt, there are some others, far less frequent in their application, yet more important in nature, since they apply also to cases of felonies and of grave misdemeanours. Suffice it to mention the most distinctive of these exceptions:

a) The prosecutor is given discretion not to prosecute, if the punishment to which the prosecution may eventually lead is negligible compared with a punishment imposed or anticipated against the accused for another act or for a severable part of an act.[14]

– This is also a device to reduce the length of court proceedings –

b) The prosecutor may refrain from prosecuting in cases where the offender is going to be extradited.[15]

c) Offences committed without the boundaries of the FRG and to which, nevertheless, German substantive law applies, may go unprosecuted if prosecution is considered to be against the public interest. These cases must be submitted to the ministry and are subject to orders given from there. It is easy to discern the aspect of political expediency in cases of that sort. The rule applies, for instance, in cases where the offence was committed in Eastern Germany; it touches the sensitive spot of West German–East German relations and needs delicate handling.[16]

d) Similar considerations apply in state crimes proper. Here it is chiefly the federal prosecutorial office and the federal minister of justice who take action, or rather non-action, for here, too, prosecution is discretionary.[17]

Late in 1986, we had a very hot public debate over the question of whether a new exception be introduced for what is called crown's witnesses in cases of terrorism, meaning that offenders of terroristic crimes should go unprosecuted if they report their accomplices to the criminal authorities. Similar provisions have been introduced in North Ireland and in Italy where terrorism is rampant. The government of the FRG had prepared a draft bill to introduce such legislation but was unable to get enough votes for it in the federal parliament. The counter-argument that finally won over was that this would have been crossing the border-line between what is tolerable and what is intolerable as far as possible exceptions from the rule of compulsory prosecution are concerned. I do not mean to discuss this question of internal German politics here in greater detail. But the matter deserves mentioning, since you can see that the principle of legality or the rule of compulsory prosecution is not an academic affair or an affair for nice legal distinctions for criminal lawyers in public lectures. On the contrary, it is still a vivid and vigorous principle that serves to separate the spirits of law-makers. In this case, it separated the falcons from the doves in the philosophy of fighting terrorism. I did not intend to separate this audience, which I thank for their patience in reading, into followers and opponents of the principle of legality. I wanted to point out how a living legal system tries to canalize and regulate prosecutorial powers and duties in a hopefully efficient manner.

NOTES

1. The framework is set by the Statute concerning the Courts (Gerichtsverfassungsgesetz, hereinafter called GVG) that deals also with the organisation of the prosecutorial offices. For this, see GVG, Titel X.
2. For a more detailed description, see *Eberhand Schmidt*, Einführung in die Geschichte der deutschen Strafrechtspflege, 3rd ed. 1965, p. 331 ff.
3. Criminal Code (Strafgesetzbuch), §§ 258, 258 a, 336, 344
4. GVG, §§ 144 ff.
5. For a more detailed explanation of the hierarchical structure implying

the right of supervision by the superintending prosecutorial office (Generalstaatsanwaltschaft) and the respective, i.e. federal or state, ministry of justice, see *Kunert*, Festschrift für Rudolf Wassermann, 1985, p. 915–925.

6. Code of Criminal Procedure (Strafprozessordnung, hereinafter called StPO), §§ 171 ff.
7. There are tendencies to do away with the supervisory power, be it a) of superiors altogether, b) of the ministries of justice only. For criticism of the first type, see, for instance, *Roxin*, Rechtsstellung und Zukunftsaufgaben der Staatsanwaltschaft, DRiZ 1969, p.385 ff.; Moderne Staatsanwaltschaft, Denkschrift der *Gewerkschaft Offentliche Dienste, Trasnport und Verkehr (OTV)*, 1975. For criticism of the latter type, see *Richter und Staatsanwalt in Nordrhein-Westfalen*, Informationsblatt Nr.2/1987, p. 2 ff. A compromise was attempted in the preliminary draft of a revision of the GVG, submitted by the Federal Ministry of Justice in 1976, but dismissed in the meantime (See, Referentenentwurf eines Gesetzes zur Änderung des Rechts der Staatsanwaltschaft, Stand 1976). Criticism was based on the contention that the public prosecutor must be as independent as the judge. But this view was rejected by the Supreme Court (Bundesverfassungsgericht), see BVerfGE 32, p. 199 ff., on the grounds that the prosecutorial power is part of the executive branch of government. See also, Federal Court (Bundesgerichtshof), BGHSt 24, p. 170.
8. This duty is expressed in the Ordinances Concerning the Duty to Report (Anordnungen über die Berichtspflichten in Strafsachen), issued by the various ministries of justice at the federal and state level.
9. Ordinance Concerning Criminal Procedure (Richtlinien für das Straf- und Bussgeldverfahren).
10. Called Ordnungswidrigkeiten.
11. For details; see, Statute Concerning Petty Infractions (Gesets über Ordnungswidrigkeiten).
12. Called Strafbefehl, see StPO, §§ 407 ff.
13. StPO, § 153 a.
14. StPO, §§ 154, 154a.
15. StPO, § 154b.
16. StPO, § 153c.
17. StPO, § 153d.

Protection of Human Rights at the Stage of Treatment

*by Nor Shahid b. Mohd. Nor**

Introduction

There is generally a misconception of prisons, as even the people at large are still deeply rooted in their thinking that prisons are merely places of punishment and it therefore follows that the nature of treatment of prisoners can only be described as barbarous. Nothing is further from the truth, for with the sweeping reforms that have been introduced into the prisons system it can be said that in the history of the system no greater change has been recorded than its transformation to an administration completely re-oriented and committed to new aims, objectives and purpose. This complete change in the character of the system naturally resulted in a complete change in the nature of treatment of offenders. A marked feature of the Malaysian Prison System is its emphasis on humane treatment of prisoners as required by the Prison Rules of 1953 and the United Nations Standard Minimum Rules for the Treatment of Offenders.

In a Malaysian Prison a prisoner is no longer required to serve penal servitude with hard labour.[1] Prisoners are also protected by the Malaysian Constitution, and this is evident in Article 6 of the Constitution[2] which prohibited slavery and forced labour, but work incidental to the serving of a sentence of imprisonment imposed by a court of law shall not be taken to be forced labour.

"Human rights" is a twentieth century name for what has been traditionally known as "natural rights" or in a more exhilarating phrase, "The Right of Man." Much has been said and talked about them and yet one may still be left wondering what they are.

The Constitutions or the legal codes of practically every state in the world today give at least formal recognition to the "Rights of Man and the Citizen."

Despite this universal trend, the doctrine is not without a challenge, and this paper shall only attempt to describe a number of problems plaguing the administration of the criminal justice system and give some account of the attempts made by the prisons administration to preserve and protect Human rights at the stage of treatment.

The Administration of Justice

In Malaysia, the most important source of law[3] is the written and unwritten law which consists of the following:

(a) The Federal Constitution which is the supreme law of the land together with the constitutions of the thirteen states comprising the Federation;
(b) Legislation enacted by Parliament and the State Assemblies under powers conferred on the them by the respective constitutions;
(c) Delegated or subsidiary legislation made by persons or bodies under powers conferred on them by Acts of Parliament or enactments of State Assemblies.

The unwritten law comprises the following:

(a) Principles of English law applicable to local circumstances;
(b) Judicial decisions of the Superior Courts, that is, The High Courts, Federal Court and Judicial Committee of the Privy Council; and

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(c) Customs of the local inhabitants which have been accepted as Law by the Courts.

Muslim law is also an important source of Malaysian law but it is applicable to Muslims only and it is administered by a separate system of courts, which is called the Syaria's Courts.

The Criminal Justice System of Malaysia is enforced and administered in three areas, which though are separate but nevertheless related in their functions. They are the Police, the Judiciary, and the Prison. Their functions are related in that the enforcement and administration of the Criminal Justice System in essence is to catch, sentence and rehabilitate the same person.

The aims of the Criminal Justice System in relation to law-breakers are that "It removes dangerous people from the community. It deters others from criminal behaviour and it gives society an opportunity to attempt to transform law-breakers into law-study-citizens." These objectives of the State are achieved by a close working relationship between the Police, the Judiciary and the Prison Service.

The Judiciary

The Malaysian Constitution provides for the exercise of power by the Legislature, the Executive and the Judiciary. The Judiciary plays an important role in this balance of power. It has the power to hear and determine civil and criminal matters, and to pronounce on the legislative or executive acts. To enable it to perform its judicial functions impartially, the Judiciary is relatively independent.

The judicial power of the country is vested in the Federal Court, the High Courts and subordinate Courts. The Head of the Judiciary is the Lord President of the Federal Court, and he has direct supervision over all Courts which is headed by an administrative head who is the Chief Registrar.

The Police Force

The Malaysian Police Force are charged with the very heavy responsibilities of not only preventing crimes but also performing a variety of general duties for the protection of the general welfare of the people. They are also responsible for investigating crimes, detecting and identifying offenders and prosecuting criminals in Courts. Besides all these they have to perform a variety of other duties including patrolling coastal waters, rivers and jungles using patrol boats and planes. To top it all the police also have to perform in jungle operations, tracking down undesirable elements, investigating the smuggling of drugs, arms, and other protected items through the borders, and ensuring the safety of passengers travelling on the nation's railway and airline systems.

The Nation's Police force is headed by an Inspector General of Police, his Deputy and four Directors of Divisions, viz: the Criminal Investigation Department, The Special Branch, Security and Public Order, and Management. The Inspector General of Police is responsible to the Minister of Home Affairs.

Although the Criminal Justice System of Malaysia is enforced and administered in three areas, the close working relationship of the Police and the Prison Service are clearly laid down in both the Prison Ordinance of 1952 and the Police Act of 1967.[4] These two provisions in the laws establish the powers and relative duties and responsibilities of the officers in the two services. This clearly establishes the fact that not only are the functions interchangeable, the authority and relative power vested in one can and is exercised by the other. The relationship between the two services is very close and intimate in character. It is largely upon the effectiveness of the close relationship established between the two services that the practical result of the Criminal Justice System is attained.

History

In Peninsular Malaysia before the Second World War, the penal establishments[5] in the various Malay States and Straits Settlements were directly under the responsibility of the respective states and Settlements, each of which had their own prison regulations. The Straits Settlements (com-

prising of Singapore, Penang and Malacca) were the earliest to build prisons. The oldest prison in Malaysia is Penang Prison and this is recorded to have been built is 1849.

Then the policy in all prisons was basically punitive in nature; by making the life of the prisoner hard and unpleasant it was hoped that such conditions would operate as a deterrent to crime. It was only some years later that some efforts were made to introduce prison industries, though on a somewhat limited scale. These included stone quarrying, carpentry and rattan work.

In 1949, a centralised administration was set up and a Commissioner of Prisons appointed to exercise control over the administration of all prisons. From 1950 onwards, in keeping with modern trends of penal development, the deterrent theory of punishment was replaced by the reformative theory and this had an important impact on the department. The year 1953 was an important year for it saw the repeal of the seven separate and different Prison Enactments which were replaced by the present Prison Ordinance and Rules which are based on the modern conception of humane treatment of prisoners.

This new piece of legislation is a landmark in the development of the penal system in the country as, for the first time, it became possible to apply uniform penal methods throughout the country and to ensure consistency of administration in all establishments in all the states. As a result, it was possible to make considerable strides in classification, educational and industrial training, the extension of trust and responsibility and special training schemes for certain categories of prisoners.

Great strides continued to be made in the post-independence period. The year 1957 saw the achievement of nationhood by the country and the appointment of the first Malaysian Commissioner of Prisons. An energetic and innovative administrator, he took great pains to ensure the development of a more humane treatment programme for prisoners. Since then, more innovations have been embarked upon by his successor who sees that the Prisons Department keeps itself abreast with modern trends in penology and social defence.

General Principles of Prison Administration

The chief aims of the Malaysian Prison system are:

(a) to safeguard its own existence
(b) to protect the public
(c) to deter potential law breakers
(d) to reform the convicted offenders.

The Prison Administration is part of this system and a brief description of its functions within this system will serve to illustrate the complex, arduous and dangerous nature and onerous responsibilities of the Prisons Department.

Malaysia, like many countries in the British Common wealth, has a colonial heritage which brought about an importation of concepts of the prison system from the British System. This is evident in the fact that the Prison Ordinance was made in 1952. In 1953 the Standard Minimum Rules for the prevention of Crime and Treatment of Offenders was passed by the United Nations, developed as well as developing for adoption and implementation. The Prison Rules of 1953 modeled after the United Nations Standard Minimum Rules was passed on the 1st of July 1953. It speaks well for Malaysia, which is a developing country, that her administration of penal establishments and treatment of offenders are in accord with these Rules. The Prisons Department is recognised by the United Nations as one of the Government Departments involved in the field of Social Defence in the prevention of crime and treatment of offenders. As part of the international action organised by the United Nations, officers from the Prisons, Police, Judiciary, social welfare and social defence organisations attend the same courses of study, seminars, conferences, and Congresses organised by the United Nations.

Like many other countries Malaysia has been strongly influenced by the so-called treatment and rehabilitation concepts, and strongly believes in the possibility of being able to treat and rehabilitate offenders. The treatment process within the prisons is

clearly directed towards the preparation of prisoners for an eventual return to the community as law-abiding and socially productive citizens. Their treatment programmes should spell out principles of legality, humaneness, and this conforms in almost every aspect to the United Nations Standard Minimum Rules, and the Prison Rules of 1953. These Rules shall be applied, due allowance being made for the differences in character and respect for discipline of various types of prisoners in accordance with the following principles:

(a) discipline and order shall be maintained with fairness but firmness, and with no more restriction than is required for safe custody and to ensure a well ordered community life;
(b) in the control of prisoners, prison officers should seek to influence them, through their own example and leadership, so as to enlist their willing co-operation;
(c) at all times the treatment of convicted prisoners shall be such as to encourage their self respect and a sense of personal responsibility, so as to rebuild their moral, to inculcate in them habits of good citizenship and hard work, to encourage them to lead a good and useful life on discharge and to fit them to do so.

Prison Ordinance 1952, Prison Rules 1953, and the Juvenile Courts Ordinance 1947

Within the framework of these legislations is designed a modern and enlightened prison system to cater for the training and humane treatment of adult offenders and young offenders with a view towards their rehabilitation.

Adult Offenders

Adult offenders, according to their needs, are sent to the different types of penal establishments e.g., the open prison, the local or short term prison, etc. for their training of offenders in orderly and industrial habits, in discipline and in helping them to learn a trade that will be gainful and useful to them on their discharge. Treatment is the sum total of the activities that are carried out in a penal establishment, including activities of community living e.g., recreation, education, work etc. that go to make up a regime that is calculated to maintain, stimulate and awaken the higher susceptibilities of prisoners, to help to develop their moral instincts and ultimately to turn them out of prison better men and women, physically and morally, then when they came in.

Young Offenders

For the Young Offenders,[10] special emphasis is laid on their training and treatment. The responsibilities here are onerous, for it is recognised that these young offenders are incipient criminals and if they are not specially helped onto a morally straight path, they will later in life turn to a career in crime and prey on the people at large. Training and treatment in Borstal-type institutions[11] differ greatly from those for adult offenders. With a regime peculiar to its own, all activities relating to treatment and training are specially designed to train these young offenders to take their place in society on their discharge. Education is given special emphasis and they are employed and trained in a wide range of occupations from agricultural pursuits to engine repairs normally given to young people outside of the institution.

Internal Security Act 1960

Within the framework of this Act[12] are established Protective Centres of Custody for the detention of Communists, subversives and anti-national elements. The administration and running of these Detention Camps poses special and intricate problems for the staff. Owing to the nature of detention and the fact that these detainees come from a background with education, efforts and techniques in treatment and training of these detainees differ completely from those used in the Prison, for it must be remembered that rehabilitation for these detainees is more a matter of change of heart than merely changing criminal

habits. Even the mechanics of security measuring the supervision and control of these detainees are different from those present in a prison. They require a finesse on the part of the staff because these detainees are quick to exploit a situation simply to embarrass the authorities and Government.

Public Order and Prevention of Crime Act 1969

All criminals and potential criminals dredged out by the Police from the reservoirs of crime in big and small towns throughout the country are sent to the Centre of Protective Custody,[13] Pulau Jerejak for detention and treatment. Here is what could be said to be the first penal settlement in this country. The physical setting and environment of this Centre is not unlike that of the tragic penal settlement of Pulau Senang established by the Singapore Government. Pulau Senang is best remembered because of the terrible massacre of the staff by the prisoners. Although help and assistance is available within call at the mainland, Pulau Jerejak faces the same hazards common to all penal islands. The work of the staff is made more arduous and difficult due to the greater emphasis and attention being paid to the mechanics of organising searches.

Unconvicted Prisoners

A person is presumed innocent unless proven guilty, a basic right clearly spelt out in Article 11 of the Universal Declaration which goes on to say that a person must have a public trial at which he is provided with all the guarantees necessary for his defence. He can also invoke Section 220 of the Malaysian Criminal Procedure[6] Code to bring to court any official who has wrongly kept him confined.

If a person is arrested, he must be informed of the grounds of his arrest, and he will be allowed to see or consult his lawyer who will defend his case. He can be detained beyond 24 hours only on the order of a magistrate. However, the Police are vested with other powers to detain a man beyond that period. The person is also allowed to file an application for habeas corpus to the High Court as provided for in the Constitution.

The Prison Rules of 1953 also stipulated that unconvicted prisoners,[7] including debtors, persons awaiting trial, persons on remand and persons committed for safe custody or for want of sureties, who have not been convicted by any Court, are while in prison not to be in association with convicted prisoners. This class of prisoners may be permitted during their period of exercise to associate together in an orderly manner and may be allowed to smoke under such conditions prescribed by the Director General.[8] They are not required to work, other than what is required to keep their rooms, furniture and utensils clean. If they desire to do so, they may be allowed to work and be paid a certain allowance for their labour and an account of the value of their daily labour will be kept by the Officer-in-Charge. The amount saved will be paid to them on discharge. Further employment will not be allowed in case of misconduct.

An unconvicted prisoner is allowed to purchase certain luxuries, in the way of books and papers, clothing and food items, but all these articles must be received or bought through the prisons. Notice to purchase all these will be given to the Officer-in-Charge. The prisoner will be allowed to buy his own food, and if he chooses to do this the prison diet will not be supplied to him, and neither will he receive any allowance in lieu. He is not allowed to receive or buy any spirituous liquors, and all articles received will be inspected by the Officer-in-Charge, and it is subjected to restriction so as to prevent luxury or waste.

An unconvicted prisoner is permitted to wear his own clothes, and the prison will only provide him with clothing if he is unable to provide it himself. The prison will provide all the bedding.

He is also allowed, if necessary for the purpose of his defence, to see a registered medical practitioner[9] appointed by himself or by his relatives or friends. He is also allowed to see his legal adviser on any weekday at a reasonable hour. This visit is to be within sight but not within hearing of

an officer.

Humane Treatment of Prisoners

Having examined very briefly its administrative structure, historical perspective and roles and functions, let us now move on to the subject proper, that is, humane treatment of prisoners.[14]

In Malaysia, particular attention is paid to the treatment of prisoners with the objective that persons deprived of liberty should be treated humanely, enjoy basic rights and, as far as possible, conditions of living in accordance with the dignity of a free man in a democratic country.

With respect to Malaysia, the premise of penal administration is provided for in the Prisons Ordinance and Prisons Rules. These two pieces of prison legislations embody a modern and humane approach to treatment of offenders and conform in almost nearly every aspect with the Standard Minimum Rules of United Nations.

So far as this country is concerned, experience has shown that the application of the Standard Minimum Rules with its emphasis on humane treatment of prisoners, is as essential in Asia as it is in Europe. Indeed, with political, economic and social advancement of the countries in the area, the application of the rules is of prime importance.

Malaysia is one of the countries that is fully aware of the growing concern in recent years over infringement of basic human rights, and we in Malaysia with our modern system are among the nations in the world that have guaranteed that these human rights be incorporated in our prison legislations.

Great emphasis is placed upon humane treatment and the concept of rehabilitation. This being so, there are provisions for classification of prisoners. For instance, with a view to facilitating reformative treatment and preventing contamination of better prisoners by the worse, prisoners in Malaysia are divided into three main categories:

(a) Unconvicted prisoners – which includes those on remand or awaiting trial.
(b) Civil – that is, persons committed for debt, failure to obey maintenance orders, contempt of court, etc.
(c) Convicted prisoners – those serving a sentence of imprisonment.
(d) Juveniles – those who are sent to Advance Approved Schools.

At all times, strict segregation is enforced in respect of the sexes, young offenders from adults, unconvicted from convicted prisoners.

Convicted prisoners sentenced to imprisonment are divided as follows:

(a) Young Prisoners Class – those not exceeding 20 years of age except those considered unsuitable who can be removed to the Star Class.
(b) Star Class – which consists of prisoners over 20 years of age who are first offenders or who may have been previously imprisoned but are considered by the Officer-in-Charge and reception board by reason of their history, character and nature of offence to be suitable for training with first offenders.
(c) Ordinary Class – this consists of all other prisoners (recidivists) unsuitable for inclusion in the Star Class.

A great deal of trouble is taken over each individual prisoner from the moment he arrives in prison. Upon admission to the institution, each prisoner is documented and a dossier is opened for him. All information about the prisoner's social background, antecedents, physical appearance, offence, sentence etc. is recorded in the dossier, admission registry and other books. The reception board interviews the inmate, ascertains his interests, classifies him and assigns him an appropriate form of treatment which is deemed best suited to him.

In addition to the above, counselling officers are to be found in most prisons. This set of officers will endeavour to settle any personal and emotional problems and anxieties a prisoner may have. In particular areas, help may have to be sought from the Social Welfare Department. Whatever it is, the Prison Department of Malaysia realises

that the important thing is to relieve the man's mind of anxieties so as to enable him to obtain the best results from training.

In Malaysia, every effort is taken to see that inmates are provided with employment opportunities. Rule 74 of the Prison Rules 1953 reads:

> "Every prisoner shall be required to engage in useful work, all of which so far as practicable shall be spent in associated or other work outside the cells, and no prisoner shall be employed on any work not authorised by the Director-General or the officer-in-charge, provided that the Medical Officer may excuse a prisoner from work on medical grounds, and no prisoner shall be set to any work unless he has been certified as fit for that work by the Medical Officer."

In the correctional system of Malaysia, prison industry forms an integrated part of the programme of rehabilitation of offenders as well as an important instrument for providing employment for inmates. Its objectives may be summarised as follows:

(a) Rehabilitation of inmates through vocational training.
(b) Training of inmates as far as possible in marketable job skills.
(c) Provision of employment opportunities for inmates.
(d) The development of sound working habits.
(e) Minimisation of government expendi ture and increase in the Prison Trust Fund.

In all prisons, inmates are provided with wide opportunities to equip themselves with a form of skill/trade to enable them to maintain or upgrade a skill already acquired prior to admission in prison in a selected trade in order that they may secure employment upon discharge.

The following are some of the trades taught in prison: carpentry, tailoring, laundry, metalwork etc.

As opposed to the emphasis on traditional type of industries as mentioned above, since 1981, the Prisons Department of Malaysia has been moving in the direction of joint-venture schemes. This new approach has three main advantages, that is, better remuneration for inmates; training in more relevant marketable skills; as well as revenue for the Government and Prison Trust Fund.[15]

Under this arrangement, the Prison Department provides the labour supply (inmates) and workshop premise (within the prison) whereas private companies provide the machinery, raw materials, trade instructors, expertise and is also responsible for the marketing and sale of the products. The participating firms are also required to pay for the rental of prison workshop, water and electricity bills, insurance coverage for inmates and regular salaries to inmates participating in the scheme (same as outside factory workers).

Earnings received by inmates are to be divided based on the following formula:

(a) 15% to the Government
(b) 15% to the Prison Trust Fund
(c) 70% to inmates.

Some of the industries pursued under the joint-venture scheme[16] are as follows:

> wood/cane furniture, knitting of sweaters for export, stitching of garments for export, electronic gadgets, carpet inlay etc.

Since its inception, the joint-venture approach has proved to be a success and inmates have benefitted tremendously from it. For this reason, the Prisons Department of Malaysia is planning to expand the said scheme to all prisons.

The Prisons Department operates a progressive stage system and an earnings scheme. To prisoners who exhibit good behaviour and industry in work, the prison's progressive stage system and earnings scheme provide the benefit of privileges. They are designed to provide incentive to prisoners to be industrious, to encourage them to participate in the vocational training programme and to maintain good behaviour.

The progressive stage system is based on the length of stay in custody. The longer one's sentence is, the higher one can rise in the stage system, thereby obtaining numerous privileges. There are five stages in the progressive stage system – first stage, second stage, third stage, fourth stage and special stage. The earnings scheme is re-

lated to the level of skill and amount of work of the inmates. There are three grades in the earning scheme. Of his monthly wages, a prisoner is required by regulation to save one-third to be paid to him on discharge. He can spend the remaining two thirds of earnings on canteen articles.

The humaneness of the prison system is also reflected in the provision of remission. It is provided in the Prison Rules that all convicted persons sentenced to definite terms of imprisonment, whether by one sentence, or by consecutive sentences, may by industry or good conduct earn remission of one-third of the remaining period of sentence or sentences.

The penal legislation also permits inmates to receive frequent visits from their families or lawyers. Inmates can communicate with and receive letters and parcels from their friends, relatives or lawyers, as maintenance of such family ties are deemed conducive for rehabilitation. Visitor's rooms are also provided in all penal institutions.

Education is deemed an integral part of the rehabilitation programme. The philosophy underlying the educational programme is to eliminate illiteracy, to help offenders overcome their anti-social attitude and to develop a wholesome attitude and self-redirection. For this purpose, classes are conducted by professionally trained school teachers and inmates are encouraged to sit for various government examinations. With support from teachers and staff members, more and more inmates are attending the educational classes. Many inmates have benefitted from the educational programme and this has assisted their resettlement after release.

As part and parcel of the educational programme, a library of fiction and non-fiction books in the languages of Malay/English/Chinese/Indian is provided for in each penal institution for the use by inmates. In addition, newspapers and periodicals are made available.

It is recognised that religion is an important reformative agent in that it provides a guide to honest citizenship and to decent and honest living. Therefore, religious teachers of various faiths are encouraged to impart religious instruction to inmates at all institutions.

Bearing in mind the importance of recreational activities in contributing towards physical and mental well-being as well as relieving tensions and monotony, facilities for a wide range of both indoor and outdoor recreational activities are provided for inmates at all institutions.

In addition, television and video facilities are also made available. Friendly games with staff or teams of outside organisations are actively encouraged to minimise the feeling of isolation and the effects of segregation. Those inmates who display some inclination to music are encouraged to develop their potentialities. Large prisons have musical bands comprising of inmates.

Great importance is attached to medical facilities. Upon admission, all inmates are medically examined. All institutions have infirmaries and dispensaries for medical aid and care of prisoners. These units are manned by qualified medical assistants. Doctors normally visit the prison once a week. Prisoners who are seriously ill or require special medical attention will be rushed to a general hospital outside the institution. Mention must be made that most prisons are also equipped with a modern dental clinic. Inmates who require psychiatric treatment such as the criminally insane are attended by psychiatrists at the national hospital outside the prison.

For the maintenance of order and discipline in penal institutions, the Prison Rules provides disciplinary punishment which proclaims at the same time that only those restraining measures which are indispensable for maintaining security and sound functioning of communal life in such an institution may be employed against prisoners. The disciplinary punishments are as follows: reprimand, segregation, removal or reduction in earnings grade, reduction or delay in stage promotion, forfeiture of privileges, forfeiture of remission and committal to solitary confinement and restricted diet. It must be stressed that physical punishments[17] that may cause serious consequences to the health of the prisoner are not used in the system of disciplinary measures in Ma-

laysia.

The treatment of prisoners in Malaysia is humane. The ration scale for prisoners is drawn up by medical authorities and is specified in the Prison Rules. Care is taken to see that the ration scale shall be of sufficient calories and quantity and shall be wholesome and of nutritional value. Much has been done in recent years to improve the diets. Food is prepared and cooked under modern conditions and meals are clean, fresh, wholesome and served in a new type of partitioned tray which is produced by the prison.

Every effort is taken to ensure that prisoners are supplied with clothing or bedding adequate for warmth or health. Additional or alternative clothing/bedding may be supplied to a prisoner upon the recommendation by a medical officer or by order of the head of the institution.

In the above, references have been made to the following which reflects the humaneness of the system: provision of vocational/industrial training, education, spiritual welfare, recreation, counselling, classification system, registry and documentation of prisoners, progressive stage system, earnings scheme, remission system, visits, medical services, use of disciplinary measures, diet scale, clothing.

In addition to the above-mentioned, the following are also incorporated in the treatment of prisoners in Malaysia:

(a) Normal working hours with 1½ days of rest per week
(b) Complete rest on public holidays
(c) Hygienic work conditions
(d) Strict separation of male and female inmates
(e) Provision of adequate sanitation
(f) Visits by a legal adviser to protect inmates' rights
(g) Freedom to complain, if he has any feelings of dissatisfaction to the director of the penal institution, to a higher supervising officer or directly to a Visiting Justice making an inspection of the institution and to do so without the presence of the officials of the institution
(h) Pre-release preparation and post-penal aid

Overcrowding in Prisons

It seems rather odd that when the general public seems to place so much emphasis on the rights of the individuals, there is no outcry from them about the deterioration of the prison regime. The effects of overcrowding create pressure not only on the prisons but also on the prisoners. Problems and difficulties imply obstacles to the achievement of the modern and humane concept of treatment.

In 1970, 11,661 prisoners were received into prisons, and 10 years later in 1980 the figure rose to 29,575, an increase of almost 154%. The figure kept on rising from year to year and at the end of 1985, 51,735 prisoners were received into 32 prison institutions throughout the country. Out of this total 23,635 or 45.7% were convicted prisoners, and the rest, or 54.3%, were unconvicted prisoners.

The number of prisoners held in prisons as of December 31st 1970, was 5,730, and ten years later in 1980 the figure rose to 11,405, an increase of almost 100%. On the 30th of November, 1986 there were 22,081 prisoners in the various prison institutions, whereas the prisons can only accommodate 12,320 prisoners at any one time. Prior to 1980 the prisons could only accommodate 8,090 prisoners, and this shows that in the last 10 years accommodations for only 4,230 more people or 2 new prisons, were completed to add to the total capacity.

The total number of prisoners being held in prisons at the end of each year are as follows:

1980 – 11,405
1981 – 13,249
1982 – 14,403
1983 – 15,294
1984 – 15,864
1985 – 20,040
1986 – 22,081

A total of 7,100 remand prisoners at the end of 1986 constituted almost 40% of the total prison population. Some of these prisoners have been in prisons for more than five years and occupy most of the available accommodation much needed for convicted prisoners.

The increase in the number of natural life and life sentence prisoners have also created problems of finding places for them. This is evident in the fact that there are now 81 natural lifers, 348 lifers and 129 condemned prisoners waiting for execution. Prisoners in these categories are more difficult to control and these are the type which need closer supervision at all times. Almost 45% of the total prison population have been convicted for drug-related offences or are themselves drug addicts.

The Drug Problem

The Malaysian Government has declared drug abuse as a security threat and the number one enemy of the Nation. Drug abuse has been a problem in Malaysia since the late 1970's and thousands of youths have been affected and become drug addicts. As a security threat it has consistently engaged the attention of politicians, administrators and the general public. This interest has intensified over the last few years and has also focussed much more on the problem as it emerges in the prisons. Millions of dollars have been spent on the building of drug rehabilitation centres and yet they are not enough to cater for the increasing number of drug addicts. They not only become drug addicts but are also responsible for the increase in the number of drug related crimes.

Drug abuse and the smuggling of drugs into prisons has not only been a preoccupation of politicians, the public, and the administration, but has also been perceived as a major problem in prisons. It was seldom that prisoners could be caught in the act of taking drugs and equally difficult to find drugs which had been smuggled in and then hidden in small quantities in or around the prison. Drug abuse within the prisons leads to other problems. However, suspected drug users are subjected to a urine test, and if found positive could face a very stern disciplinary action. Nevertheless the influx of drug addicts or drug related criminals into the prison will keep on posing a threat not only to the prison regime, but also to the security of the prisons.

The Remand Problem

Remand prisoners add pressure not only to overcrowded prisons but also to the officers who have to register them in and out of prisons daily and supervise their visits with their lawyers, families and police officers. The accommodation and space demanded by them in already overcrowded prisons is a problem that has been resting heavily on prison authorities for quite some time now.

The number of prisoners held on remand as of 31, 11, 1986 is 7,100 or almost 40% of the total prison population of 22,081. The prison authorities have at present no choice but to accommodate the prisoners held on remand while they await the outcome of investigations or hearing of their cases in court. Of the total of 7,100 remand prisoners, 2,894 have been under remand for under three months, 1,164 between three and six months, 976 between six months to one year, 600 between one year to two years, 340 between two to three years, 129 between three to five years and 995 awaiting repatriation for illegal entry.

A few have even been on remand for up to seven years. About 30% of prisoners held on remand had been charged with bailable offences, but could not raise bail.

Three reason have been identified as to why remand prisoners often have to remain in prison for long periods before they appear in court:

(a) Investigation takes a long time and police give priority to cases which are of a serious nature;
(b) When the matter comes to court and the accused is charged, the trial cannot go on immediately because courts have a heavy schedule;
(c) After a date is fixed for hearing, it is often put off because either the prosecution or the defence counsel wants a postponement.

Condemned Prisoners Problem

There are 129 condemned prisoners awaiting execution in four major prisons in the country. These are the type of prisoners that need constant and strict supervision. There are 2,049 others awaiting trial

for offences carrying the mandatory death sentence. It would take between three to five years to have this type of prisoners tried, sentenced and executed. The increase in the number of condemned prisoners poses a threat to the security of the prisons and this adds pressure to the already hard-pressed officers. Besides these condemned prisoners there are 81 prisoners serving natural life sentences and 348 life sentences, and everyone of them requires supervision at all times.

Building New Prisons

Most prisons in Malaysia were built by the British during the last century, many of them nearly 100 years ago. From the outside they look powerful, forbidding, desolate. Each cell-block has one, two or three tiers of cells, squeezed in orderly rows along both walls. The middle is left free, so that an officer would be able to see in all directions. As many as 500 prisoners are herded together in one block. This results in a perturbing devaluation of human beings. There is no doubt that the structure and layout of a prison building influences the prevailing atmosphere and the morale of prisoner and staff. Though originally built to hold fewer than 200–600, some of the old prisons, like Pudu, Taiping, Penang and Johore Bharu have 2,000 to 4,000 prisoners. In the last few years, determined efforts have been made to improve the large old prisons, with renovation to old blocks and cells. A few smaller buildings were added to the already crammed compound, and there is no more room for further expension. Some of the old prisons are not only crowded with prisoners but also with buildings.

Building new prisons is a very slow process. The New Kajang Central Prison was built under the First Malaysia Plan by the Public Works Department and the project started in 1970 took nearly 16 years to complete. With a view to overcome the overcrowding problems and to replace existing old, ill-adapted prisons, the Department is in the process of building a number of new, modern penal institutions, and this will perhaps take another decade or two to be completed if they are to be done by the Public Works Department.

In this respect Malaysia is, I believe, among the more farsighted of nations when it comes to the repatriation of prisoners into society. There are nearly 22,000 prisoners in Malaysian Prison Institutions. It is true that this number can be read as consisting of 22,000 misfits, miscreants and wrongdoers. In a great many cases however, the forgotten truth is that these people may also be skilled workers like carpenters, masons, mechanics, craftsmen, welders and artisans. They form a pool of captive talent and unharnessed potential for productive labour and the Prisons Department has taken this opportunity to capitalise on this hitherto unrecognised fact. Thirty prisoners recently built the Tampin Drug Rehabilitation Centre, in record time and at a cost of $720,000! In contrast the Public Works Department had estimated the project to cost a minimum of $1.3 million, and will take about two years to complete.

With this success the Department has been given the blessing to build four new remand centers, one open prison, one drug rehabilitation centre and two new prisons; on the average, 40% of the work has been completed.

Conclusion

It is apparent from the foregoing that the main feature of the Malaysian correctional system lies in its humaneness. Also, it is most evident that the treatment and rehabilitation programme is geared towards the preparation of inmates for their eventual return to the community as law-abiding and socially productive persons, and all facilities and conditions for living, work, recreation, and spiritual and mental uplift-ment conform to standards prescribed by medical authorities and social conscience.

In this era of changes, concomitant and consistent with national development and national aspirations, the Malaysian Correctional Service realises the need to respond to the ever increasing challenges of its time. Given this recognition, it is envisaged that in the years to come the department will attain greater heights of efficiency and

humaneness in discharging its noble task of correctional duties and human reclamation.

NOTES

1. Rule 75 of Prison Rules 1953 – A prisoner certified not to be fit for hard labour by the Medical Officer may be employed in one or more of the following forms of light labour, gardening, laundry work, cleaning and whitewashing the prison, sweeping and any such similar services.
2. Federal Constitution Article 6 (1) (2) (3).
   (1) NO PERSON SHALL BE HELD IN SLAVERY.
   (2) ALL FORMS OF FORCED LABOUR ARE PROHIBITED, but PARLIAMENT MAY BY LAW PROVIDE FOR COMPULSORY SERVICE FOR NATIONAL PURPOSES.
   (3) Work incidental to the serving of a sentence of imprisonment imposed by a Court of Law shall not be taken to be forced labour within the meaning of this article.
3. Source of law – see Article 121 – Federal Constitution.
4. See Police Act 1967, (Act No. 41 of 1967, Sec. 20 (4)).
5. See Donald Wee, History of Malaysian Prisons, Prison Headquarters Research Paper No. 1 – 1974.
6. See Section 220 Malaysian Criminal Procedure Code.
7. See Prison Rule, 1953, Rule 178 (1).
8. Prison Ordinance 1952 PU (B) 324/70 Director-General of Prisons.
9. Rule 241, Prison Rules 1953.
10. Juvenile Courts Ordinance 1947 Act 2.
11. Juvenile Courts Ordinance 1967 Act 2.
12. Internal Security Act, 1960.
13. Public Order and Prevention of Crime Act 1969 – Act 4 (2).
14. See Donald Wee, Humane Treatment of Prisoners, Prison Headquarters Resource Material 1976.
15. See Prison Trust Fund, Prison Industries Resource Material 1984.
16. Joint-Venture, see Prison Industries Resource Material 1984.
17. See Rule 57 (1), Prison Rule 1953, Use of Force, See Rule 140, Prison Rule 1953, Restraints not to be used as punishment. See Rule 132 (1), (2) (3) Prison Rule 1953, Corporal Punishment.

Appendix 'A'
Prisons Headquarters, Malaysia
(Research Unit)
Statistics of Prisoners/Inmates/Detainees
As of 30. 11. 1986

Prisons	Actual Accommodation Available	Sex		Total
		Male	Female	
Kuala Lumpur	600	3,929	0	3,929
Taiping	1,100	2,400	0	2,400
Pulau Pinang	600	2,093	99	2,192
Johor Bahru	500	2,654	0	2,654
Alur Setar	450	1,456	39	1,495
Pengkalan Chepa	500	740	21	761
Seremban	500	626	0	626
Kuantan	40	561	0	561
Sungai Petani (*)	250	137	0	137
Kajang	1,670	2,361	368	2,729
Marang (**)	300	317	0	317
Sarawak	850	561	21	582
Sabah	1,050	1,875	91	1,966
Total	8,410	19,710	639	20,349
Henry Gurney Schools				
Teluk Mas	500	436	0	436
Air Keruh	100	73	0	73
Melaka	60	51	0	51
Batu Gajah	15	0	16	16
Kepayan (Sabah)	75	23	1	24
Total	750	583	17	600
Rehabilitation Centres				
Pulau Jerejak	570	660	18	678
Muar	110	152	0	152
Batu Gajah	250	228	0	228
Total	930	1,040	18	1,058
Protective Custody Centres				
Taiping	330	22	1	23
Sarawak	1,200	0	0	0
Sabah	200	0	0	0
Total	1,730	22	1	23
Drug Rehabilitation Centre				
Sarawak	500	51	0	51
Overall Total	12,320	21,406	675	22,081

Note: (*)=This prison is only meant for young prisoners (below the age of 21 years.)
(**)=This new prison is still under construction.

Appendix 'B'
Prisons Headquarters, Malaysia
(Research Unit)
Statistics of Unconvicted Prisoners
As of 30.11.1986

Prisons	Prisoners on Remand		Prisoners on Detention		Total
	Dangerous Drugs Act, 1952	Other Ordinances or Acts	Immigration Act, 1959	Other Ordinances or Acts	
K. Lumpur	849	746	82	2	1,679
Taiping	100	752	0	25	877
P. Pinang	565	351	2	1	919
J. Bahru	549	475	0	0	1,024
A. Setar	260	151	20	23	454
P. Chepa	141	44	22	27	234
Seremban	0	0	0	0	0
Kuantan	41	90	5	0	136
Sg. Petani	31	38	0	3	72
Kajang	63	15	18	0	96
Marang	0	0	0	0	0
Sarawak	2	125	55	0	182
Sabah	124	593	688	22	1,427
Total	2,725	3,380	892	103	7,100
Percentage	38.38%	47.61%	12.56%	1.45%	100.00%

Note: (A) Prisoners on Remand refer to those who are kept in prisons under the orders of High/Session/Magistrate Courts pending cases to be heard/tried.

(B) Prisoners in Detention refer to those who are kept in prisons under the orders of the Minister of Home Affairs or other authorities pending to be banished or repatriated to other countries or restricted to other places of residence.

Appendix 'C'
Prisons Headquarters, Malaysia
(Research Unit)
Statistics of Prisoners on Remand
As of 30.11.1986

Prisons	Period Being Remanded in Priosns						Total
	–3 mths	3 – 6 mths	6 – 12 mths	1 – 2 yrs	2 – 3 yrs	3 yrs –	
K. Lumpur	903	260	212	130	63	27	1,595
Taiping	388	213	141	70	27	13	852
P. Pinang	436	243	139	35	37	26	916
J. Bahru	354	284	213	117	32	24	1,024
A. Setar	319	30	42	16	4	0	411
P. Chepa	94	25	45	9	8	4	185
Seremban	0	0	0	0	0	0	0
Kuantan	96	7	4	13	7	4	131
Sg. Petani	39	8	3	16	3	0	69
Kajang	51	3	8	9	7	0	78
Marang	0	0	0	0	0	0	0
Sarawak	53	22	20	5	15	12	127
Sabah	161	69	149	180	139	19	717
Total	2,894	1,164	976	600	342	129	6,105
Percentage	47.4%	19.1%	16.0%	9.8%	5.6%	2.1%	100.0%

Note: Prisoners on Remand refer to those who are kept in prisons under the orders of High/Session/Magistrate Courts pending cases to be heard/tried.

Appendix 'D'
Prisons Headquarters, Malaysia
(Research Unit)
Statistics of Prisoners Under Sentence of Death
As of 30.11.1986

Crimes/Acts	–	ISA	Arms	Drug	302 PC	396 PC	Kidnap	Total
Sex								
Male	–	13	3	89	17	3	1	126
Female	–	0	0	3	0	0	0	3
Total	–	13	3	92	17	3	1	129
Ethnic Group								
Malay	–	1	3	27	4	0	0	35
Chinese	–	10	0	34	7	0	1	52
Indian	–	0	0	6	2	0	0	8
Other M'sian	–	0	0	1	4	3	0	8
Foreigners	–	2	0	24	0	0	0	26
Total	–	13	3	92	17	3	1	129
Prisons								
K. Lumpur	–	3	2	16	2	0	0	23
Taiping	–	0	0	42	5	0	0	47
P. Pinang	–	1	0	11	0	0	0	12
J. Bahru	–	1	0	2	0	0	0	3
A. Setar	–	0	0	4	0	0	0	4
S. Petani	–	0	0	0	0	0	0	0
P. Chepa	–	0	0	4	0	0	0	4
Kuantan	–	0	0	0	0	0	0	0
Seremban	–	0	0	0	0	0	0	0
Kajang	–	8	1	4	6	0	1	20
Marang	–	0	0	0	0	0	0	0
Sarawak	–	0	0	0	3	3	0	6
Sabah	–	0	0	9	1	0	0	10
Total	–	13	3	92	17	3	1	129

Note:

Other Malaysians	:	302 PC	–	Sarawakian (n)	– 3
	:	396 PC	–	Sarawakian (n)	– 3
	:	Drug	–	Thai	– 2
Foreigners	:	ISA	–	Thai	– 1
	:		–	Singaporean	– 1
	:	Drug	–	Indonesian	– 1
	:		–	Thai	– 8
	:		–	Hongkongite	– 8
	:		–	Filipino	– 7

Appendix 'E'
Prisons Headquarters, Malaysia
(Research Unit)
Statistics of Prisoners Under Sentence of Natural Life Imprisonment As of 30.11.1986

Crimes/Acts	—	ISA	Arms	Drug	302 PC	304 PC	Total
Sex							
Male	—	0	61	11	7	1	80
Female	—	0	0	0	1	0	1
Total	—	0	61	11	8	1	81
Ethnic Group							
Malay	—	0	36	4	1	0	41
Chinese	—	0	13	5	2	0	20
Indian	—	0	0	0	0	0	0
Other M'sian	—	0	2	0	3	0	5
Foreigners	—	0	10	2	2	1	15
Total	—	0	61	11	8	1	81
Prisons							
K. Lumpur	—	0	7	0	0	0	7
Taiping	—	0	29	0	0	0	29
P. Pinang	—	0	3	0	0	0	3
J. Bahru	—	0	3	0	0	0	3
A. Setar	—	0	7	0	0	0	7
S. Petani	—	0	0	0	0	0	0
P. Chepa	—	0	0	0	0	0	0
Kuantan	—	0	0	0	0	0	0
Seremban	—	0	0	0	0	0	0
Kajang	—	0	7	0	0	0	7
Marang	—	0	0	0	0	0	0
Sarawak	—	0	1	6	1	0	8
Sabah	—	0	4	5	7	1	17
Total	—	0	61	11	8	1	81

Note:

Other Malaysians	: Arms	— Sarawakian (n)	—	1
	:	— Thai	—	1
	: 302 PC	— Sarawakian (n)	—	1
	:	— Sabahan (n)	—	2
Foreigners	: Arms	— Filipino	—	2
	:	— Singaporean	—	2
	:	— Indonesian	—	6
	: 302 PC	— Indonesian	—	2
	: 304 PC	— Filipino	—	1
	: Drug	— Filipino	—	1
	:	— Chinese	—	1

Appendix 'F'
Prisons Headquarters, Malaysia
Research Unit
Statistics of Prisoners under Sentence of Life Imprisonment
As of 30.11.1986

Crimes/Acts	ISA	Arms	Drug	Kidnap	302 PC	304 PC	307 PC	376 PC	394 PC	Total
Sex										
Male	22	5	261	19	15	8	1	1	7	339
Female	0	0	9	0	0	0	0	0	0	9
Total	22	5	270	19	15	8	1	1	7	348
Ethnic Group										
Malay	3	3	139	4	12	4	0	0	3	168
Chinese	13	2	86	12	0	1	1	0	0	115
Indian	1	0	12	0	2	1	0	1	2	19
Other M'sian	0	0	2	3	1	0	0	0	0	6
Foreigners	5	0	31	0	0	2	0	0	2	40
Total	22	5	270	19	15	8	1	1	7	348
Prisons										
K. Lumpur	1	0	8	1	2	2	0	1	2	17
Taiping	15	2	98	10	4	2	1	0	5	137
P. Pinang	1	0	48	2	0	1	0	0	0	52
J. Bahru	0	0	2	0	1	0	0	0	0	3
A. Setar	0	0	56	3	2	3	0	0	0	64
S. Petani	0	0	0	0	0	0	0	0	0	0
P. Chepa	0	0	2	0	0	0	0	0	0	2
Kuantan	0	0	0	0	0	0	0	0	0	0
Seremban	0	0	34	0	0	0	0	0	0	34
Kajang	5	3	22	3	6	0	0	0	0	39
Marang	0	0	0	0	0	0	0	0	0	0
Sarawak	0	0	0	0	0	0	0	0	0	0
Sabah	0	0	0	0	0	0	0	0	0	0
Jumlah	22	5	270	19	15	8	1	1	7	348

Note:

Other Malaysians	: Kidnap	– Thai	– 3
	: 302 PC	– Eurasian	– 1
	: Drug	– Thai	– 2
Foreigners	: ISA	– Thai	– 5
	: Drug	– Australia	– 2
	:	– American (USA)	– 1
	:	– Thai	– 17
	:	– Burmese	– 3
	:	– Singaporean	– 4
	:	– Hongkongite	– 2
	:	– French	– 1
	:	– Indonesian	– 1
	: 304 PC	– Indian	– 1
	:	– Thai	– 1
	: 396 PC	– Thai	– 2

Appendix 'G-1'
Prisons Headquarters, Malaysia
(Research Unit)
Statistics of Prison Accommodation in Peninsular Malaysia

Prisons	Year Established	Actual Accommodation Available	Security Classification
Kuala Lumpur	1895	600	Maximum
Taiping	1879	1,100	Maximum
Pulau Pinang	1849	600	Maximum
Johor Bahru	1883	500	Maximum
Alur Setar	1893	450	Moderate
Pengkalan Chepa	1950	500	Semi-open
Seremban	1902	500	Maximum
Kuantan	1908	40	Maximum
Sungai Petani	1920	250	Maximum
Kajang	1984	1,670	Maximum
Marang	*	1,000	Open
Simpang Rengam	*	2,000	Maximum
Penor	*	1,000	Open
Jelebu	*	1,000	Open
Total		11,210	
Henry Gurney Schools			
Teluk Mas	1950	500	Open
Air Keruh	1969	100	Open
Melaka (*)	1860	60	Maximum
Batu Gajah (F)	1954	15	Open
Total		675	
Rehabilitation Centres			
Pulau Jerejak	1969	570	Moderate
Muar (#)	1927	110	Maximum
Batu Gajah (&)	1902	250	Maximum
Total		930	
Centre of Protective Custody			
Taiping	1973	330	Moderate
Grand Total of Accommodation		13,145	All institutions

Note: * = New prisons presently under construction.
(*) = Formerly a prison. Later in 1962 began to function as a Henry Gurney School.
(#) = Formerly a prison; then a Centre of Protective Custody. Later in 1975 began to function as a Rehabilitation Centre.
(&) = Formerly a prison; then a Centre of Protective Custody. Later in 1983 began to function as a Rehabilitation Centre.

Appendix 'G-2'
Prisons Headquarters, Malaysia
Research Unit
Statistics of Prison Accommodation in East Malaysia

Sarawak Prisons	Year Established	Actual Accommodation Available	Security Classification
Kuching	1882	200	Maximum
Sibu	1927	200	Maximum
Seri Aman	1864	200	Moderate
Miri	1962	200	Moderate
Limbang	1965	50	Moderate
Total		850	
Centre of Protective Custody			
Kuching	1964	1,000	Moderate
Sibu	1927	200	Moderate
Total		1,200	
Drug Rehabilitation Centre			
Kuching	1980	500	Moderate
Grand Total of Accommodation		2,550	All institutions

Sabah Prisons	Year Established	Actual Accommodation Available	Security Classification
Kota Kinabalu	1953	450	Maximum
Tawau	1965	250	Maximum
Sandakan	1954	250	Maximum
Keningau	1965	40	Open
Kota Kinabalu (F)	1967	60	Moderate
Total		1,050	
Henry Gurney School			
Kepayan	1973	75	Open
Centre of Protective Custody			
Kota Kinabalu	1964	200	Moderate
Grand Total of Accommodation		1,325	All institutions

International Co-operation, Training and Research

*by Yolande Diallo**

Implementation of International Instruments on Human Rights

Since the General Assembly adopted and proclaimed the Universal Declaration on Human Rights on 10 December 1948, the United Nations organs have continuously sought new ways and means of promoting respect for, and observance of the human rights and fundamental freedoms set out in the Declaration.

A major achievement in this endeavour was the adoption in 1966 and entry into force in 1976 of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to the International Covenant on Civil and Political Rights.

These instruments, together with the Universal Declaration on Human Rights, provide measures of implementation of the human rights and fundamental freedoms set out in their provisions.

In addition, the United Nations organs have adopted a wide variety of resolutions, decisions, declarations and conventions designed to accelerate the universal realization of human rights and fundamental freedoms by all. Some of these have been of general character while others have aimed at ensuring the enjoyment of particular rights and freedoms. Moreover, the United Nations had adopted particular standards applicable to categories of persons such as persons deprived, for whatever reason, of their liberty whether accused or convicted of crime. It has outlawed particular forms of treatment and punishment, has initiated studies leading to the preparation of a Draft Code of Medical Ethics and has reaffirmed the Standard Minimum Rules for the Treatment of Prisoners which have provided some measures of protection to incarcerated persons.

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The Universal Declaration on Human Rights and The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights

Composed of the Universal Declaration on Human Rights and the Covenants, the International Bill of Human Rights contains provisions for adequate protection of detained persons.

The basic principles governing respect for the rights of detained persons are found in Article 5 of the Universal Declaration on Human Rights which reads:

> "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Article 7 of the International Covenant on Civil and Political Rights of 1966 reads as follows:

> "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation."

Article 4, paragraph 2 of that Covenant provides against any derogation from Article 7.

Article 10 of the same Covenant reads as follows:

> "1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the

human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons. (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

The question of torture and other cruel, inhuman or degrading treatment or punishment has been closely examined in recent years due, in large part to "the increase in the number of alarming reports on torture" and to the close attention given by the various bodies of the United Nations such as the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. In addition the Sixth and the Seventh United Nations Congresses on the Crime Prevention and the Treatment of Offenders which took place in Caracas in 1980 and in Milano in 1985 have paid particular attention to the implementation of the Declaration on the Protection of All Persons from Torture and other Cruel, Inhuman or Degrading Treatment and Punishment adopted by the General Assembly at its thirtieth session as "A guideline for all States and other entities exercising effective powers." The Declaration contains twelve articles.

In Article 1, "torture" is defined for the purpose of the Declaration, as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official or a person for such purposes as obtaining from him or a third person, information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from inherent in or incidental to lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

"Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment."

Article 2 characterizes any act of torture as an offence to human dignity and states that it should be condemned "as a denial of the purposes of the Charter of the United Nations and as a violation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights."

The Declaration denies States the right to permit or tolerate torture even in cases of national emergency (Article 3) and States are called upon to institute effective measures against the use of torture and the like (Article 4) to subject their interrogation method to general review (Article 6) and special review (Article 7). Public officials concerned with law enforcement must be trained to operate without compensation for harm sustained and confessions obtained in such a manner cannot be used for evidence (Article 12).

Article 5 of the Declaration, relating to education and training merits being quoted in full:

"The training of law enforcement personnel and of the public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other forms of cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment or such persons."

It should be noted that no circumstances, however exceptional, can permit resort to torture and like practices. In the Declaration:

"Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a

justification of torture or other forms of cruel, inhuman or degrading treatment or punishment." (Article 3)

The same rule is provided for in Article 4 of the International Covenant on Civil and Political Rights. Not even in national emergencies which justify derogations of other rights, may torture or other cruel, inhuman or degrading treatment or punishment be permitted. Likewise, the Geneva Conventions of 1949 prohibit the use of torture both in international wars and non-international armed conflicts.

Similarly the Standard Minimum Rules for the Treatment of Prisoners in paragraph 31 reads "corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishment shall be completely abolished for disciplinary offences."

The Draft Principles on Freedom from Arbitrary Arrest and Detention deal also with this subject and provide in Article 24:

"1. No arrested or detained person shall be subjected to physical or mental compulsion, torture, violence, threats or incitements of any kind, deceipt, trickery, misleading suggestions, protracted questioning, hypnosis, administration of drugs or any other means which tend to impair or weaken his freedom of action or decision, his memory or his judgement.

2. Any statement which may be induced into making through any of the above prohibited methods as well as any evidence obtained as a result thereof shall not be admissible in evidence against him in any proceedings."

3. No confession or admission by an arrested or detained person can be used against him in evidence unless it is made voluntarily in the presence of his counsel and before a judge or other officer authorized by law to exercise judicial power."

United Nations Standard on Minimum Rules for the Treatment of Offenders

1. The Rules

The provisions protecting detained persons found in the Universal Declaration of Human Rights (Article 5), in articles 7 and 10 of the Covenant have been given very detailed expression in the Standard Minimum Rules for the Treatment of Offenders. These rules were adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (August 1955) and approved by the Economic and Social Council (July 1957) which invited Governments to give favourable consideration to the adoption and application of the Rules in the operation and administration of their penal and correctional institutions.

Paragraph 2 of the Standard Minimum Rules described them as "the minimum conditions which are accepted as suitable by the United Nations."

The Rules are divided into two parts – one, applicable to specific categories of detained persons, that is prisoners under sentence, insane and mentally abnormal prisoners, prisoners under arrest or awaiting trial and civil prisoners.

As a basic principle, the Standard Minimum Rules for the Treatment of Offenders are to be applied impartially with no discrimination on the grounds of race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. However, the necessity of respecting the religious beliefs and the moral precepts of the group to which a prisoner belongs is explicitly recognized by the Rules. The following topics are covered in the different sections of the Rules; the maintenance of a registration book for the entry and leaving of prisoners, the separation of categories of prisoners according to sex, age, criminal record, the necessities of their treatment and the legal basis of their detention (untried or convicted prisoners, other civil prisoners, criminal offenders, juveniles); accommodation including sleeping accommodations, living and working areas, sanitary installations, including adequate bath and shower facilities; personal hygiene; clothing and bedding; food; exercise and sports; medical services. Under this latter section basic medical services for both physical and

mental illnesses must be provided and in women's institutions special prenatal and post-natal facilities are to be maintained. The section of the Rules dealing with discipline and punishment provides that law or regulation of competent administrative authorities shall determine the conduct constituting disciplinary offences as well as the types and duration which may be inflicted. No prisoner shall be punished except in accordance with the terms of these laws or regulations and he shall never be punished twice for the same offence. In addition, a prisoner shall be informed of the offence alleged against him and given a proper opportunity to present his defence.

Limits are placed on permissible types of punishment and in no case is cruel, inhuman or degrading punishment allowed and any punishment by close confinement or reduction of diet is subject to the continued supervision of the medical officer.

Another section of the Rules limits the instruments of restraint which may be used on prisoners.

Provision is also made in these Rules for written information concerning prison regulations to be given to prisoners to make requests or to complain to the director of the institution, prison inspectors, the Central Prison Administration and to judicial, or other proper authorities. Prisoners, under the necessary supervision, are to be permitted contact with the outside world through communications and visits and they are to be kept informed of all important new items.

Other sections of these Rules deal with books, religion and religious services, the custody of prisoners' property and information concerning death or serious illness of a member of the prisoner's family and illness or transfer of the prisoner himself. Other provisions deal with the methods of transfer of prisoners from one institution to another and the qualifications of the personnel of the prison.

Special additional rules are provided to cover the case of prisoners who have been sentenced and those who are insane or mentally abnormal.

Prisoners under arrest or awaiting trial but who have not been convicted are to be considered innocent and receive the benefit of a special régime including separation from convicted prisoners. Civil prisoners, not subject to criminal procedures, are also to be given special treatment not less favourable than that of untried prisoners.

In 1977, the Economic and Social Council decided that a new rule should be added to the Standard Minimum Rules. The new rule relates in particular to persons arrested or imprisoned without charge, and provides that they shall be accorded the same protection as persons under arrest or awaiting trial and prisoners under sentence.

2. Application and Implementation

In 1976 the Committee on Crime Prevention and Control at its fourth session after recommending that the Standard Minimum Rules be amended (as previously mentioned), adopted recommendations for *Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Offenders.*

States whose standards for protection of detained persons against torture and similar treatment fall short of the Standard Minimum Rules were requested to adopt the Rules which should be embodied in national legislation and other regulations and made available to persons concerned with their application and in particular to correctional personnel. The Standard Minimum Rules should be made available to all detained persons in a manner and form they can understand. A regular reporting system is provided for on the extent of implementation and progress made with regard to the application of the Standard Minimum Rules, and Member States would be asked to inform the Secretary-General on the subject. The co-operation of the specialized agencies and of governmental and non-governmental organizations in the preparation of eventual periodic reports on the implementation of the Rules could also be requested. Others recommended procedures dealing with the examination of information on the Rules and the implementation, aid and assistance to governments, and seminars on the subject. The Committee on Crime Prevention and Control was given special responsibility for

reviewing the Rules, and their implementation and procedures are provided for in the enforcement of the Rules.

At the Seventh Congress on Crime Prevention (Milano, 1985) the need for further implementation was stressed once more by governments.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("the Beijing Rules")

The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its Resolution 4 entitled "Development of Minimum Standards of Juvenile Justice" recommended that the Committee on Crime Prevention and Control develop "standard minimum rules for the administration of juvenile justice and the care of juveniles to serve as a model for Member States." The Congress also recommended that the Secretary-General should report to the Seventh United Nations Congress on the Prevention of Crime on the progress achieved in the formulation of the new rules for review and final action.

The Congress recognized the fact that special attention should be given to the ways in which juveniles are handled because of their early stage of development and affirmed that standard minimum rules for the administration of juvenile justice were important in diminishing any adverse effects of formal intervention, and in protecting the fundamental human rights of juveniles in conflict with the law in diverse national settings and legal structure. For these reasons the Congress directed that the Rules should reflect four basic principles:

(1) Juveniles in trouble with the law should be provided with carefully constructed legal protection;

(2) Pre-trial detention should be used only as a last resort, no minor or juvenile offenders should be held in a gaol or other facility where they are vulnerable to the negative influences of adult offenders during this period, and account should always be taken of the needs peculiar to their age;

(3) Juvenile offenders should not be incarcerated in a correctional institution unless adjudicated of a serious act involving, above all, violence against another person or persistence in committing other serious offences; moreover no such incarceration should occur unless it is necessary for their own protection or unless there is no other appropriate response that will protect the public safety, or satisfy the end of justice and provide the juvenile with the opportunity to exercise self-control;

(4) The community of nations should do all it can, both individually and collectively, to provide the means by which every young person can look forward to a life that is meaningful and valuable.

The Standard Minimum Rules for the administration of juvenile justice have two characteristics: as standard rules, they should be applicable in countries with very different backgrounds and legal systems; as minimum rules, they should contain, and disseminate world-wide, a certain "quality of life" in accordance with the ideal of universal human rights.

The draft rules are to be considered in this perspective: as standard rules, they have to be sensitive to the broad scope of national and regional differences that mark the experience and practices in juvenile justice in the contemporary world. As minimum rules, they none the less have to incorporate an unequivocal set of guarantees with reference to the administration of justice and in accordance with the recommendations of the Sixth United Nations Congress on the Prevention of Crime.

1. General Principles

a) Fundamental principles (Rules 1.1 to 1.6)

Rules 1.1 to 1.3 point to the important role that a constructive social policy for juveniles will play *inter alia* in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles, while Rule 1.6 refers to the necessity of

constantly improving juvenile justice without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States.

b) Scope of the Rules and definitions used
(Rules 2.1 to 2.3)

The Standard Minimum Rules are deliberately formulated so as to be applicable within different legal systems and, at the same time, to set some minimum standards for the handling of juvenile offenders under any definition of a juvenile and under any system of dealing with juvenile offenders. The Rules are always to be applied impartially and without distinction of any kind.

Rule 2.1 stresses the importance of the Rules always being applied impartially. It follows the formulation of Principle 2 of the Declaration of the Rights of the Child.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender" who is the main subject of these Standard Minimum Rules. It should be noted that age limits will depend on each respective legal system, thus respecting the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile" ranging from 7 to 18 years or above.

c) Extension of the Rules
(Rules 3.1 to 3.3)

Rule 3 extends the protection afforded by the Standard Minimum Rules to cover the so-called "status offences," for example truancy, school and family disobedience, public drunkeness, etc. ...; juvenile welfare and care proceedings; proceedings dealing with young adult offenders. Such extension seems to be justified as a desirable step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law.

d) Age of criminal responsibility
(Rule 4)

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is whether a child, by virtue of her or his individual discernment and understanding can be held responsible for essentially anti-social behaviour. If the age is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibility (such as marital status, civil majority, etc. ...).

e) Aims of juvenile justice
(Rule 5.1)

Rule 5 refers to two of the most important objectives of juvenile justice. The first objective is the promotion of the well-being of the juvenile.

The second objective is the principle of proportionality, meaning that the response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances.

f) Scope of discretion
(Rules 6.1 to 6.3)

Rules 6.1 to 6.3 combine several important features of effective, fair and humane juvenile justice administration: the need to permit the exercise of discretionary power at all significant levels of processing and the need to provide checks and balances in order to curb any abuses of discretionary power and to safeguard the rights of the young offender.

g) Rights of juveniles
(Rule 7.1)

This rule emphasizes some important points that represent essential elements for a fair and just trial and are internationally recognized in existing human rights instruments (the presumption of innocence which is found in Article 11 of the Universal Declaration of Human Rights and in Article 14 paragraph 2 of the International Covenant on Civil and Political Rights).

h) Protection of privacy
(Rules 8.1 to 8.2)

Rule 8 stresses the importance of the protection of the juvenile's rights to privacy.

i) Saving clause
(Rule 9)

2. Investigation and Prosecution

a) Initial contact
(Rules 10.1 to 10.3)

Rule 10.1 is in principle contained in Rule 92 of the Standard Minimum Rules for the Treatment of Prisoners. Rule 10.3 deals with some fundamental aspects of the procedure and behaviour on the part of the police and other law enforcement officials in case of juvenile crime.

b) Diversion
(Rules 11.1 to 11.4)

Diversion, involving removal from criminal justice processing and frequently, to committing support services is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration.

c) Specialization within the police
(Rule 12.1)

Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner. While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth.

d) Detention pending trial

The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. Rule 13 encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile.

Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights especially Articles 9 and 10, paragraphs 2(b) and 3. The Sixth United Nations Congress on the Prevention of Crime in its Resolution 4 on Juvenile Standards specified that the Rules should *inter alia* reflect the basic principle that pre-trial detention should be used only as a last resort.

3. Adjudication and Disposition

a) Competent authority to adjudicate

The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law." In accordance with due process a fair and just trial includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the right to remain silent, etc....

b) Legal counsel, parents and guardians

Rule 15.1 uses terminology similar to that found in Rule 93 of the Standard Minimum Rules.

c) Social inquiry reports

Such reports are an indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile such as social and family background, school career, educational experiences, etc.... For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other persons, including probation officers, may serve the same function.

Rules 17, 18, 19, 20, 21 and 22 deal respectively with guiding principles in adjudication and disposition, various disposition measures, least possible use of institutionalization, avoidance of unnecessary delay, records and the need for professionalism and training.

4. Non-institutional Treatment

Finally parts V and VI rely to institutional and non-institutional treatment.

Code of Conduct for Law Enforcement Officials

In 1979, the General Assembly adopted a Code for Law Enforcement Officials and transmitted it to governments with the recommendation that favourable consideration should be given to its use within the framework of national legislation or practice as a body of principles for observance by law enforcement officials.

Article 5 of the Code reads as follows:

"No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment."

In its commentary on Article 5, the Assembly points out that this prohibition derives from the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, according to which "such an act is an offence to human dignity and shall be condemned as the denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration on Human Rights and other international human rights instruments."

The Assembly adds that "the term cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly, but should be interpreted so as to extend the widest possible protection against abuses whether physical or mental.

At the Seventh Congress on Crime Prevention the need for further implementation of the principles of the Code at the national level, the important role of the United Nations and its regional and interregional institutes for the prevention of crime and the treatment of offenders was stressed.

A proposal was made by the Sub-Commission on Prevention of Discrimination and Protection of Minorities that the Congress should find ways and means to promote international technical co-operation in the area of restraints on the use of force by law enforcement officials and military personnel.

Other International Instruments

In addition to the international human rights instruments previously studied regarding the protection of offenders, we should also mention some other instruments dealing with this matter.

1. Code of Medical Ethics

In 1976 the General Assembly invited the World Health Organization to draft a code of medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment.

With the assistance of the World Health Organization, the Council for international organizations of the Medical Sciences and the World Medical Assembly, the General Assembly was able to formulate and adopt in 1982 a series of "Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment."

Principle 2 states that:

"It is a gross contravention of medical ethics, as well as an offence under applicable international instruments for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment."

At its 1983 session, the General Assembly expressed alarm that frequently members of the medical profession or other health personnel were engaged in activities difficult to reconcile with the principles of medical ethics, urged all governments to

promote the application of those principles by health personnel and government officials, particularly those employed in institutions of detention or imprisonment, and called for the principles to be widely disseminated by the Secretary-General, by governments and by the intergovernmental and non-governmental organizations concerned.

2. Draft Principles on Freedom from Arbitrary Arrest, Detention or Exile

The Universal Declaration's proclamation that "everyone has the right to life, liberty and security of person" (Article 3) is given more precision by Article 9 which states "no one shall be subjected to arbitrary arrest, detention or exile." The International Covenant on Civil and Political Rights in its article 9 states the same: "everyone has the right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention."

The Commission on Human Rights in 1956 decided to conduct studies of specific rights or groups of rights and appointed a committee composed of four of its members to undertake the first of these studies on the right of everyone to be free from arbitrary arrest, detention or exile. The study was completed in 1961 and in 1962 a series of draft principles were prepared which are presently before the Sixth Committee of the General Assembly for completion and adoption.

3. The International Convention on the Elimination of All Forms of Racial Discrimination

This Convention which entered into force in January 1969 is the key United Nations instrument against racial discrimination. Article 5 provides that States Parties "undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right to everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law" notably the enjoyment of the right to equal treatment before the tribunals and other organs administering justice. Non-discrimination is a basic principle which can be found also in the Standard Minimum Rules for the Treatment of Prisoners.

> "The following rules should be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (paragraph 6 (1)).

The principle of non-discrimination and its implications in the administration of criminal justice was the object of a study carried out by the Sub-Commission on Prevention of Discrimination and Protection of Minorities which contained a set of *Principles on Equality in the Administration of Justice.*

4. The International Convention on the Suppression and Punishment of the Crime of Apartheid

The Convention which entered into force in July 1976 in Article 2 defines the crime of "apartheid" as including a number of inhuman acts committed for the purpose of establishing and maintaining domination by one racial group over another racial group and systematically oppressing it. Among these acts are: denial to a member or members of a racial group of the right to life and liberty of person ... or arbitrary arrest and illegal imprisonment.

Roles of the United Nations and Other International Agencies in the Protection of Rights of Offenders and Victims

1. The United Nations

Since the adoption and proclamation of the Universal Declaration of Human Rights, the United Nations and other international organizations have continuously sought for new ways and means of promoting respect for and observance of the human rights and fundamental freedoms set out in the Declaration. A major achievement was the adoption in 1966 and entry into force in 1976 of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol.

In addition the United Nations organs

concerned adopted a wide variety of resolutions, decisions, declarations and conventions designed to accelerate the universal realization of human rights by all peoples everywhere. Some of these have been of a general character while some others have aimed at ensuring the recognition and full enjoyment of particular rights and freedoms.

Over the years the United Nations has also sought in many ways to ensure adequate protection for all against torture and other cruel, inhuman or degrading treatment or punishment. It has moreover adopted particular standards applicable to persons deprived of their liberty, has outlawed particular forms of treatment and punishment and has initiated studies leading to the preparation of various international instruments providing some measures of protection to incarcerated persons. One of the main purposes of international action in the field of human rights is to extend the limits of the protection at national and international levels.

At the national level, states by voluntarily accepting human rights instruments undertake to put into effect the domestic laws, regulations or administrative provisions of those instruments. Under Article 64 of the Charter, the Economic and Social Council may make arrangements with the United Nations Members and the specialized agencies to obtain reports on steps taken to give effect to its recommendations and to recommendations on matters falling within its competence made by the General Assembly.

At the international level, the United Nations plays an important normative role and regarding the protection of rights of offenders and victims, the United Nations has adopted a number of international instruments and standards (Re. Standard Minimum Rules for the Treatment of Prisoners) which have been accepted generally to be good general principles and practice in the treatment of prisoners. They are rules to guard against mistreatment, particularly in connection with the enforcement of discipline and the use of instruments of restraint in penal institutions.

The 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment elaborated by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, provides in Article 6 that "each state shall keep with systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any case of torture or other cruel, inhuman or degrading treatment or punishment."

In 1975 the General Assembly called for the preparation of a draft code for conduct for law enforcement officials and the formulation of a body of principles for the protection of all persons under any form of detention or imprisonment. The Code of Conduct for Law Enforcement Officials, adopted by the Assembly in 1979 provides in Article 5:

> "No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment."

A commentary attached to the article points out that although the term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly it should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

A draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment prepared by the Sub-Commission in 1978 provides in Article 19:

> "1. No detained person shall be compelled to testify against himself.
>
> 2. No detained person while being interrogated shall be subjected to violence, threats or methods of interrogation which impair his freedom of decision or his judgement.
>
> 3. No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health."

The urgent need for further effective international action to protect the human

rights of prisoners and detainees, not only against torture but also against mistreatment is clearly documented by material received by the Secretary-General from non-governmental organizations and presented in summary form to the Sub-Commission at each session since 1976.

Every year the Sub-Commission analyses and reviews information on the rights of prisoners and detainees, and, by publishing such analyses, seeks to mobilize international opinion against certain practices. Recommendations are also made with regard to practical action which could be taken by law enforcement agencies to prevent the commission of excesses.

In the recent past the United Nations attention was called upon the victims of crime while in recent years considerable progress had been made to improve the situation of victims. There was wide acceptance of the view that victims had for too long received insufficient attention from criminal justice systems, especially in cases of torture.

In 1978 the General Assembly by its resolution 33/174 of 20 December established the United Nations Trust Fund for Chile to receive contributions and distribute, through established channels of assistance, humanitarian, legal and financial aid to persons whose human rights had been violated by detention or imprisonment.

Two years later the General Assembly requested the Commission on Human Rights to study the possibility of extending the mandate of the United Nations Trust Fund for Chile to persons whose human rights had been grossly violated as a result of gross and flagrant violations of their human rights and to relatives of persons in those categories.

In 1981 the Fund was redesigned as the United Nations Voluntary Fund for Victims of Torture.

The Fund is administered by the Secretary-General with advice of a Board of trustees composed of five members with wide experience in the field of human rights, acting in their personal capacity, who are appointed by the Secretary-General with due regard to equitable geographical distribution. The Government of Japan has just contributed 500,000 US dollars to the Fund.

At the Seventh Congress on Crime Prevention particular attention was given to the question of the human rights of victims and many delegations stressed that the time had now come for the adoption of a Declaration with regard to victims.

2. The International Labour Organization

Since its establishment in 1919 as an autonomous institution associated with the League of Nations, ILO's main concern has been the formulation of international labour standards and their effective implementation.

The International Labour Conference has gradually built up a body of international labour conventions and recommendations, many of which deal with such human rights problems as the protection of arrested or detained trade-union activists.

3. The World Health Organization

The Constitution of the WHO was adopted on 22 July 1946 by the International Health Conference and came into being on 7 April 1948. Although WHO has not adopted international instruments in the field of human rights, it played an important part in the preparation of the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment adopted in 1982 by the General Assembly.

4. The United Nations High Commissioner for Refugees

As an integral part of the United Nations system, the UNHCR participates fully in all arrangements for co-operation within the system. It deals mainly with protection of refugees and returnees.

Training and Research

In addition to elaborating principles, setting standards and ensuring the observance of human rights and fundamental

freedoms, the United Nations bodies have endeavoured to promote respect for those rights and freedoms through research, the preparation of studies, and teaching at every level of formal and informal education.

In recent years, United Nations organs have devoted considerable time to search for new ways and means of ensuring to everyone the enjoyment of human rights and fundamental freedoms. In this endeavour they have considered a variety of proposals for improving the co-ordination of human rights activities within the United Nations system.

Training of personnel

Between 1953 and 1955 the Secretary-General was authorized by the General Assembly and the Economic and Social Council to make provision, at the request of governments and with the co-operation of the specialized agencies where appropriate, for certain forms of assistance with respect to human rights. The programme was designed to give government officers and qualified students an opportunity to share their experience and exchange knowledge on ways of promoting the full enjoyment of human rights by everyone.

(1) Advisory services of experts

In recent years, experts on questions relating to human rights were provided to advise and assist governments of some countries in their efforts to restore to their countries a democratic system, respectful of human rights and fundamental freedoms.

(a) Equatorial Guinea

In 1981 the Economic and Social Council expressed its readiness to assist the Government of Equatorial Guinea, at its request, in the task of restoring human rights in that country and requested the Secretary-General to draw up a plan of action aimed at implementing the recommendation submitted by an expert, Professor Jimenez appointed by the Secretary-General.

(b) Uganda

In 1982 the Council approved a decision by the Commission on Human Rights to request the Secretary-General in response to the interest expressed by the Government of Uganda to provide consultative advisory services and other appropriate assistance to help that government take measures to continue guaranteeing the enjoyment of human rights paying particular attention to *inter alia* the "need for the training of prison officers with a view to securing the application of recognized norms of treatment of prisoners" and "the need for the training of police officers, particularly investigative and scientific experts."

(2) Fellowships

Fellowships are awarded under the programme of advisory services in the field of human rights with a view to providing young persons entrusted with functions important to the promotion and protection of human rights in their countries with an opportunity to broaden their professional knowledge and experience by acquainting themselves with advanced methods and techniques in this field. Most fellowships are awarded for periods from 2 to 3 months and go to candidates nominated by their governments on the basis of their qualifications and position. Among the recipients of fellowships have been judges, prosecutors, senior police officials, instructors at police academies, officials responsible for the preparation of legislation, officials of ministries of justice, etc.... Many of those receiving fellowships have used their awards to observe and study existing procedures and various facets of the administration of justice. In particular governments have proposed that their administrative and judicial officials be given the opportunity to observe abroad such procedures as techniques for ensuring the rights of the accused to a speedy trial, protection of the accused in the preliminary investigation of criminal offences, methods of interrogation of suspected or accused persons, and ways of protecting the right of such persons to communicate with lawyers, family members and friends. Governments have also nominated administrative and judicial officials to observe the working of various remedies against the abuse of authority, administrative tribunals and the role of the ombudsman.

(3) Regional training seminars

In 1963 the Economic and Social Council requested the Secretary-General to consider the organization of regional training courses in human rights. The first pilot project in group training for human rights fellows was held at UNAFEI in Japan and was concerned with human rights in the administration of justice.

A second one was held in Japan in 1972, in Egypt in 1973, Costa Rica in 1975 and Australia in 1976. In 1977 Japan held again a seminar on the "safeguards against the deprivation of the right to liberty and security of persons" and in 1981 Australia hosted the seminar on human rights guaranteed in the administration of criminal justice.

Research

Under Article 13 of the United Nations Charter, the General Assembly may initiate studies for the purpose of promoting international co-operation in the economic, social, cultural, educational and fundamental freedoms.

Under Article 62, the Economic and Social Council may make or initiate studies for the same purposes with a view to promoting respect for and observance of human rights for all, and may prepare draft conventions for submission to the Assembly with respect to matters falling within its competence.

Both the General Assembly and the Economic and Social Council and many of their subsidiary bodies have initiated studies of various aspects of human rights. Most of these studies have been carried out by the staff of the Centre for Human Rights but others have been undertaken by commissions, committees, working groups or individuals possessing special knowledge or competence. Most of the studies were intended to provide the United Nations body concerned with information on the existing situation, in law and in fact, with respect to particular human rights aspects, so that it could consider all the facts before deciding upon a source of action. In many cases the preparation of a study constituted the preparatory work leading up to the drafting of an international convention, declaration or other instrument.

I will mention in this context the following studies:

Study on the Right of Everyone to be Free from Arbitrary Arrest, Detention or Exile prepared by the Committee on the Right of Everyone to be Free from Arbitrary Arrest, Detention or Exile consisting of four members of the Commission on Human Rights elected by the Commission.

Study on the Equality in the Administration of Justice prepared by Mr. Abu Rannat, Special Rapporteur appointed by the Sub-Commission in 1963.

Study on the Question of human rights of persons subjected to any form of detention or imprisonment prepared by Mrs. Nicole Questiaux, Special Rapporteur appointed by the Sub-Commission in 1977.

In recent years there has been a considerable upsurge of interest in the victims of crime. Although attention has long been focused primarily on the offender, the contributions of victimologists and victims advocates have helped to draw attention to the needs of victims and to the possibilities for more effective and informed action on their behalf.

At the international level the necessity of a more scientific approach is felt, the development of basic norms and guidelines seems to be the most important step, but other steps are also needed. The development of data systems, which would include world-wide indicators of the extent and trends of different kind of victimization and victims, and studies on the efficacy of the modalities available to deal with them. in light of the existing needs could facilitate the formulation of more effective and appropriate strategies. The role of the United Nations in this respect could be of great importance mainly through technical assistance, fellowships, promotion of technical co-operation among countries.

Non-governmental organizations have a special role to play in this regard, since they have an independence and impartiality that permit them to plead the case of many victims who have no one to speak on their behalf. Through associations of

victims they can play a leading role in research and assistance.

Conclusion

At the international level a number of instruments have already been adopted: a draft body of principles for the protection of persons under any form of detention or imprisonment, a Convention against torture and other cruel, inhuman or degrading treatment or punishment, a draft Code of Medical Ethics. Some other means are in preparation such as the Draft Principles on Freedom from arbitrary arrest, detention and exile. Emphasis should be placed on the completion and speedy adoption of all those projects which are designated to strengthen the existing arsenal of international instruments, special care being taken to provide supervisory bodies to act in cases of emergency, without which such instruments would only be able partially to fulfil their functions.

As regards victims, assistance should be provided to aid in action-oriented victim research and the most effective means of dealing with this new aspect of criminality.

SECTION 2: PARTICIPANTS' PAPERS

The Protection of Rights of Offenders and Victims of Crime in Fiji

*by Nazhat Shameen Khan**

Introduction

In this paper I will outline firstly the system of criminal justice in Fiji, secondly the statutory provisions relating to the treatment of persons awaiting trial, undergoing trial and the treatment of offenders after sentencing, and thirdly provisions for the treatment of victims of crime in Fiji.

The Fiji System of Criminal Justice

The Fiji Islands were a colony of the British Empire from 10 October 1874 to 10 October 1970. The system of justice is British and the Constitution of Fiji preserves both the common law and the Westminster Parliamentary Government.

The Constitution also provides for an Attorney-General, a Chief Justice, Director of Public Prosecutions, an Ombudsman, Judges of the Supreme Court and Court of Appeal and a Judicial and Legal Services Commission which is responsible for legal and judicial appointments.

The courts in Fiji are the Fiji Court of Appeal, the Supreme Court and the Magistrate's Court. There is a right of Appeal to the Privy Council in London from Fiji Court of Appeal decisions on matters concerning the interpretation of the Constitution or on an application concerning the fundamental rights and freedoms of a person granted by the Constitution. In civil matters there is a right of appeal where the property or matter in dispute is valued in excess of F$1,000.

In criminal cases leave to appeal to the Privy Council must be sought from the Judicial Committee of the Privy Council. There is a right of appeal from trials (both civil and criminal) in the Supreme Court to the Court of Appeal, and a right of appeal on a point of law from a decision of the Supreme Court on an appeal from the Magistrate's Court.

The Supreme Court of Fiji has a Chief Justice (who is also the President of the Court of Appeal) and seven puisne judges. The Court has unlimited jurisdiction and can hear civil and criminal matters which lie outside the jurisdiction of the Magistrate's Courts.

The Magistrate's Courts can hear most cases except for certain very grave cases which must be heard by the Supreme Court such as murder and treason. All other cases are triable in the Magistrate's Courts but in respect of many offences the accused has a right to elect trial by the Supreme Court. Before an accused is committed to trial to the Supreme Court a preliminary inquiry must be held in the Magistrate's Court.

The Magistrate's Courts also hear domestic and juvenile cases. At present in Fiji, one of the main problems is the backlog of cases in the Supreme Court. This is partly due to the increase in crimes for which there is a right of election to the Supreme Court, and partly due to the increase in accused persons who prefer to be tried by the Supreme Court. This matter will be dealt with in more detail later on in this paper.

Rights of Offenders

Fiji protects the rights of accused persons awaiting trial by statutes protecting the liberty of individuals, bail provisions and legal aid.

During trial, the system of criminal justice is based on the concept that accused

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persons are presumed to be innocent until they are proved guilty. In addition accused persons are entitled to free legal representation in serious cases.

After sentence has been passed there are a number of alternatives to penal institutions including compulsory supervision orders and parole.

Pre-Trial Rights of Defendants

a) *Arrest:* The police may arrest persons with or without warrants. Section 21 of the Criminal Procedure Code gives the police powers to arrest without warrant any person whom he suspects upon reasonable grounds of having committed a cognizable offence (these offences are specified in the Code), any person who commits any offence in the presence of an officer, any person who obstructs the police or escapes from lawful custody and any person found in possession of stolen goods.

The method of arresting a person required of police officers in Fiji conforms with the provisions of Article 9 of the International Convenant on Civil and Political Rights.

In the case of *R v. Ponipate Lesavua and Sakeasi Yabia* Criminal Case No. 927 of 1985 in the Suva Magistrate's Court, two police officers were convicted of unlawfully detaining persons without arresting them.

In that case the then Chief Magistrate of Fiji Mr. Gordon Ward said:

> "A police officer may only detain a person when he has arrested him. Any detention, without arrest for example, to question a suspect is unlawful and a serious interference with a citizen's liberty. There is not, and never has been a power to detain or arrest without a warrant any person to help with enquiries or to be questioned and anyone so asked is entitled to refuse to go with the officer unless and until he is told he is being arrested and the reason for his arrest."

This case did not lay down any new law. However it demonstrates the willingness of the Fiji Courts to uphold the liberty of the individual and to restrict the bounds of police interrogation and detention in accordance with the development of English law. The case conforms with the principles laid down in *Christie v. Leachinsky* (1974) AC 573 and *Rice v. Connoly* (1966) 2 QB 414.

Police interrogation in Fiji is governed by the Judges Rules (issued by the Supreme Court Judges of Fiji by *Notice in 1967 Cap. 13)* which are incorporated into the *Force Standing Orders* of the Royal Fiji Police.

The Rules are Rules of Practice and are not legally enforceable. However breaches of the Judges Rules may result in cautioned statements being declared inadmissible in trials and will be considered when the trial judge decides whether the statement given by the accused was admissible or not.

In practice the Judges Rules are very seriously considered by trial judges and on more than one occasion in 1986 in the Fiji Supreme Court, confessions made by defendants were declared to be inadmissible. As a result the police are taking more care to adhere strictly by the Judges Rules when questioning suspects.

b) *Bail:* Section 26 of the Criminal Procedure Code, Cap. 21 gives senior police officers the power to release accused persons on bail with or without sureties to appear before a Magistrate's Court at a stipulated time unless the offence appears to the officer to be a serious one. If it is not serious the accused persons is entitled to bail as of right.

Similarly Section 108 of the Criminal Procedure Code provides:

> "(1) ..... where any person, other than a person accused of murder or treason, is arrested or detained without warrant by a police officer or appears or is brought before a court and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to give bail, such person may in the discretion of the officer or court be admitted to bail with or without a surety or sureties and, in the case of a court, subject to such conditions and limitations as the court may think it fit to impose.

(2) The amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive."

The discretion under Section 108 is therefore wider than the discretion given to police officers under Section 26 where it is provided that bail *shall* be granted unless the offence is serious.

In practice in Fiji bail is granted in all except the most serious cases or in cases where the accused has frequently been in breach of bail conditions.

It should be noted here that absconding while on bail has caused an increase in the number of cases pending trial in the Fiji courts because it sometimes takes months for the police to trace defendants who have absconded. I intend to go into this in greater depth under *Treatment of offenders during trial.*

Those defendants charged with murder and treason are not entitled to bail. In some cases, they may be remanded in custody for up to a year awaiting trial. The reasons for this delay are varied, but the main one is the large back-log of cases in the Supreme Court. The situation is therefore far from satisfactory particularly as delay occurs despite the fact that murder cases and all cases in which the accused is detained in custody pending trial, are given priority in the Supreme Court. Again I will deal with this situation under the next category.

In practice the provisions regarding bail are satisfactory in Fiji from the accused's point of view.

Treatment of Offenders During Trial

Article 14 of the Covenant provides that accused persons are entitled to a fair and public hearing by a competent independent and impartial tribunal established by law. All accused persons are presumed to be innocent until proved guilty and paragraph 3 (a) provides for understanding of the charge, choice of counsel, trial without delay and in his presence, the right to examine witnesses, the right to an interpreter and the right not to be compelled to confess guilt. The Article also deals with the right of appeal, rights of juveniles, right to compensation and the concept of autrefois acquit or convict.

The laws of Fiji already incorporate the above principles either by statute or in common law. The Constitution for instance establishes the right to a public hearing and the presumption of innocence.

1. The Judiciary

In respect of the judiciary Section 90 of the Constitution provides –

a) The Chief Justice shall be appointed by the Governor-General acting after consultation with the Prime Minister and the Leader of the Opposition.
b) The puisne judges shall be appointed by the Governor-General acting after consultation with the Judicial & Legal Services Commission.

In practice judges are either selected from local senior members of the bar who have shown a high standard of professional behaviour or from expatriate applicants who have acted as judges or magistrates in other jurisdictions. At present in Fiji there are 5 expatriate magistrates and 8 local magistrates. On the Supreme Court bench there are 4 expatriate judges and 3 local judges including the Chief Justice Sir Timoci Tuivaga.

Every year, four Supreme Court Sessions in Suva, four in Lautoka and three in Labasa in the Northern Division, deal with criminal cases. In Suva two criminal Supreme Courts sit simultaneously – in Lautoka and Labasa only one court sits.

2. Delay

The most important problem facing the Supreme Court in Fiji is the severe back-log of cases. This is also a problem in some Magistrate's Courts. While in Magistrate's Courts the cases are not difficult to pinpoint – that is the shortage of magistrates and courts in which to house them; the main causes in the Supreme Court are not so easy to identify.

The following table shows the increase by 1985 in the number of cases to be dealt with in the Supreme Court annually since 1976.

1976	63
1977	28
1978	42
1979	27
1980	52
1981	47
1982	79
1983	80
1984	118
1985	126

The causes for the increase are numerous, and the result is a backlog of cases, delay in hearing cases and increased pressure on prosecutors, court officials and judges.

It is clear that the increase in crime rate is one of the more important reasons. The table shown in Appendix D shows the increase in the crime rate since 1976.

An important factor which has helped to create the backlog in the Supreme Court is the number of accused persons who have cases pending in the Supreme Court who have disappeared and against whom bench warrants have been issued. It is often the case that on a date set for hearing the accused fails to appear which not only causes inconvenience and expense, it also means that no other case can be called on that day or for another three days because the Criminal Procedure Code requires three clear days for a trial date to be set.

Another probable cause is the increase in the number of persons electing Supreme Court trial. Often some very minor cases of Larceny from Person concerning up to $10 come up to the Supreme Court for trial. It may be the situation that accused persons feel that a trial before a judge and assessors may be fairer than a trial in the Magistrate's Court. However, the severe backlog in the number of cases caused the question of delay and the principle "Justice delayed is justice denied" to be raised in Parliament. However the moves by the Attorney-General to limit the types of cases in which there is a right of election caused a wave of violent opposition by the Law Society of Fiji. The Law Society cited the accused's constitutional right to a fair trial.

However, a reduction in the number of cases to be heard in the Supreme Court may not guarantee less delay since there is also a backlog in the Magistrate's Court. Nevertheless cases, particularly the less serious ones, are more speedily dealt with in the Magistrate's Courts, and, it must be added, just as fairly. The following points should also be taken into account:

a) There are at present a number of offences for which there is no right of election to the Supreme Court and to which the Law Society has taken no exception at all. These include Committing Nuisance, Selling Noxious Food, Defilement of a Girl under Sixteen and Attempted Rape.

b) Even without the consent of the accused, all cases are triable by the Supreme Court. A Magistrate can exercise his discretion under Section 220 to send a case up to the Supreme Court for trial. Section 220 provides that –

> "If before or during the course of a trial before a Magistrate's Court it appears to the Magistrate that the case is one which ought to be tried by the Supreme Court or if before the commencement of the trial an application in that behalf is made by a public prosecutor that it shall be so tried, the Magistrate shall not proceed with the trial but in lieu thereof he shall hold a preliminary inquiry..."

Section 220 therefore also gives to the prosecutor the right to elevate a case to the Supreme Court.

c) Trials in the Magistrate's Courts are disposed of fairly quickly in comparison with the Supreme Court. In the Magistrate's Court there will be no preliminary inquiry, no trial within a trial or *voir dire,* no need for an opening address to assessors to explain the procedure and the burden of proof and no need to wait for the next criminal sessions.

Thus for the above reasons a reduction in the number of cases for which the consent of the accused is allowed before a case is tried in the Magistrate's Court may have the result of reducing delay in the hearing of trials.

Another possible solution is of course to provide more judges, magistrates and courts. A new court complex was proposed some years ago but as yet no practical move has been made to commence building. In addition an urgent need for more magistrates and judges is balanced with the need for members of the bench who are independent, well-qualified and of a high standard of professional integrity. It would be a mistake to compromise the latter for the former.

3. Legal Representation

Accused persons are in Fiji given every opportunity to obtain counsel for their defence. Suspects do not have the right to have a lawyer present during police interrogation.

In the Fiji case of *R v. Shiv Narayan* Lautoka Supreme Court Case No. 2 of 1980 Williams J stated –

> "There is no legislation to the effect that a suspect has the right to have a lawyer present during the entire course of his interview with the police. Art. 5(3) (b) of the Constitution of Fiji states that an accused shall be afforded reasonable facilities to consult his lawyer .... I am not aware that there is an established common lawright to have a lawyer present through an interview when one is led by the police."

Legal representation in Fiji is not free.

The *Legal Aid Act* Cap. 15 of the 1978 Laws of Fiji enables the Chief Justice to make rules for legal aid to be granted to "poor" persons.

The Legal Aid Rules provide that "a poor person" is a person who is not possessed in Fiji or elsewhere, of money or property, other than wearing apparel, the value of more than $200.

The Legal Aid Rules provide that Legal Aid may be granted by the President of the Court of Appeal to the Privy Council, or to the Court of Appeal and by the Chief Justice for trials in the Supreme Court or the Magistrate's Court.

Applications are made on a form to the Chief Registrar of the Supreme Court. If legal aid is granted the Chief Registrar then briefs any barrister and solicitor who is willing to accept the brief. In choosing the lawyer the Chief Registrar may accept suggestions from the accused himself.

In practice the Supreme Court has funds only to grant legal aid in serious cases of murder and manslaughter. All other applications are usually unsuccessful.

It is evident therefore that the legal aid system in Fiji is far from satisfactory. The definition of "poor person" is far from satisfactory and excludes a number of deserving cases. In practice legal aid is only available in cases of murder and manslaughter which excludes complicated cases such as fraudulent conversion and fraudulent falsification of accounts which require legal expertise.

The Fiji Law Society attempted in 1984 to set up a "Duty Solicitor Scheme" wherein barristers and solicitors in Suva were required each day according to a roster, to attend the cells at the courthouse to give impromptu advice to accused persons remanded in custody pending trial on the same day. This scheme was of course a limited one, but nevertheless it was an attempt at a legal aid system. The scheme was not a success due to lack of committment to it on the part of practitioners, and it has not been revived.

4. The Trial Proper

Section 10 (2) of the Constitution of Fiji provides for the presumption of innocence. The burden lies on the prosecution to prove the accused's guilt. In practice the prosecutor is expected to be fair and to be concerned primarily with the impartial administration of justice.

The Director of Public Prosecutions under Section 85 of the Constitution has the power to undertake and institute criminal proceedings before any court of law, to take over and continue any criminal proceedings and to discontinue at any stage before judgment is delivered any criminal proceedings. These powers may be exercised by him in person or by any person acting on his instructions. The DPP is not subject to the direction or control of any other person or authority.

The DPP may enter a *nolle prosequi* to discontinue proceedings in cases where witnesses are unavailable, for policy reasons and where it would be unfair to proceed. Often it is considered fairer for the prosecution to withdraw a charge resulting in an acquittal for the accused than to enter a nolle prosequi which is no bar to fresh proceedings being commenced against the same accused.

Accused persons have the right to have an interpreter, and the same procedural rights which apply under English law for trials apply also to Fiji.

Treatment of Offenders After Sentence

First offenders in Fiji are sometimes sentenced to imprisonment. It has been accepted by the Fiji Law Reform Commission in its *Penal Policy Review Report* that imprisonment should be used as a punishment of last resort so far as that is practicable. However, the rights of the victim is considered as important as the rights of the offender, and increasing pressure from the public is put on the courts to balance the rights of both.

In June 1986, the Law Reform Commission recommended that penal policy should place a new emphasis of the rights of victims, that penal policy should ensure that an offender does not profit from his crime, and that new emphasis should be placed on compensating a victim for property loss.

The Law Reform Commission also recommended that legislative guidelines be enacted to provide for inter alia:

a) The imprisonment of offenders who commit crimes of violence (with certain exceptions).

b) The principle that offences against property should be dealt with differently to offences against the person.

c) Protection of the rights of victims.

d) Encouragement of the incorporation of traditional and cultural motions of justice provided they are compatible with the established system of criminal justice.

e) Special regard to custom and culture in sentencing.

f) Provision for a wider range of sentencing options such as Community Work Orders and Community Car Orders.

g) Rehabilitation.

h) A provision that fine and maintenance defaulters should not be imprisoned.

i) Introduction of a comprehensive legal aid scheme.

1. The Fijian Courts

Much support has been given to the idea of introducing a new Fijian Legal System in which villages have their own courts to administer justice in the traditional Fijian way. This was approved in a meeting of the Great Council of Chiefs despite reservations expressed as to the practicality of the scheme and the possible conflict with the state courts. It has been suggested that if Fijians have their own courts then Muslims and Hindus also have the right to demand an introduction of traditional Muslim and Hindu courts. However the mechanics of the scheme are still under discussion although the idea in principle has been approved in respect of certain types of offences.

2. Rights of the Victim

Section 161 and 162 of the Criminal Procedure Code provide for compensation to be awarded to victims and innocent persons by the accused. Section 164, 165, 166, 167 and 168 related to the restoration of property, real and personal to victims of crime. There is no provision for compensation to be paid to victims by the state except of course by civil action. Often in cases of break-ins or larceny by accused persons who are unemployed and without means, victims are left with no financial redress at all.

In respect of victims of rape and domestic violence a new body called the Women's Crisis Centre has been set up in Suva, which is partially subsidised by the government. It deals not only with victims of reported rapes and violence, but also with cases in which the victims want no public-

ity and simply require counselling.

In 1986 about 100 women came to the Crisis Centre for support, counselling and legal advice. Help at the Centre is free and the Centre has an office in central Suva.

Much concern has been expressed in recent months by the public about the number of offenders who are released as extra-mural prisoners and on compulsory supervision orders. Often these are the offenders who re-offend. Since 1984, 200 prisoners were released on CSO. In October 1986, public outcry resulted when a Marketing Manager of Rewa Dairy Co-operative Ltd., convicted of fraudulent conversion and sentenced to 2 years imprisonment, was released after 2 months on CSO. Questions were asked in Parliament, and as a result, all further grants on CSOs have been suspended.

The decision of the Minister for Home Affairs has also been the subject of Judicial Review by the DPP as to the considerations taken into account before the offender was released in that case. It is clear that the public in Fiji are concerned about the consequences of releasing prisoners too early.

The laws of Fiji have not placed enough emphasis on the rights of victims, or offenders. Prisons are over-crowded, few victims are given redress for their loss, the court system is a frightening one for a victim of rape or violence and not enough attention is paid to the principles of rehabilitation and compensation. The balancing of the rights of victims and offenders is, of necessity, a delicate one.

However, with the implementation of the recommendations of the Fiji Law Reform Commission the balance may be achieved.

Conclusion

The system of criminal justice in Fiji is, in practice, not without its faults. The backlog of cases in the Magistrate's Courts and Supreme Courts, the delays in trials, the inadequacy of the legal aid provisions and compensation provisions, over-crowding in prisons and minimal regard for the rights of victims are just some of the problems facing the administration of justice in Fiji today.

However, with perseverance the channelling of available resources to improve facilities and the gradual building of more courts to house more magistrates and justices, some of these problems may be solved in the near future.

For the rest, the basic system of criminal justice, based as it is on constitutional rights, the presumption of innocence and individual liberty holds hope for a country which is still developing and which depends on justice and democracy for further peaceful development.

Appendix A

Section 10 Constitution of Fiji, Cap. 1 Ed. 1978

Provisions to secure protection of law

10. (1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence –

(a) shall be presumed to be innocent until he is proved or has pleaded guilty;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;

(c) shall be given adequate time and facilities for the preparation of his defence;

(d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;

(e) shall be afforded facilities to examine in person or by his legal representative the witnesses called by the prosecution before any court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by

the prosecution; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorized by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be prescribed, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the preceding subsection shall prevent the court or other authority from excluding from the proceedings (except the announcement of the decision of the court or other authority) persons other than the parties thereto and their legal representatives to such extent as the court or other authority –

(a) may by law be empowered to do so and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered to do so in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –

(a) subsection (2) (a) of this section to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2) (e) to this section to the extent that the law in question imposes reasonable conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds; or

(c) subsection (5) of this section to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force so, however, that any court so

trying such a member and convicting him shall, in sentencing him to any punishment, take into account any punishment awarded him under that disciplinary law.

(12) For the purposes of subsection (2) of this section a person who has been served with a summons or other process requiring him to appear at the time and place appointed for his trial and who does not so appear shall be deemed to have consented to the trial taking place in his absence.

Appendix B

Section 21 – Criminal Procedure Code, Cap. 21 Ed. 1978

Arrest by police officer without warrant

21. Any police officer may, without an order from a magistrate and warrant, arrest –

(a) any person whom he suspects upon reasonable grounds committed a cognizable offence;

(b) any person who commits any offence in his presence;

(c) any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(d) any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;

(e) any person whom he suspects upon reasonable grounds of being a deserter from Her Majesty's Army or Navy or Air Force;

(f) any person whom he finds in any highway, yard or other place during the night and whom he suspects upon reasonable grounds of having committed or being about to commit a felony;

(g) any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Fiji which, if committed in Fiji would have been punishable as an offence, and for which he is, under the Extradition Act, or otherwise, liable to be apprehended and detained in Fiji;

(h) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking;

(i) any released convict committing a breach of any provision prescribed by section 46 of the Penal Code or of any rule made thereunder;

(j) any person for whom he has reasonable cause to believe a warrant of arrest has been issued.

Appendix C

Section 26 and 108 of the Criminal Procedure Code, Cap. 21 Ed. 1978

Detention of persons arrested without warrant

26. When any person has been taken into custody without a warrant for an offence other than murder or treason, the officer of or above the rank of corporal to whom such person shall have been brought may in any case and shall, if it does not appear practicable to bring such person before an appropriate Magistrate's Court within twenty-four hours after he has been so taken into custody, inquire into the case, and, unless the offence appears to the officer to be of a serious nature, release the person on his entering into a recognizance, with or without sureties, for a reasonable amount to appear before a Magistrate's Court at a time and place to be named in the recognizance, but where any person is retained in custody he shall be brought before a Magistrate's Court as soon as practicable:

Provided that an officer of or above the rank of sergeant may release a person arrested on suspicion on a charge of committing any offence, when, after due police inquiry, insufficient evidence is, in his opinion, disclosed on which to proceed with the charge.

Provisions as to Bail and Recognizances

Bail in certain cases

108. (1) Subject to the provisions of section 26, where any person, other than a person accused of murder or treason, is arrested or detained without warrant by a police officer or appears or is brought before a court and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to give bail, such person may in the discretion of the officer or court be admit-

ted to bail with or without a surety or sureties and, in the case of a court, be subject to such conditions and limitations as the court may think it fit to impose.

(2) The amount of bail shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(3) Notwithstanding anything contained in subsection (1), the Supreme Court may in any case direct that any person be admitted to bail or that the bail required by a Magistrate's Court or police officer be reduced.

Appendix D

Table showing reported Penal Code offences and Number of Convictions annually since 1976

	Reported Penal Code Cases	Court Cases (Total Convictions)
1976	12,775	4,489
1977	12,284	4,424
1978	13,141	5,245
1979	12,988	3,859
1980	12,479	3,448
1981	12,399	4,334
1982	12,829	4,750
1983	13,812	2,915
1984	14,313	3,630
1985	14,168	3,040
1986	15,648	3,015

Appendix E – Penal Policy Review Recommendations – June 1986

Penal Policy Review Report (Part I)

Summary of Principal Recommendations Contained in Report

1. Penal policy must ensure the criminal justice system upholds the fundamental rights and freedoms of every person in Fiji under the Constitution, to "life, liberty, security of the person and the protection of the law" so that public confidence in the criminal justice system is maintained. (Refer paras 13–19 and para 155)
2. Penal policy should place a new emphasis of the rights of the victim of a crime, both in compensating a victim for property loss and damage, and for personal injury suffered as the result of a crime. (Refer paras 161–190)
3. Penal policy should ensure that an offender does not profit from his crime. (Refer para 164)
4. As a matter of penal policy imprisonment should be used a punishment of last resort so far as that is practicable and consonant with promoting the safety of the community. (Refer paras 64–72 and para 156)
5. A policy of "humane containment" as a basic principle in the treatment of offenders, should be adopted in respect of the use of imprisonment. This embodies the principle that an offender is sent to prison *as* punishment and not *for* punishment. (Refer paras 79–80)
6. Legislative guidelines should be enacted in Fiji which lay down broad legislative preferences in sentencing without undermining the principle of judicial independence. (Refer paras 122–139)
7. A new sentencing statute should be enacted which embodies broad legislative guidelines and principles relating to sentencing along with specific sentencing dispositions. (Refer paras 38–45)
8. Legislative guidelines should be enacted that in particular provide for:
   (1) The imprisonment of offenders who commit crimes of violence (with certain exceptions in special circumstances).
   (2) A primary recognition of a victim's rights in dealing with property related offences.
   (3) A greater recognition of a victim's right to compensation for criminal injury. (Refer paras 151–170, 186–189)
   (4) That support the principle that offences against property should be dealt with differently to offences against the person.
   (5) That implements the proposed principle that imprisonment be used as a punishment of last resort. (Refer para 4 of this summary)
9. Penal policy should ensure that sentencing does not reflect a situation where crimes against the person are viewed in the same light as crimes against property. (Refer para 164)
10. That the Courts be empowered to take

into account an offer to make amends and that a specific statutory provision be introduced to recognize the principle. (Refer para 204–205)

11. A proposed new sentence of reparation should extend the principle of reparation to include reparation in terms of goods or services in addition to an assessed amount of money. (Refer paras 174–177)
12. Penal policy should encourage the incorporation of traditional and cultural notions of justice into the criminal justice system, providing they are compatible with, and do not distort the established system of criminal justice. (Refer paras 27–32, 203–204)
13. The Courts should have regard to matters of custom and culture where relevant when sentencing an offender. A wider provision than that presently contained in the Criminal Procedure Code should be introduced.
14. The Courts should be provided with a wider range of sentencing options. In particular non-custodial community based sentences as alternatives to imprisonment should be introduced. The community based sentences proposed are –
    (1) Community work orders, and
    (2) Community care orders
    The introduction of these proposed alternatives to imprisonment are important in view of the large number of fine defaulters and young people in prison, many of whom are first offenders. (Refer paras 16 and 206–207)
15. Penal policy should encourage community participation in the treatment and rehabilitation of offenders. The community should be in a strong partner in the criminal justice system. (Refer paras 212–226)
16. A network of "community supervisors" should be established to assist in the supervision of community based sentences. The scheme of community supervisors should "link" in with the proposed new Fijian administration. (Refer paras 179–180)
17. As a matter of general penal policy fine defaulters and maintenance defaulters should not be imprisoned unless the default is wilful and in effect amounts to a contempt of the court order. (Refer paras 103–120)
18. That consideration be given setting up a comprehensive scheme of criminal legal aid. (Refer para 160)
19. The rehabilitation of an offender and his reintegration back into society should be the ultimate goal of the criminal justice system so far as that offender is concerned. The adoption of the twin policies of "through care" and "after care" should be adopted to assist in achieving this goal. (Refer paras 211–225)
20. That legislation be introduced to give effect to the "living it down" principle and deal with the problem of old convictions. (Refer paras 226–232)
21. That a new sentence of "preventive detention" be introduced to deal with the "habitual" sexual offender. (Refer paras 237–255)

Appendix F – Fiji Times Editorial – 6/1/87

Welcome move on crime

THE Special Task Force on crime has got off to a commendable start with the decision to suspend releasing any more prisoners on Compulsory Supervision Orders (CSO).

The release of certain individuals on CSOs lately caused the Government a spot of embarrassment.

Besides this, the number of prisoners able to get out of jail on special orders has become a cause of alarm and concern to a public worried by a serious increase in crime.

Even the courts have objected to the liberal use of CSOs which tend to put into ridicule sentences imposed by the courts.

Figures released in Parliament at its last session showed that a total of 200 prisoners had been released on CSOs since 1984.

Although 1984 was the worst year with 109 CSOs issued – the numbers have dwindled since to 57 in 1985 and 37 in 1986 – victims of crime have begun to question a system of justice where prisoners are able to get away so lightly.

However, a complete ban on CSOs is not desirable.

There are cases when these early releases are justified either on the grounds of humanity or for the sake of better rehabilita-

tion of a prisoner.

But prisoners must be released with utmost discretion and after serious weighing in of all considerations.

This must dictate against vesting in one person the power to make the final decision on these orders.

The Government should consider the setting up of a body similar to a parole review board made up of prison authorities, social welfare workers and lay people to deal with such matters.

Advancement of Fair and Humane Treatment of Offenders and Victims in Criminal Justice Administration

*by A.M.M. Nasrullah Khan**

Introduction and Significance

Control of crimes and criminals through effective and efficient administration of criminal justice is, admittedly, an essential prerequisite for the healthy development of a country and its orderly growth. Equally important is the task of the criminal justice administration of a country to ensure and implement within the framework of its own legal system fair and humane treatment to offenders and victims of crimes. Constitutional guarantees for rights to individual liberty, security, freedom of expression and action or against administrative abuses are available in a democratic set-up or a government based on democratic values and principles.

On the other hand, contents of various international instruments on human rights and related matters incorporated in national laws of many countries in this region provide for the protection of human rights of offenders at the stage of arrest, detention and trial and at the stage of treatment. Protection of and assistance to victims of crime have also been called for by the recent Seventh U.N. Congress in 1985 in Milan (Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power). In this context, let us look at Bangladesh and its existing system of criminal justice administration.

To introduce Bangladesh, it is a tropical and densely populated country (100 million people in 55,000 sq. miles) having a vast stretch of plain and, at the same time, fertile land. Average rainfall over the whole year comes to 203 cm. to 230. In Bangladesh, criminal justice administration is the responsibility shared by a few departments like those of the police, Jail and Judiciary of the Ministry of Home and Ministry of Law. Police in Bangladesh as a law-enforcing and investigating agency has, however, a main role to play since the real work of treatment begins the moment an alleged offender is arrested by the police. Keeping in view the subject matter of the seminar, I propose to discuss below the situation and laws as available in Bangladesh in this regard.

Protection of Human Rights of Offenders at the Stages of Arrest, Detention and Trial

This is possible if no one is subjected to arbitrary arrest and detention and trial is held under due process of law. In Bangladesh there exists adequate legal provisions to govern the procedure of arrest, detention and trial processes of an offender without prejudicing his rights as guaranteed in the Constitution of the People's Republic of Bangladesh. Thus, Article 33 (1) of the Constitution of the People's Republic of Bangladesh provides enough safeguards to the rights of a person and states in an unequivocal term that a person can be arrested and detained only after he is informed of the grounds of arrest and detention. Such person has the inalienable right to consult and be defended by, a legal practitioner for remedy.

Under section 54 of the Criminal Procedure Code (hereinafter to be called as the Cr.P.C.) the police have the power to arrest a person concerned in any cognizable offence. But under Article 33 (2) of the

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Constitution as well as Section 61 of the Cr.P.C., it is mandatory for the arresting authority to produce such person before the nearest magistrate for order within twenty-four hours of such arrest exclusive of the time necessary for the journey from the place of arrest to the court of the magistrate. Even the preventive detention of a person beyond a certain period cannot be possible without the compliance of certain quasi-judicial processes. In addition, there exists provision for *habeas corpus* i.e. filing writ to the High Court by an aggrieved person against the detention presumed to have been done illegally. There is specific mention of such relief admissible under Section 491 Cr.P.C. All these existing legal measures are in fact intended to check and contain arbitrary arrest by the executive authority including the police. This is quite in conformity with Article 9 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Civil and Political Rights (to be referred to as Covenant).

With regard to the detention of persons awaiting trial (unconvicted prisoners), the law provides minimum possible duration of detention and allows release from the detention through positive use of bail vide Sections 496 and 498 of Cr.P.C. Exception has been made only in case of offence punishable with death or transportation for life. Even in such cases, the court may order bail for a person who is a woman, sick or infirm, or a person under the age of sixteen years. Provision for bail has been provided under Sections 497 (2) & (4) even during the time of investigation by a police officer or during the time of trial at the court if it appears that sufficient evidence against the alleged offender is not available. In fact such consideration is there because a person is presumed to be innocent unless proved guilty. This is in agreement with article 11 (1) of the Universal Declaration of Human Rights and article 14 (2) of the Covenant.

Reasons for Prolonged Detention and Remedies Suggested

Despite such liberal provisions of bail, certain cases of prolonged detention of persons in jail awaiting trial have come to our notice. Some of the important reasons are given below:—

a. Lack of speedy trial in the courts more because of congestion of cases with limited or inadequate number of judges.

b. Prosecutor/defence lawyer, otherwise busy, prefers to take more time from the court resulting in delay in the trial of a detained person.

c. Failure of the witnesses to appear in time before the court for deposition thereby causing delay in the trial.

d. Financial constraint of the alleged offender in detention causes delay in the appointment of defence lawyer thereby delaying the process of trial.

e. Prolonged detention is also caused due to delayed investigation of cases by the investigating agency.

To remedy the situation against the prolonged detention, some positive steps as stated below need to be taken. A required number of impartial and independent tribunals/courts with adequate number of judges should be established.

1. Tendency to give time to the prosecutor/defence lawyer on request should be stopped except on genuine grounds.

2. Appropriate arrangements should be made for the appearance of witnesses before the court for deposition.

3. State-help in the appointment of a defence lawyer, in case the alleged offender cannot do it, should be promptly given.

4. There should be a time-limit for completion of investigation of cases by the police/investigating agency;

5. Voluntary associations like the Institute of Democratic Rights, Bangladesh Society for enforcement of Human Rights, Adhikar Trust (Right's Trust) in Bangladesh should be more active and should take up in the court the cases of offenders in detention.

In Bangladesh, the government has already taken steps for speedy trial of cases and completion of investigation of cases within a fixed time. Recently administrative reforms have been carried out in Bangladesh. In place of 19 districts, 64 dis-

tricts and 460 upazillas (sub-districts) have been constituted under recent administrative decentralization. As a result, a required number of district courts and magistrates' courts have also been established in all the districts and upazillas. Moreover in the interests of having a speedy trial, the trial period at the magistrate's court for a particular case has been limited to 60 days and in the trying Session Judge's court to 120 days vide Section 339 (c) Cr.P.C. as amended. Similarly, it has been made obligatory for the investigating officer to complete the investigation within sixty days vide Section 167 (5) Cr.P.C. as amended. There are legal provisions in Chapters XXXI and XXXII (Sections 404-442 Cr.P.C.) for preferring appeals etc. to higher courts by aggrieved person. For fair trial, an insolvent accused can ask for competent counsel and other legal help from the state and the state under the orders of court, if circumstances so require, has to come forward with such help for the legitimate defence of the accused. Even the statement of police before the court or statement recorded u/s 161 Cr.P.C. by police is not admissible as evidence in a case against an alleged offender. Thus, sufficient care has been taken in Bangladesh for speedy and fair trial under existing laws and by recent administrative decentralisation. Fair and speedy trial is further assured only when the independence of judiciary is guaranteed. In this connection, Article 14 of the Covenant concerning the right to a fair and speedy and public trial by a competent, independent and impartial tribunal and court established by law and the Basic Principles of the Independence of Judiciary as adopted by Seventh U.N. Congress in Milan in August-September, 1985 may be referred to in Chapter VI relating to judiciary in the Bangladesh Constitution and relevant sections of Cr.P.C. as referred to above, and in fact fulfil the requirements for an independent judiciary existing in Bangladesh.

Compensation for Unlawful Arrest and Detention

Article 9 (5) of the Covenant provides an enforceable right to compensation for the victim of unlawful arrest or detention. The right to financial compensation of a person, illegally arrested and detained on the information of a complainant, which was found to be false, vexatious and frivolous by the court has been recognized and provided for under Article 250 of Cr.P.C. of Bangladesh. Instances are there where it has been resorted to. Nonetheless, resort to it is infrequent because of the fact that firstly general people are not adequately enlightened and familiar with the legal provision and secondly, it is sometimes time-consuming and expensive. In this respect, arbitration by local elite through a system called "Shalish" is more popular in rural areas of Bangladesh and whatever compensation is decided in the "Shalish," it is usually paid without resort to further appeal by either party.

Cases of Juvenile Offenders

A juvenile offender, defined as a child or young person alleged to have committed or found to have committed an offence (vide Article 2.2 (c) of U.N.S.M.R. known as "Beijing Rules") obviously deserves special consideration during the time of trial owing to their early state of human development.

The "Beijing Rules," laid down by the U.N. Congress of 1985 in Milan, are very extensive and wide in scope dealing with all stages of juvenile cases which include the offence committed, protection of and assistance to their rights, investigation, prosecution and disposition of such cases in a formal/informal manner, their treatment in institutional, non-institutional and semi-institutional manner.

In Bangladesh, the Children Act 1974, and the Bangladesh Children Rules 1976, in fact govern the cases of all juvenile offenders. The Act 1974, consisting of 78 articles, appears to be quite in conformity with the Beijing Rules. Section 2 (f) defines a juvenile as a person under the age of sixteen years. As per Section 3 of the Act, the Government of Bangladesh has set up a juvenile court at Tongi exclusively to deal with such cases. In places where

such a court is not in existence, the powers /authority of the said court have been conferred on the High Court Division, Session Courts in the districts and Courts of the Magistrate 1st Class. Section 6 prohibits joint trial of juveniles and adults except under exceptional circumstances. Section 9 provides that except those who are required in connection with the trial, no person shall be present at any sitting of the juvenile court thereby guaranteeing their right to privacy to the maximum. Section 17 prohibits the publication of reports in newspapers, magazines etc. regarding the identity of the juvenile, the proceeding in any court or any other particular of the juvenile, unless in the opinion of the court it is required in the interest of the juvenile. Under Section 32 (1) of the said Act, a probation officer and a police officer not below the rank of sub-inspector of police may bring the cases of juvenile offenders before the juvenile court which as per procedure laid down in Sections 32 (2-6) and 58 orders the juvenile offenders to be sent either to a certified Institute, approved home or to the care of the relative until the juvenile attains the age of eighteen years or for any shorter period. In the arrest, trial and treatment of the juvenile offender, including their release from the care and custody of anyone, the role of the probation officer who works under the court is very important.

As per the Children Act 1974 and the Children Rules 1976, there is one National Institute of Correctional Services in Bangladesh working at a place called Tongi. The complex (National Institute of Correctional Services) consists mainly of one Juvenile Court, Remand Home and Training Institute.

The Court while trying and deciding the case of a juvenile offender below the age of 16 years takes into account the offender's psycho-socio-economic background and the investigating reports submitted by the probation officer and social case worker. The court commits the offender to remand home or training institute or to the care of the parent/relative under the supervision of the probation officer as the case may be.

Remand home is an institutional arrangement where an offender is further studied by the correctional personnel and on his report, the court arrives at a final decision regarding the disposition of that particular case.

Training Institute

It plays the major role in reforming and rehabilitating the juvenile found guilty of an offence and placed on probation under the supervision of a probation officer or committed to the training institute for detention. The initial work starts with classification of the juvenile according to age, average intelligence, antecedent, formal education, trade aptitude, the nature and severity of offence. A treatment plan is drawn up on the basis of the above data and investigating reports. The treatment team consists of a social case worker, probation officer, house parents, teachers, trade instructors, recreation teacher and warders who work individually and in groups with the inmates. Individual counselling, group counselling and family guidance if necessary are provided. Besides a weekly conference, there are other extracurricular activities which include recreational programmes and physical training as per requirement with a view to developing comradeship, a sense of responsibility, mutual co-operation etc. To make their rehabilitation in the society possible after release, vocational training in various subjects like automobile and radio/television repairing, carpentry, tailoring, haircutting etc. are made available. Arrangement for formal education is also there. Religious education is also imparted to build up their moral character and to make them sensible and responsible. After-care service by voluntary organizations during the post-release period is sometimes a necessity for the released juvenile offenders but that is yet to be developed. Rule 19.1 however calls upon the member-state to make least possible use of institutionalization for the treatment of juvenile offenders. But only one National Institute at Tongi for the whole of Bangladesh having a population of ten (10) crores can not be

adequate. However the Government of Bangladesh has a plan to set up three more such institutes in three other Divisions of Bangladesh. Fund-constraint seems to be causing delay in the implementation of the plan.

Again seen in the context of U.N.S.M.R. or Beijing Rules, many more positive measures are required to be taken.

Article 11 stresses the disposition of cases at least of a non-serious nature by police, prosecution or authorized agency without recourse to formal hearings. But this is yet to be fully developed. As per Article 12 of the Beijing Rules, specialization within the police to deal with juvenile crime is yet to be developed in Bangladesh. The National Institute of Correctional Services provides institutional treatment which in fact embodies some aspects, if not all, of semi-institutional arrangements like educational houses and vocational training courses for rehabilitation of the juveniles. The Department of Social Services of the Ministry of Social Welfare and Women's Affairs controls and supervises the work of the National Institute of Correctional Services and also monitors the implementation of its various programmes.

Bangladesh Retired Police Officers Welfare Association, a voluntary organization (N.G.O.), has however taken up a laudable plan called the "Assistance Plan for Juvenile Delinquents" (APJD). The plan is intended to ensure the implementation of various provisions of the Children Act 1974, and its Rules 1976, through effective representation at appropriate levels of Administration and to extend necessary assistance to juvenile offenders for their proper custody, protection and treatment. The Juvenile Delinquency Committee (JDC) has been formed to carry on the responsibility in this regard (vide the weekly *Detective* 25th Dec., 1986).

The Bangladesh Government has in fact been attaching due importance to the growing problem of juvenile offenders. Laws are there and arrangements made out of its limited resources providing for treatment and rehabilitation of the offenders. Much is yet to be done for them. Because of fund-constraint, poor institutional/non-institutional arrangement, insufficient training facilities, limited number of trained manpower, lack of public awareness and inadequate responses from voluntary associations (N.G.O's.), we could not make as much headway as is required. As it appears, Rule 1.5 of S.M.R., acknowledging the existence of such situations in many third-world countries, observes categorically, "These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each member-state." It is perhaps high time for the U.N. aid-giving agencies/multi-national aid-giving agencies and developed countries to come forward and extend all possible material assistance in this field on humanitarian grounds etc.

Protection of Human Rights of Offenders at the Stage of Treatment

Article 5 of the Universal Declaration of Human Rights in general and Article 10 of the Covenant in particular call on the member-states to ensure the protection of human rights of offenders deprived of their liberty.

United Nations Standard Minimum Rules for Treatment of Prisoners (SMR for Prisoners) adopted at Geneva in 1955 have laid down in detail for consideration by member-states various provisions concerning the separation of categories (Article 8) and treatment to be extended to them in prison. But to find out how far the human rights of the offenders are protected in a particular country, we have to look into the available prison system, its management, strength and above all, the treatment the offenders receive or is provided for in the prison.

In Bangladesh, the management of the prisons is generally regulated by laws like (i) the Prisons Act IX of 1894, (ii) Prisoners Act-III of 1900, (iii) Act XXXIII of 1920 (iv) Civil and Criminal Procedure Code and Bangladesh Penal Code with regard to confinement of prisoners and execution of sentences and (v) any other executive orders issued by the Govern-

ment through the Ministry of Home Affairs. The Ministry controls the entire jail administration through the Directorate of Prisons headed by the Inspector-General of Prisons. Jails/prisons are divided into four categories in Bangladesh. With the recent decentralization of the administrative system and consequent creation of new districts and upazillas, more jail structures are coming up. As a result, the problem of over-crowding in jail, earlier existing in acute form, has to a large extent been reduced. Classification of a prisoner follows as soon as he is committed to the jail by the court or any other accredited authority. Thus, convicts are always kept separate from non-convicts and both live in two separate blocks. Non-convicts include untried and under-trial prisoners. In every jail, there is a separate annexure for the female prisoners who are again kept separately as convicts and non-convicts (unconvicted prisoners). Juvenile prisoners below 16 years are usually taken to the National Institute of Correctional Services at Tongi. In jail, they are kept separate from the rest. Again they are divided into convicts and non-convicts accommodated in separate blocks. Adolescent prisoners (age group of 16-21), divided into convicts and non-convicts, are also kept separately in two separate blocks. Two types of accommodation- and cellular-dormitory are available for the prisoners

The penitentiary system, developed in our country during colonial days under the British concept, is based upon the consideration that the law-breakers or offenders of law need to be kept within the four walls of an institution for the safety and security of the society. As a result, the correction of the offenders and their rehabilitation afterwards in the society under non-institutional method did not get priority as a treatment programme.

Despite inadequacy of funds, trained manpower, lack of requisite facilities etc., the Government of Bangladesh has introduced inside the jail a number of treatment programmes for the correction of offenders and their rehabilitation in the society afterwards.

1. Vocational Training

Such training in different trades such as cane and bamboo industries, cloth weaving by semi-automatic looms, carpentry, carpet weaving, coil industries etc. is made available to prisoners sentenced to rigorous imprisonment.

2. Academic Training

Adult education to illiterate prisoners by paid teachers is provided. Facilities to appear at the examination for academic attainments are provided to well-behaved and willing prisoners. A modest library is also maintained in most of the jails.

3. Well-behaved and willing literate prisoners are granted facilities to read newspapers, periodicals, library books.

4. Recreational Facilities

Such facilities, though limited in scale, are provided to prisoners.

Condonation of Sentence for Good Work and Good Conduct

Convicted prisoners displaying good conduct are entitled to remission of their sentence at a fixed rate of days in a month. In addition, the jail administration is empowered to grant further remission of the sentence for good conduct and work.

Moreover there exists an advisory board with official and non-official members, which meets twice a year to consider premature release of life-convicts and some other convicts under certain circumstances. District magistrates and trying magistrates are required to pay regular visits to prisons to see the condition of the inmates and to attend to their complaints and grievances. Experience has shown that all these provide incentives to prisoners to reform themselves and to lead a disciplined life.

Thus it is evident that the existing prison system falls short of what is required under S.M.R. for the treatment of prisoners. S.M.R. for prisoners acknowledges the fact at Article 2 that not all of the rules are capable of application in all places and at all times in view of the great variety of legal, social, economic and geographical conditions of the world. The

Government of Bangladesh is aware of the situation and accordingly, a Jails Reform Commission headed by Justice F.K.M.A. Munim was set up in 1978 to examine the jail system and to make recommendations. The Commission has submitted its report recommending a modern approach to the whole system with emphasis on a non-institutional method of treatment both as a corrective measure and for the protection of the rights of offenders. It is under active consideration by the government. Non-institutional methods of treatment, which are open, in fact, constitute in modern times a challenge to and an effective alternative to existing institutional systems or jails which work under a closed system. Correction and subsequent rehabilitation of offenders are possible more often under a non-institutional method of treatment which includes liberal use of bail, grant of probation and parole, introduction of community service orders as provided under the Criminal Justice Act 1972 of the U.K., semi-custodial penalties, establishment of attendance centres and approved schools for the offenders, conditional discharge, suspension of sentence etc. Such measures for non-institutional treatment should be introduced through national legislation thereby making it (non-institutional treatment) mandatory.

For the reformation, training and rehabilitation of offenders, emphasis needs to be given not on segregation or separation of categories based on age, sex, gravity of offence but on the classification system according to the offenders' individual needs and requirements that lead to the formulation of a treatment programme for a group.

To change the present system of prison administration from penal to correctional approach,

a) awareness of new values and attitudes amongst the prison staff is urgently required,

b) the employees need to be adequately motivated and trained

c) necessary facilities and amenities for the inmates of the prison have to be catered for.

Protection of and Assistance to Victims of Crime

Victimology as a subject concerning victims of crime is yet to develop adequately in many third-world countries and required attention to the protection of and assistance to the victims of crime is hardly given under criminal justice administration. The Seventh U.N. Congress in Milan focussed attention on it and adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. According to the Declaration, victims mean persons who, individually or collectively, have suffered harm physical, mental, emotional and economic, or impairment of fundamental rights through acts or omission that are in violation of criminal laws.

In Bangladesh, nation-wide surveys have rarely been made to determine the number or class of victims of crimes. However, the poor, the weak and the women are generally found to be victims of crimes. Nowadays criminal activities of organized groups of Musclemen, called "Mastan" in Bangladesh, also give rise to victims of crimes. This is a phenomenon peculiar to towns and urban areas not only in Bangladesh but also elsewhere. A consolidated statement of 1985 (Annex-A) indicating how victims suffered *materially* as a result of traditional crimes committed is enclosed here for information. These are taken from the case references recorded by the police for investigation. But the picture or the statement never reflects how many people, except the complainant, have suffered in each crime recorded by the police. No formal or informal institution/system exists to identify such aggrieved people or victims of each crime. For example, a poor pedestrian, a breadwinner of a family consisting of six members, died by a vehicular accident on the road. The driver may be prosecuted for rash and negligent driving under section 304A and B of the Bangladesh Penal Code. But here the pedestrain is not alone the casualty but all the six members of the family, dependent on him for their bread, are the victims of crimes. Protection of and assistance to such victims

of crime is obviously called for. Except the legal action taken by the police against the driver, further protection and assistance to other victims of crime in this specific instance are ordinarily nobody's concern. Victims of traditional crimes apart, there are other victims of crimes resulting from what is known as cruelty to women, such as, (a) victims of acid-throwing, (b) the wife as a victim of crimes for dowry, (c) maid servant as a victim of crime. There are also other victims of crimes such as small tenants as victims of crime in the hand of landlords, consumers as victims of crimes in the hands of traders selling adulterated goods and charging high prices etc. Instances of victims of crimes in some more fields of activity are also present. The important issue is how far protection and assistance to such victims of crimes are available in Bangladesh.

To begin with, we may first examine the procedure to receive and deal with accusations or complaints. In Bangladesh, a victim can lodge a complaint, free of cost, to a police station or to a court on payment of nominal court fees. He may also do so by submitting a petition to higher police authorities, to the Ministry of Home and even to the President's Sect. Even if no information has been received from the complainant, a police officer can lodge a complaint suomoto with the police station on receipt of such information through his own source. Thus, it may be seen that the procedure to receive complaints or accusations is quite wide and exhaustive. If the complaint, so received and recorded, is a cognizable offence, the police take up the investigation under Cr.P.C. and submit reports to the criminal court for disposal. In case of non-cognizable offence, police can take up enquiry/investigation under Cr.P.C. on the orders of the court. It is however found in practice that victims of crimes in certain cases fall shy of going to police station and filing complaints because of the fact that as they are ignorant, they are not aware of remedies available in the court or they have no confidence in the policemen or they think that the process is time-consuming and expensive. As was said earlier, the existing system of receiving complaints or accusations is quite adequate. What is required is to establish good public relations, this by having policemen make frequent tours in the rural areas in order to intensify their efforts for the protection of the rights and interests of victims and witnesses by safeguarding their privacy, minimising inconvenience, ensuring their safety and avoiding delay in the investigation and disposition of cases. As regards the grant of parole or conditional release and pardon by the court or by the government to an accused, it is increasingly felt nowadays that the opinion of concerned victims of crime should also be taken. It is a new concept providing certain amounts of accountability of the accused towards the concerned victim but it is yet to be adequately known to the public in our part of the country.

That the victims of crimes have the right to financial redress has been accepted in the Seventh U.N. Congress of 1985. Financial redress includes restitution obtained from an offender or the third party and compensation provided by the state or some other fund set up for the purpose. Restitution which may include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of victimisation is possible in Bangladesh under the Civil Code. Section 545 of Cr.P.C. also vests the court with the power to order payment of expenses incurred in prosecution or pay compensation to a person from the fine imposed as a sentence for loss or injury caused by the offence. Though the Section 545 Cr.P.C. provides some scope for payment of reasonable expenses or compensation to the victim from the fine imposed, it is however no substitution for restitution, and very poor substitution for compensation as discussed under the terms "Restitution" and "Compensation" in the Declaration of Basic Principles of Justice for victims of crime of the Seventh U.N. Congress of 1985. In Bangladesh, there exists, since time immemorial, the traditional system of mediation or arbitration in the rural areas, under which it is possible

for the victims of crime to avail themselves of restitution or compensation obtained from the offender.

So far, state-funds in Bangladesh for use in compensation to any victim of crime has not been provided under law. However, the Government of Bangladesh as an administrative practice does give a lump-sum monetary compensation to victims or their dependents in case of injury or death due to accident, police-fire, natural calamity etc. No hard and fast rule with institutional arrangement to process such cases on a regular basis for compensation seems to have been developed. Voluntary associations which extend legal help and counselling to the victims of crimes may take up a project for collecting and establishing a fund. It may be possible to raise such a fund if the job is taken up in earnest by the voluntary associations.

International Instruments on Human Rights

As discussed above, international conventions like the Declaration of Human Rights, the Covenant for Civil and Political Rights, S.M.R. for the Treatment of Offenders and for the Administration of Juvenile Justice, Declaration for the Victims of Crime etc. exist in detail in each specific field calling member-states to ensure within their national framework advancement of fair and humane treatment of offenders and victims in criminal justice administration. In many countries, these instruments are incorporated into their national legislation, regulations and administrative practices for implementation. There however still exists no small gap between what international instruments profess and national legislations reiterate and what has been achieved on the ground in each member-state. Fund-constraint, poor responses from government functionaries, lack of public awareness etc. are some of the ills which have definitely slowed down the process of implementation. Nevertheless, the advancement, though slow, is still far greater than existed in the preceding years.

Training and Research

To improve the situation further and to accelerate the process of implementation of various international instruments and national legislation on the aforesaid subjects, training of functionaries who suffer from inertia, lack of motivation and commitment is indispensable. Extensive training both at home and abroad should be arranged and given in right earnest. Victims of crimes constitute, comparatively, a new subject on which scientific and action-oriented research should be taken up with data-based information collected from the member-states. Their cases may be discussed in the legal forum, seminars and conferences both at home and abroad with a view to reaching a consensus on the guidelines and recommendations for member-states.

Role of U.N.O. and Other International Agencies

U.N.O. and other international agencies can play a very significant role in this regard (training, research, monitoring etc.). They can arrange international and regional conferences of member-states for exchange of views and consequent decisions, assist them in training and research and call upon the developed countries and international/multi-national agencies to extend material help to developing countries where it is required.

Annex-A

Statement of Property Stolen and Recovered for the Year, 1985

Range and Units	Amount of Property Stolen	Amount of Property Recovered
1	2	3
1) Dhaka Metropolitan Police (DMP)	19,22,35,552.00	6,01,12,398.00
2) Dhaka Range (Consisting of 17 districts/Units.)	8,51,30,809.71	1,39,59,738.00
3) Chittagong Metropolitan Police (CMP)	70,00,000.00	30,00,000.00
4) Chittagong Range (Consisting of 16 districts/Units.)	4,69,23,013.96	29,57,928.30
5) Rajshahi Range (Consisting of 17 districts/Units.)	10,15,58,727.00	6,63,62,034.20
6) Khulna Range (Consisting of 16 districts).	13,02,96,899.45	22,00,913.80
TOTAL	56,31,45,002.12	14,85,93,012.30

The Protection and Assistance of Victims of Crime in Malaysia

*by Mohd Sedek bin Haji Mohd Ali**

Background and Introduction

This paper is prepared to meet the requirements of the Seminar held at UNAFEI, Japan, between January 28 to March 16, 1987. I have chosen this small but interesting topic to be examined with relation to Malaysia since there is a recent flurry of interest and commitment amongst individuals and voluntary organizations in Malaysia towards similar subjects. To quote a few instances; in early 1986 a voluntary organization called "The National Council of Women's Organizations," sent a memorandum to the government urging amongst other things the further improvement of the various approaches towards the victims of rape and cases of family violence, both in terms of the legal framework and the handling and investigation of such cases. This voluntary organization has so far been very serious and persistent about the matter and to mention briefly, it has so far started to establish rape crisis centres to help victims of rape. In another case in Kuala Lumpur it is known that there was an idea mooted by a group of individuals to set up an association to help victims of crime.

It should suffice at this stage to impress that there is in fact an upsurge in the awareness towards improving further the protection and assistance towards victims of crime, especially so in crimes of passion and those affecting the weaker sex.

Object and Scope of This Paper

The object of this paper is to examine the present facilities of protection and assistance to victims of crime focusing mainly on certain specific crimes of passion and to explore and suggest other ways of achieving the same.

This essay will in certain respects be general in nature, but with much emphasis on the aspect of the need of evolving a more humane approach in the handling of victims of rape and victims of crime towards the fairer sex. It is the overall hope of this paper to establish that when the welfare and protection of victims of crime has been adequately met, this will compliment the criminal justice system in the country, and its sum total will work in concert to create a near crime-free society.

Finally, it should be stressed here that the basis of any law in Malaysia and in any democratic country has always been that the needs of the majority overrides the minority. The fact that there are generally more victims of crime than those comitting crime, means that there should be more committment on our part to give priority to the subject of the protection of crime victims.

Crime and Victims of Crime in Malaysia

There has been no general consensus on the definitions of crime between countries in the world. This is understandable, since there are differences in cultures between countries, and this accounts for the differences in their world views which influence their definitions of crime. Generally, however, it can be said that crime is a wrongdoing by one onto another which the state takes cognizance of, and thus penal laws and procedures are enacted accordingly through which justice is meted out. In the context of Malaysia, crime is a wrongdoing or a violation of a certain set of laws enacted by Parliament. The Malaysian Penal

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Code lays down the provisions on most major crimes and this is supplemented by other subsidiary laws. According to the United Nations Declaration of Basic Principles of Justice for Victims of Crime, "victims" are defined as being a person or persons who individually or collectively, have suffered harm, including to physical or mental rights, injury, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of Criminal Laws operative within member countries. In my essay I shall simplify the definition of "victims and crime," as being one or a group, which suffer an act or wrongdoing, including omissions, that violates a set of laws enacted by the Malaysian Parliament.

The legal system and provisions in Malaysia have run the test of time and so far have never shown any inadequacy in meeting the wide and varied nature of all criminal acts. This in my opinion is the core through which protection and assistance to victims of crime emanate. If there are no adequate laws to define a wrongdoing, this would be tantamount to totally disregarding a victim as a victim, and what further avenues are there for any protection or assistance when in the first instance a victim is not even regarded as one.

In the Malaysian context, at least up to the present moment, our legal provisions are adequate and flexible to meet the various circumstances of a criminal act. Our Penal Laws are codified and there are other subsidiary legislation on certain specific crimes which are given special emphasis due to their violent nature. In appendix A are absolute figures on crime for the years 1984, 1985 and 1986, which have been extracted from the records kept by the Malaysian Police. Though there are limitations for any cross-country comparisons to be made from these statistics, this Interpol index crime format may at best provide for some form of inter-country comparison.

From the figures of appendix A it can be seen that there has been an increase in the crimes recorded in Malaysia over a three-year period, i.e., 77,939, 89,224 and 95,096 reports respectively. Since there are no records being kept on the actual number of crime victims in Malaysia per annum, it could safely be assumed that the total crime reports above could be representative of the number of victims of crime. Taking the population forecast for 1986 which is 16,109,000, it can be said that the ratio of victims to population stands at 1:169. Seen in another perspective, appendix B shows the crime per 100,000 population for Malaysia and some other countries.

It can thus be concluded that for Malaysia in particular, and most other countries in general, there is an upward trend in crimes reported. If we focus further on the crime types it is evident that violent crime has shown an upward trend and this has, in part, spurred the population especially through their voluntary organizations to make representations for victims of crime to be better protected. Though these representations do not necessarily mean that there are inadequate protective measures for crime victims, it may indicate that sometimes we are more engrossed in the fight to protect the human rights of the criminals. It is time that we devote attention to address the subject of victims with similar zest and vigour; after all victims of crime never choose to be victims and most of the time the trauma and psychological effect of the crime, especially in violent cases, the memory of which is ineffaceable for the victim.

Procedure to Receive and Deal with Accusations and Complaints

In the paper I have so far assumed that the victims of crime are those parts of the population that have been affected by the wrongdoing of another and that wrongdoing or violation has been reported to the authorities. Though the definitions of victims of crime can be wide and varied, I have narrowed down the definition to be in line with the overall objective of this paper. This definition has also been thought to be practical so that any suggestions to improve the protection and welfare of the

victims of any crime are built around the current provisions of the law and the current criminal justice system.

Measures to Facilitate Complaints

In Malaysia the provisions and procedures to make reports and complaints are laid down in Part V, Chapter XIII, of The Criminal Procedure Code. It is clear in Section 107 of the above provisions that any information or complaint shall be reduced to writing and will be acted upon by the police. To comply with this provision of the law there are at present 726 police stations in the country where the public can lodge their complaints either by going to the police station or complaints can be received by phone. The ratio of police stations to the population is about 1:22189. Taking the number of crimes reported in 1986 which is 95,096, the ratio of police stations to the number of crime victims would be higher, i.e. 1:131. We are also fortunate in that Malaysia, at least in the first instance, anybody can report on any information without having to be the victim. The commencement of police investigation and actions does not depend on reports to be made by victims. The police themselves can lodge their own complaints after information is received.

There can be many police stations existing with simplified procedures for the filing of complaints, but this may not necessarily be indicative of the ease through which a victim of crime is protected. There is the human aspect to the overall scenario which has been given much attention in Malaysia. The public should not be made to feel reluctant to come to a police station to file a complaint. A feeling of confidence in the police force should prevail at all times. The Malaysian Police Force has given priority to this problem since we realize that this is the spirit and the theme of the protection of victims of crime. While there are regular courses conducted especially for the personnel at the front office (enquiry office), regular checks are also made to uphold the image of the police as a fair enforcer of the laws of the country.

Protection of Rights and Interests of Victims of Crime During Criminal Procedure

1. Protection of Privacy

It is an acknowledged fact that confidentiality of all reports and complaints made by victims must be maintained at all times. Anything falling short of this would only make a victim feel unsafe and threatened and its overall effect would work against encouraging a fair, democratic atmosphere where any person can make a complaint without any fear or favour.

In the Malaysian context this fact was realized and the law has therefore provided safeguards to ensure the secrecy and confidentiality of reports made by victims of crime or anybody else.

All reports made to the police are confidential public documents which are not divulged to anybody except by application and for a legal reason. This is very clearly stated in Sections 74 and 75 of the Evidence Act No. 56/1950. Recently an ammendment to The Official Secret Act was passed by Parliament to tighten further the procedure and safety of public documents by enhancing the punishment for any violation. The punishment for violating the provisions of The Official Secrets Act with respect to divulging unauthorized contents of information of any official document was enhanced with the introduction of a mandatory imprisonment of not less than one year but not exceeding five years. This is to be compared to the previous sentence not exceeding five years, or a fine not exceeding $20,000, or both imprisonment and fine being imposed. This amendment of the law was a subject of much debate and opposition which in my opinion was more politically motivated. In Malaysia there are sufficient legal provisions to protect the privacy, rights and interests of victims of crime with respect to complaints.

The other aspect of the protection of rights and interests and that of privacy in making reports by victims of crime is

physical in nature. The Malaysian Police has placed much emphasis on the procedures relating to the reporting of certain sensitive crimes providing for full confidentiality at all times. As an example, cases of kidnap and extortion are dealt with in highest confidence from the start when information is first received. Other sensitive crimes like rape which receives much attention more for reasons tied to the nature of the offence are being highly protected, especially when reports and investigations are made. In short there is adequate protection of privacy both legally and conceptually when a victim of crime lodges a report.

2. Protection of Rights and Interest During Investigation and Trial

There are also legal and conceptual provisions to protect rights, interests and the privacy of victims of crime during the process of investigation and trial.

a) Protection of Rights and Interest During Investigations

Investigations are normally classified as being confidential and in certain hypersensitive cases, special arrangements are made to protect further the confidentiality of an investigation both for tactical and procedural reasons. There is every reason for police investigations to be confidential and graded, as otherwise this tactical investigative procedure, once known to the criminals, will be used to work against police investigative approaches.

In police investigations, statements are recorded privately between the recording officer and the victim or witness. This is clear in Section 112 and 113 of The Criminal Procedure Code. Other documentary and physical evidence of an investigation, like that of fingerprints and chemist reports, are also confidential, but will be served on the accused within 14 days before the trial if those documents are to be used for evidence in any trial.

In other cases where the authorities feel witnesses need to be physically protected from being harassed or even intimidated for very obvious reasons, the police provide security arrangements for the complainant or witnesses. The Criminal Intimidation Act provides for offences if witnesses to an investigation are being intimidated.

b) Protection of Rights and Interests During Trial

During a trial, there are also legal provisions to protect the victims of crime and witnesses against unfair treatment. There are provisions for hearings to be done in camera and the Evidence Act also makes provisions to protect witnesses from being asked insulting questions and questions adducing bad character. Section 8 of The Criminal Procedure Code empowers a Magistrate to exclude members of the public during a trial on grounds of public policy or expediency. The Prosecutor and the Magistrate presiding monitors the welfare of the victims, just as the suspect is being given a fair hearing. In certain cases under the Corruption Act certain witnesses or informants are protected from public exposure even during a trial.

c) Measures to Reflect Victims' Opinion on the Sentence and the Decision of Pardon

On the whole the legal system in Malaysia only empowers the Court to make decisions on any case being heard in a trial where both the defence and the prosecution will make representations. At the end of the prosecution case the Court will decide whether there is a *prima facie* case and for defence to be called. When defence is called there will be submissions by both parties before the presiding magistrate decides on the final result of the case. Basically if the magistrate finds that the case has been proved beyond reasonable doubt, he will convict the suspect and the amount of sentence will depend on the present provisions of the related Law.

I should say that the victim's opinion on the sentence of any case will be persuasive on the public prosecutor. The opinion of the public prosecutor though normally being influenced by the victim of such crime and pressures from public and associations, is seen to be independant from such influences. The decision for pardon if sentence had been passed on the suspect

will depend entirely on the convict and the Pardons Board which is being presided by rulers (royalties) normally makes the decision independent of the opinion of the victims of crime. Article 42 of the Malaysian constitution lays out the role and powers of the Pardons Board which is the last and final authority for parole. Understandably decisions of the Pardons Board are never influenced by the victim's opinion but for rather more mundane reasons.

Compensation to Victims of Crime

Victims of crime generally do not receive compensation from offenders nor do the Courts direct the offenders to pay such compensation to the victims. Even in cases of hit-and-run accidents for example, the State has no obligation to compensate the victims unless insured. Though there is a provision in Section 426 of The Criminal Procedure Code which states that, "The court before which a person is convicted of any crime may in its discretion make an order for the payment by him of a sum to be fixed by the Court by way of compensation to any person, or to the representatives of any person injured in respect of his person, character or property by the crime or offence for which the sentence is passed." To date this provision which looks seemingly wide has not been invoked. The beginning of this year has seen some indications that the authorities might invoke this provision in view of the increase in white-collar crime.

Other Measures to Protect and Assist Victims of Crime in Malaysia with Emphasis on the Victims of Rape

So far it has been outlined that there are enough and adequate provisions both legally and procedurally on the protection of victims of crime. I have also stated in the introduction that recently there has been a flurry of interest amongst individuals and voluntary organizations in Malaysia for better protection and assistance towards victims of certain crimes of passion. The protection of victims of rape has gained international momentum in both developed and developing countries, and the female fraternity has been publicizing this problem. It has now come to a point at which it is difficult to ignore. I will now describe the situation in Malaysia.

It is undoubted that victims of sexual cases require considerable help and treatment. Rape is a heinous crime where the victims suffer in silence and with extreme mental anguish. The very thought of the ordeal, coupled quite often with social ostracism, especially in traditional societies, have further exacerbated the suffering of rape victims. For many years this crime has caught the public's attention unfortunately for the wrong reasons; among others, as a topic for discussion of the moral values of the victims. Thus the victims of rape not only undergo traumatic experiences during the abuse but also long after it.

At the beginning of 1985, The National Council Of Women's Organizations sent a memorandum to the Malaysian Government. Among other things were representations for a better and more humane approach towards the crime of rape both in its handling and investigation. There were also suggestions for enhanced punishment on rape with minimum jail sentences and mandatory whipping. Suggestions were also made to widen the definition of rape to include among others, anal intercourse, the insertion of objects such as bottles or hands. Lastly there were also representations made that the investigators of the crime of rape should be "professional," more sympathetic and fully appreciative of the psychological aspects in their handling of victims.

The Royal Malaysian Police has been responsive to these suggestions and has begun forming specialized Rape and Sexual Crime Investigation Squads consisting of female officers. Certain seminars have been organized together with the NCWO's and The Ministry of Health and Welfare in the area of counselling to revive and rehabilitate the victims of sexual assault.

Support on this project has been well received from all quarters. Psychological assistance to victims of rape in Malaysia is

well underway with the establishment of rape crisis centres.

The area of legal amendments to the definition of rape is still being debated and has not gained much headway. On the whole it can be said that there has been much success especially in making the public more aware of the crime of rape and encouraging the victims to come forward to report such crimes. As a final result, as can be seen in appendix C there has been an upsurge in the reports on rape received in 1986.

Referring to appendix C, there are various implications in the formulation of a program or strategy to further protect and assist victims of rape in Malaysia. First and foremost the statistics do tell a tale on the width and depth of the rape problem in Malaysia. There are on the average about 2 rape cases reported in a day. Rape as defined in Section 376 of the Penal Code is a crime committed by a man who has sexual intercourse with a woman under one of the following circumstances: against her will; without her consent or where consent has been obtained by putting her in fear of death or harm; with consent but believing that the man is the one she is lawfully married to; or with or without consent when the female is under 14 years old; except sexual intercourse with one's own wife who should not be below 13 years of age. Penetration is the main ingredient of sexual intercourse in the Malaysian law.

The women's association as mentioned earlier was not too happy with the present definition of rape. They argue that the age limit for statutory rape be raised to sixteen since the minimum age of consent for marriage at the moment is sixteen. The proposal was debatable especially in the context of a multi-racial Malaysia where customs amongst races vary to a large extent. As an example: amongst Muslims the age of maturity of a female is considered to be the age of puberty, and that is also the legal minimum age for marriage. This proposal has not gained much ground yet and I personally feel that the present definitions are more than adequate.

From a study made in 1986 there were about 30% of rape reports where victims were below 14 years old; 15% where victims were between 14 to 16 years old; and 55% of the cases where victims were adults above 16 years old. From these statistics it is imperative that concentration of protection should center on the 16 and above and those below 14; for they form the greater percentage of the population. Besides the above the association was also of the view that the definition of sexual intercourse should be given a wider meaning than the concept of penetration. Thus they suggested that the insertion of objects into the vagina is also considered as penetration and thus rape. They are of the view that sexual assaults are acts of violence rather than excessive passion. This suggestion is still at a discussion stage and has yet to receive all-round support from most quarters.

From the above discussion one point that is very clear is that the Women's associations are now demanding supposedly wider definitions on the crime of rape. As mentioned earlier I still maintain that Malaysia's laws are adequate and accommodate most or all kinds of criminal acts. The demand in redefining rape by the Women's association is more a reflection of their feeling that the crime of rape should be made a more serious offence and thus given a more elaborate and wide definition.

While it is agreeable that the crime of rape, especially those done unto juveniles should be given serious thought from the legal aspect, the association should also approach the problem from other perspectives. The association should study the profiles of the perpetrators, the environment of incidents, the motivation of the perpetrators, and the age and occupation or status of both the victims and the perpetrators. I would summarize that if the rape problem is being seen as a whole and not in parts, then there will be an all-round effort in trying to improve the welfare of victims of rape. Even the psychological and counselling programs need to be complimented with the proposed cross sectional study on rape; or otherwise we would tend to treat the prob-

lem through the symptoms as opposed for a diagnostic treatment.

All the literature on rape condemns the crime, especially if done to juveniles. The sufferings of a victim of rape can almost never be adequately described. The fact is there is a need for a new approach towards the protection of rape crime victims and particularly in Malaysia.

There are other sensitive crimes where protection and assistance along the same psychological approach should be pursued. The victims of the crime of kidnapping and other hostage-taking incidents have also suffered shattering experiences, and there is a dire need similar to that of the rape victims that they need to be counselled and to be psychologically revived. The Royal Malaysian Police has also taken note of this need as expressed by the Inspector General of Police at the opening speech of a Crisis Management Course held on the 19th of January 1987.

Conclusion

As evident from the previous discussions there are still gaps which need improvements to the assistance and protection towards victims of crime. One glaring area is on the aspect of compensation towards victims of crime, though this might be much related to a multitude of other considerations, the main one being financial. It is felt that in the same way that criminals have their rights safeguarded, the general public too has a right to live in a crime free world or at the least they should be well-protected and assisted if crimes cannot be eradicated. To my opinion there is even more justification to give attention to victims of crime since this area had been overshadowed most of the time. Voluntary organization and the public at large should rally together to work for a betterment of protection and assistance in the areas enumerated above.

References

1. Malaysian Federal Constitution: Reprint No. 1 of 1978, printed by the Government Printers.
2. Excerpts from the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders; Report Prepared by the Secretariat.
3. A Compilation of Notes on a Seminar on Handling of Sexual Cases and Use of Violance Against Women and Children. The Royal Malaysian Police College.
4. The Penal Code.
5. Criminal Procedure Code (FMS Cap 6).
6. Evidence Act 1950, Act 56 (Revised 1971).
7. Notes on Workshop on Legal Aspects Pertaining to Status of Women, National Council of Women's Organizations of Malaysia.

Appendix A

Index Crime Statistics (Total Reports Received)

	1984		1985		1986	
	Total Reports	% Change	Total Reports	% Change	Total Reports	% Change
Violent Crime						
Murder	293	-3.30	327	11.60	377	15.29
Attempted murder	63	23.53	59	-6.35	84	42.37
Gang robbery with firearms	61	22.00	55	-9.84	56	1.82
Gang robbery without firearms	460	22.34	632	37.39	626	-0.95
Robbery with firearms	760	13.77	950	25.00	1,022	7.58
Robbery without firearms	4,710	11.03	6,244	32.57	7,331	17.41
Rape	470	2.17	530	12.77	688	29.81
Causing harm	2,163	5.0	2,684	24.09	2,601	-3.09
Subtotal	8,980	9.39	11,481	27.85	12,785	11.36
Property Crime						
H'breaking & theft by day	4,478	1.96	5,092	13.71	5,171	1.55
H'breaking & theft by night	18,430	6.01	20,413	10.76	20,374	-0.19
Theft of m.van/lorry	372	54.13	466	24.93	557	19.53
Theft of motorcar	2,271	24.17	3,140	38.27	3,813	21.43
Theft of motorcycle	11,280	17.50	13,654	21.05	16,056	17.59
Theft of bicycle	5,039	-0.57	4,673	-7.26	3,832	-18.00
Other thefts	27,089	0.20	30,305	11.88	32,508	7.26
Subtotal	68,959	5.20	77,743	12.74	82,311	5.87
Total	77,939	5.67	89,224	14.48	95,096	6.58

Appendix B

Crime Rate per 100,000 Population for the Year 1984

	Murder	Rape	Robbery	Causing arm	H'breaking & theft	Motorcar theft	Other thefts	Total
Sweden	5.74	11.93	44.12	876.20	1,708.79	460.03	4,718.04	1,117.84
New Zealand*	2.54	14.42	14.91	N/A	2,243.06	N/A	5,001.96	1,039.56
West Germany	4.51	9.73	49.90	2,550.87	1,554.10	117.96	2,550.87	976.84
Finland	5.62	6.48	33.69	855.30	772.61	171.65	1,649.28	499.23
Japan	1.47	1.60	1.82	577.90	251.90	29.37	855.30	245.62
Hongkong*	1.64	1.63	198.53	4,718.04	236.42	N/A	577.90	819.17
Singapore	2.73	4.15	64.05	8.57	123.92	21.43	876.20	157.29
S. Korea*	1.36	10.02	7.44	1,649.28	63.38	N/A	204.17	276.52
Malaysia	1.97	3.17	40.36	252.06	154.33	15.30	294.94	108.89
Cyprus*	2.06	0.56	2.62	49.00	182.50	N/A	252.06	69.83
Philip-pines*	42.51	2.63	33.00	N/A	N/A	2.02	N/A	11.45
Lebanon	19.20	1.13	24.53	294.94	45.07	54.23	49.00	69.73
Indonesia*	0.90	1.23	5.65	N/A	38.44	4.92	8.57	8.53

Note: Countries with * have one or more statistics which are not available.
The above statistics were provided by Interpol.

Appendix C

Rape Figures for the Year 1985 and 1986 and Rape Crime Analysis for the Year 1986

State	1985	1986
Kedah/Perlis	41 (-22.6%)	57 (+39.0%)
Pulau Pinang	50 (+31.6%)	49 (-2.0%)
Perak	59 (+34.1%)	85 (+44.1%)
Kuala Lumpur	42 (-16.0%)	125 (+197.6%)
Selangor	63 (+34.0%)	67 (+6.3%)
Negri Sembilan	28 (+33.3%)	37 (+32.1%)
Melaka	10 (-33.3%)	16 (+60.0%)
Johor	44 (+15.8%)	61 (+38.6%)
Pahang	38 (+8.6%)	28 (-26.3%)
Trengganu	16 (-20.0%)	24 (+50.0%)
Kelantan	37 (+94.7%)	27 (-27.0%)
Sabah	75 (+13.6%)	71 (-5.3%)
Sarawak	27 (+12.5%)	41 (+51.8%)
Total	530 (+12.8%)	688 (+29.8%)

Note: Statistics in ( ) are percentage changes over preceeding year.

These figures are from records maintained by D2A.

Persons Arrested by Race – 1986

Malay	–	173 (56.1%)
Chinese	–	59 (19.1%)
Indian	–	27 (8.8%)
Others	–	49 (15.9%)
Total	–	308 (100%)

Suspected Perpetrators by Race – 1986

Malay	–	246 (47.0%)
Chinese	–	153 (29.2%)
Indian	–	57 (10.9%)
Others	–	67 (12.8%)
Total	–	523 (100%)

Suspected Perpetrators by Occupation

Govt. servants	–	42 (8.0%)
Unemployed	–	57 (10.9%)
Private sector	–	88 (16.8%)
Self-employed	–	97 (18.5%)
Unknown	–	239 (45.7%)
Total	–	523 (100%)

Breakdown of Rape Victims – 1986

Victims by Age		
Below 14 years	–	131 (26.8%)
Below 16 years	–	89 (18.2%)
Above 16 years	–	268 (55.0%)
Total	–	488 (100%)
Victims by Race		
Malay	–	260 (53.3%)
Chinese	–	96 (19.7%)
Indian	–	46 (9.4%)
Others	–	86 (17.6%)
Total	–	488 (100%)

Victims by Occupation

Unemployed	–	189 (38.7%)
Students	–	137 (28.0%)
Govt. servants	–	14 (2.9%)
Others	–	148 (30.3%)
Total	–	488 (100%)

Environment of Incident

Public places	–	156 (32.0%)
Dwelling	–	265 (54.3%)
Hotel	–	52 (10.7%)
Unknown	–	15 (3.1%)
Total	–	488 (100%)

Relationship of Victims/Perpetrators 1986

Known to victims	–	262 (53.7%)
Unknown to victims	–	226 (46.3%)
Total	–	488 (100%)

Known to Victims – Breakdown

Boyfriends	–	32 (12.2%)
Casual friends	–	31 (11.8%)
Classmates	–	1 (0.3%)
Fathers	–	13 (5.0%)
Step-fathers	–	7 (2.7%)
Uncles	–	13 (5.0%)
Neighbours	–	44 (16.8%)
Acquaintances	–	84 (32.0%)
From same hometowns	–	25 (9.5%)
Colleagues	–	8 (3.1%)
Brother-in-laws	–	4 (1.5%)
Total	–	262 (100%)

Unknown to Victims – Breakdown

Strangers	–	148 (65.5%)
New acquaintances	–	84 (37.2%)
Total	–	226 (100%)

Rape Cases Reported/Solved/Arrests 1985 - 1986

Year	Total	Solved	Arrests
1985	530	269 (50.7%)	309
1986	688	243 (35.3%)	308
Total	1,218	512 (42.0%)	617

SECTION 3: REPORT OF THE SEMINAR

Summary Reports of the Rapporteurs

Session 1: Protection of Human Rights at the Stages of Investigation, Detention, Arrest and Trial

Chairperson: Mr. Jyotoh Shimanouchi (Japan)
Rapporteur: Ms. Nazhat Shameem Khan (Fiji)
Advisor: Mr. Yasuro Tanaka

Introduction

A discussion was held to supplement and expand participants' contributions in their presentation of individual papers on the protection of rights of suspects at the pre-trial stage of investigation, arrest and detention, and of the protection of the rights of those standing trial in the administration of criminal justice. The actual state of affairs in respect of these rights in various countries was discussed. More importantly, however, recommendations were made by participants to remedy any breaches of these rights in their countries and to offer alternatives to the over-use, for instance, of remanding suspects pending trial.

Protection of Human Rights at the Stages of Investigation, Detention and Arrest

In most countries, the powers given to police officers to investigate, arrest and detain suspects, are ensconced in statutory provisions. For instance, in Bangladesh, section 54 of the Criminal Procedure Code specifies the persons to whom the power of arrest is given, and on what grounds these powers may be exercised. Most countries also have legislation limiting the period of time for which a suspect may be detained by the police before he or she is taken before a judicial officer for an order granting bail or for remand.

The problems, however, appear to lie in three main areas.

a) Persons remanded for long periods of time pending trial;
b) Arbitrary arrest and detention;
c) Compensation for arbitrary detention.

Remands Pending Trial

In many countries, one of the reasons why prisons are over-crowded is the large number of persons who are remanded in custody pending trial. It was suggested that attention be focussed on this problem and it was recommended by the visiting expert Professor B.J. George Jr. that all cases in custody pending trial should be the exception rather than the rule. Before a suspect is remanded in custody pending trial, cause must be shown as to why custody is necessary in a particular case.

The participant from Nigeria recommended the system of voluntary reporting on appointment to assist investigation in cases where the suspect's identity and address are easily obtainable.

The participant from Jamaica suggested the introduction of an efficient processing system whereby the background of an offender is thoroughly investigated before he or she is remanded in custody to ensure that custody is really necessary. For instance custody may be necessary in cases where there is a fear that witnesses will be interfered with.

Another possible solution to remedy a situation of a prolonged period of remand pending trial is the imposition of time limits for investigation and trial. Dr. Kunert stated that in Germany where there is sufficient evidence to show a high grade of suspicion or guilt and anticipation of escape or interference with witnesses, a warrant may be issued by the court to allow the police to remand the suspect while investigation is being carried out. A time limit of six months is given for such investigations after which the matter must

be reviewed by the High Court.

In Bangladesh, India and Tanzania, a statutory time limit of 60 days is given for the police to complete investigations. Beyond this period, special leave of the court must be applied for to extend the time limit if good cause is shown.

Another solution is the system of setting off the period spent in custody with the period of sentence passed at the end of the case. This solution however only applies to cases which end in convictions and in respect of which the sentence exceeds the period spent in custody before trial.

Bail, which is available in most countries (with the exception of Peru) may be used more extensively to reduce the number of prisoners pending trial. However, in countries such as Sudan and Fiji where communications are not sophisticated and large numbers of the population are uneducated and ill-informed, suspects have a tendency to disappear into the country and valuable resources would then be wasted in an attempt to trace them.

The solution in such cases may well be the modernizing and re-structuring of court administration so that offenders are tried quickly, efficiently and justly. The participant from Sri Lanka suggested that the decision to prosecute should be exercised by a public procecution as in Japan to obtain the best positive results in court.

Arbitrary Arrest and Detention

The participant from Bangladesh suggested that the powers given to police officers to arrest and detain suspects ought to be limited in cases of officers of a lower rank. Such powers given to a police constable who may be semi-educated can be misused and therefore the powers should be exercised under the supervision of a Class 1 Gazetted Officer. The participant from Tanzania stated that the police sometimes arrested persons without enough evidence and caused those persons to be remanded in custody for up to five years before they were released on the ground that there was insufficient evidence for a hearing.

It was also noted that the rights of detainees and arrestees are not always observed. For instance in Sri Lanka the suspect is not always told that he may contact his next-of-kin or his legal representative. This is also the case in Nigeria.

There were various recommendations on how to deal with this problem. In Peru, there is provision for public prosecutors to visit any police station at any time to check the detained persons therein and to see if their rights are being respected. The participant from Bangladesh suggested increased supervision by senior police officers. The participant from Kenya recommended better and more extensive training of police officers about human rights in relation to arrest and detention. Education of this nature should also extend to the public. The participant from Jamaica recommended training and the appointing of police public relations officers who would mediate between the police and the offender.

The recommendation of training would, of course, also apply to human rights in relation to all stages of police investigation such as search, seizure, confiscation of goods and the interrogation of suspects. In most countries although the police have theoretically no right to induce or threaten suspects during interrogation, breaches of this rule sometimes occur. The reports of such incidents give rise to concern in this area also. Perhaps the most important solution to these problems would be the use of effective procedures to compensate the victim of such abuse.

Compensation for Arbitrary Arrest Detention and Interrogation

Professor B.J. George Jr. suggested that the introduction of a compensation scheme whereby a victim of police abuse would be paid by the state treasury would not cause the officer concerned to suffer personally. Disciplinary proceedings would be more effective as a check against the abuse of powers by the police. Such proceedings could take the form of a fine or reprimand, a reduction in pay, or suspension of employment; similar measures are implemented in some countries. In Peru for

instance more than 1,000 police officers have been dismissed from employment for illegal behavior while on duty. In Sri Lanka disciplinary police proceedings have been established by statute.

Protection of Human Rights at the Stage of Trial

Again, most countries have statutory provisions dealing with the protection of the right to a fair speedy and public trial by an impartial tribunal, the right to an interpreter, to competent counsel and the right to appeal. The rights of juveniles are also protected in most countries.

In practice, however, some countries are encountering difficulties in protecting those rights at the stage of trial. The most important problem areas appear to be:

a) delay in hearing;
b) the right to competent counsel;
c) the right to an interpreter; and
d) protection of rights of juveniles.

Delay in Hearings

The inability of the administration of justice to bring offenders to trial quickly is a problem facing many countries. In Ecuador for instance cases may be delayed for a long time, whereas in Papua New Guinea it may take up to ten months before a hearing commences. In Japan the average length of a trial in which the defendant is denying facts charged is 10.9 months.

The causes of delay are numerous. Amongst them are: the tendency of the accused to jump bail and not to appear on hearing dates, frequent applications for adjournments by counsel, administrative difficulties such as the shortage of judges, lawyers and interpreters, and delay in investigation.

Various solutions were suggested by participants and visiting experts.

Professor B.J. George Jr. suggested the modernizing of court administration, having a system of checking the length of time a trial has lasted, statutory time limits of court proceedings, the introduction of sanctions where proceedings are prolonged and accelerated trial procedure such as a guilty plea procedure.

The participant from India agreed that the system of the administration of justice ought to be streamlined, and that time limits ought to be imposed for the hearing of cases.

The participant from Sri Lanka suggested the appointment of more judges to courts for an easier division of the workload. The participant from Bangladesh suggested the introduction of a system of fines for minor offences as is found in West Germany in property cases. He also recommended that the judiciary should discourage adjournments as a rule, and that there should be a check system of the judiciary in respect of delays which would make the judiciary accountable to Parliament or some other body.

The participant from Jamaica expressed the reservation that speedy trial should not mean that the judge has no time to dispense justice to the offender. The participant from Tanzania suggested an increased use of the idea of suspending prosecution and also of settling minor cases out of court such as traffic violations. It must be noted that these solutions are working well in Japan.

Often delay in trials is due to poor communications and lack of resources. However the stream-lining of court systems would do much to minimize delay. Lack of personnel, as is found in countries such as Malaysia, where it may take up to three years for a murder trial to be heard, is a real problem which may be solved to a certain extent by re-structuring the system of justice.

It must be noted that some countries have provided for legislative time limits for the hearing of cases. For instance in Bangladesh a case must be heard within three months (although on a transfer to another court, the three-month time limit will once again begin to run) and in India judgment must be given within 15 days after the end of trial.

The Right to Competent Counsel

This right is provided for by the legisla-

tion of most countries. However, in practice, free legal representation is only available in the most serious cases. In addition legal and statutory provisions are often limited and unsatisfactory.

One complaint was that counsel given briefs to defend defendants on legal aid were often inexperienced and incompetent. This was due to the fact that more experienced counsel were earning more money in private cases.

In Papua New Guinea the office of the Public Solicitor offers free legal representation to offenders. This office is a government office within the Civil Service.

Professor Kunert suggested that counsel should be made available at the time of arrest and detention for it is at this stage that the accused is most in need of support and legal assistance.

It is clear that in most countries the provisions for free legal representation are unsatisfactory and require reform urgently. However, lack of resources handicap the development of the area of human rights. Professor George suggested that specialised training is necessary for counsel and judges so that there is a systematic control over judges, prosecutors and defence counsel. He also recommended a Public Defender's Office which should take the majority of cases. However members of the private Bar could also appear to defend accused persons with the approval of the court.

It is the responsibility of the courts to ensure that the defendant is represented by competent counsel.

The Right to an Interpreter

This right is an important one because it is necessary for the defendant and witnesses to communicate and understand clearly, the court proceedings. There is some difficulty in Papua New Guinea with obtaining interpreters due to the large number of dialects used and the general unaccessibility of these interpreters. This problem gives rise to adjournments and further delay.

In Tanzania the magistrate or judge may act as his own interpreter, interpreting from Swahili to English for record purposes. In some countries therefore the training of interpreters will be necessary.

Juveniles

Most countries have provisions for separate courts for juveniles and different procedures. It was suggested that prosecutions of juveniles should be suspended to a greater extent so that juveniles are not exposed to a court procedure at all. It was also suggested that despite legislative and procedural safeguards the juvenile knows very well that he is accused of a criminal offence and that he is liable to punishment. Again, a more liberal use of suspending prosecution in cases of juveniles would minimise such exposure.

Conclusion

It is clear that in most countries, the human rights of offenders during investigation and trial are not strictly observed. This is due to a variety of reasons including lack of education, resources and supervision. However with the implementation of at least some of the recommendations suggested by the participants of this seminar much can be achieved to improve the efficiency and fairness of the various systems of criminal justice.

Session 2: Protection of Human Rights of Offenders at the Stage of Treatment

Chairperson: *Mr. Stephen Olaiya Abeji (Nigeria)*
Rapporteur: *Mr. Suresh Chandra Dwivedi (India)*
Advisor: *Mr. Yukio Nomura*

Introduction

The topic above constitutes one of the aspects of the theme of the 74th Seminar in session i.e., "Fair and Humane Treatment of Offenders and Victims of Crime." The protection of the right of offenders has been fostered significantly through

various international and domestic legislations. Article 5 of the Universal Declaration of Human Rights (1948) and Article 10 of the Covenant provide amply for the protection of human rights of offenders deprived of their liberty and some other articles of these instruments are also related to them. The cardinal principles established in the aforesaid articles have been very explicitly enumerated in the United Nations Standard Minimum Rules for the Treatment of Prisoners (1955) commonly known as SMR for Prisoners adopted by the First U.N. Congress on Prevention of Crime and Treatment of Offenders held at Geneva in 1955.

The subject was discussed taking into consideration the following sub-topics.

a) Treatment of unconvicted/undertrial prisoners
b) Treatment of prisoners and protection of their rights
c) Treatment of juveniles contained in penal institutions and protection of their rights.
d) Treatment of offenders under community supervision and protection of their rights (procedure of revocation, charge of condition etc.)

The session took up the discussion on the SMR for prisoners in particular and consensus emerged that SMRs (1955) have had a great impact on the domestic legislation of various countries and on penocorrectional practices. All the participants were unanimous on the dire need to implement the provisions of SMR for prisoners with adequate attention to the sensitive and urgent problems of segregation of undertrials/remands from convicted prisoners.

Apropos above two sub-topics i.e., a)-b) the national situation of participating countries is as follows:

In Japan it was noticed that the situation was most satisfactory as the system resorts minimally to arrest the persons who innately respond to voluntary investigation at the first stage of inquiry itself, and the arrest rate is constantly on the decline, for instance in 1985—total no. of cases prosecuted stands at 216,000 and only in 32,000 cases were arrests effected i.e. 15% of total cases were handled by public prosecutors. The offenders as a rule of prudence are generally not arrested or governed by rules of prudence. In 1986, 42,000 were prosecuted and through the effective instrument of suspension of prosecution, a very few unconvicted persons are detained in Japan. In 1984 through the district courts, 66,000 only received sentences, 27% of total arrested were released on bail. Prisoners, if at all arrested are immediately released after arrest and in the majority of cases are not arrested at the very outset itself. In 1985 penal institutions on an average confined 55,000 persons, and out of these only 45,800 became convicted prisoners. This meant that 85% are convicted prisoners and only about 9,000 are unconvicted i.e., 16.8% of the total number. It is a unique criminal justice system that strives to keep the number of unconvicted to the minimum.

The delegate from Jamaica pointed out that the treatment of offenders should start at the stage of arrest itself and it is very important as to how we interact with the arrested person and it was emphasized that the police should be very humane and empathetic and all efforts should be to humanize their approach as the persons arrested (unconvicted) are presumed to be innocent and hence all possible courtesy should be extended to them and they should be allowed to consult their family whereby they can attend to urgent matters of importance. There should be continuity in communication with the outside world and they should have the knowledge of their rights and a lawyer should be made available whenever required for. It is unfortunate that society in general views an unconvicted/under trial person as a convicted prisoner. If the arrestees are remanded it should be ensured that all social, recreational facilities i.e. radio, newspapers etc. are provided in detention centres. While in court such a detenu should be respectfully addressed and not as a convict. It is deplorable to prejudge and treat such a person as guilty. Such an approach instantly stigmatizes and dehumanizes him by

creating a wrong role-perception of those involved in the criminal justice system. In Saudi Arabia fair and humane treatment was meted out by extending all necessary services to convicted and unconvicted persons and neither of them are kept in isolated cells and full facilities of T.V., radio, magazines, and newspapers are provided without discrimination. They are free to receive a call (local and international) from family and friends. Lawyers can be contacted for legal aid if required. Another interesting feature was a release of a large number of prisoners during Ramadan by the King, who condoned the sentences by one quarter or a half of the total sentence.

The Kenyan delegate observed that there should be no maltreatment of unconvicted prisoners and in no circumstances should they be made to do forced hard labour. On the contrary it was felt that these persons should be respected as any respectable citizen. He reiterated the need for segregation of the unconvicted from the convicted and a milieu should be created so as not to infect the detenus by keeping them together with convicts. In regard to humane treatment it is essential that the convicted/unconvicted persons are provided with decent food, clothing and facility to see their relatives whenever desired. It was observed that it is not possible to have open prisoners in Saudi Arabia as 70% to 80% of the prisoners are foreigners who may seek an easy escape. The delegate from Sudan stressed that an unconvicted detenu should not be dubbed a prisoner and may be called a remand or detenu and should not be incarcerated unless very violent and dangerous. He should be free to see relatives, doctors, and lawyer. Traffic violators should not be kept in police/judicial custody unless it is a case of rash and negligent driving resulting in death. Treatment to prisoners (convicted) should be fair and humane but not too lenient, except in the case of juveniles and victims. The problem of better prison administration was considered more important than the building of more prisons in view of heavy financial implication.

In Hong Kong the detainees/remands are kept at separate remand centres. There are four such centres in Hong Kong for adults and children—male and female respectively. Only those involved in serious offences are detained at these centres as most of them are first offenders and might instantly react negatively to this new environment. These remand centres are manned by professional persons with special orientation in crisis-intervention techniques and the inmates are provided with plenty of recreational facilities. They are also offered counselling on court procedures and legal aid. An empathetic attitude is expected of the staff working at these centres.

It was further informed that in Tanzania, UNSMR are incorporated in the 1967 Prison Act, in prison standing order and prison regulations, and these are being followed but the problem of segregation is a serious one leading to overcrowding in prisons. Conceptually it is an ideal arrangement but resources are lacking to implement it. The government would like to build a remand prison in every district but financial constraints have thwarted this. Persons remain under trial for long periods in view of delays in investigation. In the case of certain categories of convicts, some are put in open prisons and if they have less than six months' punishment there is a provision for releasing them on extra-mural labour. There is constant review of long timers and after four years some can be released. In case of those facing penalty with death, they can apply for mercy petition/pardon to the president and sentences are sometimes commuted. There is a remission system in vogue on the merits of each case. A participant from the correctional services of Japan informed that unconvicted/convicted persons are placed in detention separately and the attitude towards treatment for both also varies. In case of those unconvicted there is a free protection of rights while in case of convicted ones there is some limitation.

A participant from Thailand informed that they have an open jail along with a resettlement village. According to Article

11 of the Corrections Act—remands under trials are to be kept separately from the convicts and for this purpose their exists a special remand prison in Bangkok but in the context of rural areas this has not been possible and there is no separation. It has been evident that the behaviour/attitude of the correctional officers is not up to the mark. He felt that if the government cannot cope with the problem of the lack in segregation, it should ensure that the detenus are treated properly attitudinally and behaviourally.

In Bangladesh—The nomenclature of "under trial" is used in cases of unconvicted persons. Some under trials remain in jail for a long time. There is a definite policy of fair and humane treatment and vindication of their rights. The delegate suggested that there should be liberal use of bail to relieve congestion in prisons. For the convicted it is necessary that the incarceration should generate some sense of deterrence within rules of local discipline. Emphasis should be laid on non-institutional treatment with minimal regimentation in the shape of open jails, halfway houses etc., and the special training of correctional officers is very important especially in cases of underdeveloped and developing countries with a shift in criminal policy from penal to correctional approach.

The session was enlightened about Sri Lanka's approach that there should be further differential treatment of unconvicted from presumed innocent persons. All factors in case of those found guilty should be weighed with authorities especially in case of fear of accused absconding, interfering with and intimidation of witnesses, etc. Unconvicted ones are treated decently as normal citizens with all normal facilities provided. In the Malaysian context it was mentioned that there is congestion problem due to the unconvicted being lodged together with the convicts. A viable solution would be to build up remand centres with a new nomenclature of under trials or remands. In the context of convicted ones no perceptible violation of SMRs was in evidence as the spirit of these has been enshrined in the domestic correctional rules and regulations but the humane implementation of these directions is conspicuous by its absence. It was observed that there should be periodic visits of committees to prisons to oversee the observance of rules. The board of governors who visit the prisons weekly should fully ensure compliance to SMRs for prisoners, extending a reasonable opportunity to the inmates to complain to them wherever they have been denied their rights.

The Director of UNAFEI in concluding emphasized the most vital aspect of congestion/overcrowding obtaining in many countries in the area of treatment of convicted persons and human rights. It was considered almost impossible by any one agency/segment of the criminal justice system to tackle it. It is a natural corollary when a system resorts more and more to prosecution—resulting in more arrests and less and less releases/bails and rehabilitation; overcrowding is inevitable and cannot be wished away. He exhorted the need for creating a high-powered committee—i.e. a First Instance Fulfilment Committee as existing in Japan representing all the segments of the criminal justice system i.e., Chief Judge, Public Prosecutors, Defense Lawyers—for a better co-ordination of administration at the first instance etc. The possibility of establishing such a body should be explored in all developing countries comprising all those concerned with the criminal justice system i.e., correctional institution, police, courts, and probation, to evaluate periodic implementation of SMRs for prisoners with an integrated and pragmatic approach to solving the problems of criminal justice administration with inter-disciplinary perspectives.

An expert from U.S., Prof. George Jr. was of the view the international agency like the U.N. can do little in dealing with consequences of overcrowding in prisons except in the area of research. Something can be done by courts by not sending large number of convicts to prisons. Courts should apply a rule of parsimony—with a norm of prison sentences as a last resort and not the first. On the point of building more prisons—the need created by more

harsh sentences—leads to a vicious circle. In the U.S. there is a pressure valve provided to prisons that when the strength exceeds 10% of the sanctioned capacity the parole authorities are asked to release more and more prisoners.

Further discussion ensued on c) the treatment of juveniles confined in penal institutions and protection of their rights and d) on the treatment of offenders under community supervision and protection of their rights (procedure of revocation—charge of condition etc.).

Apropos the above SMR for juvenile justice (Beijing rules) adequately and explicitly provide that incarceration of a juvenile in an institution is to be rare and for a minimum period only with accent on well developed rehabilitation schemes. Such measures will control stigmatisation and reduce recidivism.

Further, the seminar realised the need for deliberation on the lack of attention paid to the protection of the rights of offenders under community supervision (probation, parole etc.). Due consideration of offenders' rights under community supervision, which if not properly exercised on their behalf will negate the whole system of community supervision orders. Hence prompt and empathetic monitoring of this supervision by the community is a must for a fair and humane treatment of offenders.

During the discussion the session was informed that in Japan, there is differentiation between juveniles and adult offenders at the investigation stage itself and maintained till the end. Segregation is an inbuilt mechanism in the system. There are nine juvenile prisons in Japan. In 1985, a total of 626 juveniles were prosecuted to the criminal court and only 129 juveniles were sentenced to imprisonment without obtaining suspended sentence, and out of this 41 were in traffic offences and only 80 were placed in juvenile prisons. Inprisonment is awarded with labour and sentences of long-term and short-term parole is automatic if one-third of the minimum sentence has been passed satisfactorily. There is distinct and different treatment accorded to juveniles and adults. Parole is considered at the earlier stages with a lot of suitable rehabilitation schemes.

The delegate from Ecuador was of the view that there should be separate prisons for juveniles. There should be good hygienic conditions but in reality not a very healthy atmosphere exists. Prisons in Ecuador are overcrowded and there is no sound personnel policy regarding proper recruitment of prison staff. Their salaries are low and sometimes they have been found colluding with criminals. SMRs for juveniles are not observed in their true spirit. He suggested holding of international seminars for free and frank exchange of ideas regarding SMRs for juveniles. This was reiterated from the U.N. Congress at Milan on the Prevention of Crime and Treatment of Offenders in 1985.

In Thailand correctional institutions are under the Ministry of Interior while probation cases are under the Ministry of Justice. The King also pardons convicts individually and collectively. Any prisoner can apply for parole after completing two-thirds of his/her imprisonment term based on good conduct. There is classification of prisoners as bad, fair and good. Another method of evaluation is by public work conduct; if they are not sentenced for more than two years, they are automatically released under this scheme. Further there are two open jails with ample freedom of movement. There is one resettlement village established for those who can carry out agricultural operations with their family staying with them.

In Japan family courts make decisions regarding institutionalisation of juveniles and most of the cases are decided by them. Rehabilitation of juveniles is related to parole and two aspects are kept in mind i.e., as to who is to be paroled and when to be paroled. This has eased the problem of overcrowding. Selection of parolees is done very carefully and meticulously. There is special stress laid on environmental adjustments with perspective planning for rehabilitation facilities in consonance with human rights of juveniles. However, community-based treatment also poses some

problems. In a community there are other people around and a parolee is always conscious of it. Hence the need for anonymity for the probation officer or voluntary probation officers.

In Panama juvenile delinquents are not considered offenders but maladjusted. There are separate juvenile penal institutions manned by personnel well trained in child psychology and social defence. Visits of these maladjusted children are organized to schools, along with participation games etc. They are also given vocational education. In a number of cases applications for release on parole are accepted by the judges. They are also enabled to acquire jobs in local industries. According to Article 27 of the Panama Constitution—it is enjoined on the penitentiary system to provide security principles, social defense/ and rehabilitation to delinquent children.

A participant from Kenya indicated that children of 14-15 years of age are referred to approved schools while those in the category of 15-17 are sent to Borstals. In the correctional approach, a non-institutional arrangement is preferred to an institutional one. The inmates are imparted school subjects and skills and trained in agriculture and animal husbandry. There is an accent on non-stigmatisation. Parole boards review their cases very carefully and all possible efforts are made to naturalise them in society. Although there is an Act dealing with parole—it is rarely invoked and more often probation is practised in case of juveniles and adults alike. The problem of confidentiality as faced by Japanese probation officers and voluntary probation officers also exists in Kenya in a hide-and-seek situation between offender and probation officer.

We were further informed about the Japanese system that there are three types of juvenile training schools for different age groups and according to the nature of offence, an average period of stay is 1.2 years or 1.4 years. It is heartening to note that the population of such referrals is decreasing. Normally the juveniles have been found to be involved in shop-lifting, joy-riding etc. Under the new dispensation, the family court can order confinement up to 6 months and this provision for long-term sentences is providing a big deterrent. Two different types of juveniles are not kept at the same place to avoid mutual contamination and segregation is resorted to on the scientific basis of degree of criminality/delinquency.

In Hong Kong on the other hand institutional sanction imprisonment is used as a last resort and community-based treatment is preferred as a sound correctional policy. But somehow it has not been very effective operationally. Efforts are made to assess each juvenile comprehensively on merits regarding his suitability for the specific kind of treatment. The institution of Detention Centres in Hong Kong as Borstals is very successful, as after three years of release it has been noticed that no crime is committed by juvenile offenders.

An expert from West Germany, Dr. Kunert, was of the view that efforts should be made to avoid negative effects of overcrowding by incarceration as building more institutions leads to a vicious circle and alternatives of parole, protection and community supervision are very appropriate for juvenile justice. In the context of institutional treatment of juveniles it calls for optimum socialisation with more stress on formal education, vocational guidance rather than sentencing to forced labour.

Conclusion

The Seminar reiterated the need for basic minimum human needs to provide basic minimum facilities in prisons. Advocated strongly, was the non-use of nomenclature of convicts/prisoners, instead referring to such persons as remands or under-trials and they should be treated a little differently and more humanely as compared to treatment meted out to those convicted.

It was an unanimous view that all the suggestions/recommendations stipulated in SMRs for prisoners (1955) and SMR for Juvenile Justice (Beijing Rules) should be fully implementated in letter and spirit as these are still valid and call for expeditious

suitable action. All member countries should be exhorted to review these SMRs and comply with them as also those stressed by Milano Conference Seventh U.N. Congress on the Prevention of Crime and Treatment of Offenders (1985).

A conspicuous consensus arrived at was in the area of developing more and more alternatives to institutional treatment for juvenile offenders as it was keenly felt that it should be preferred at all times in view of its obvious advantages. Training of correctional officers should be given due importance in view of lack of proper and empathetic attitudes in them today. Sensitivity training of all those involved in criminal justice administration was the *sine qua non* of a sound system. Segregation was strongly recommended to avoid dehumanisation, criminalisation with different treatment for the convicted/unconvicted juveniles. The Family Court model of Japan for juvenile justice was considered a model one to be emulated with local modifications. All possible efforts must be made by police, public prosecutors, courts and correctional officers to resort to ways and means to secure release of offenders to help reduce congestion as building more and more institutions is no solution to ensure fair and humane treatment of offenders. In order to achieve these objectives it was agreed that countries should constitute a high powered—First Instance, Fulfillment Committee as in Japan, consisting of all segments of criminal justice administration to review and remedy the situation. The need for this symbiotic and interdisciplinary perspective is imperative to achieve a well co-ordinated effort in all segments of criminal justice administration.

Session 3: Protection of and Assistance to Victims of Crime

Chairperson: *Mr. A.M.M. Nasrullah Khan (Bangladesh)*
Rapporteur: *Mr. Mohamed Ahmed Hashim (Sudan)*
Advisor: *Mr. Shu Sugita*

Introduction

Victims of crime have received insufficient attention from the criminal justice system. Although in recent years considerable progress has been made to improve the situation of victims, many shortcomings and problems still remain.

Respect for human dignity and the protection of human rights makes it imperative that protection and assistance should be provided to victims. The paramount objective of the criminal justice administration is to ease further traumas of victims suffering from bodily injury, the loss of property, or fear and shock of victimization.

Not only the direct impact of crime described above, but also the secondary distress shall be kept to a minimum. Insensitiveness on the part of criminal justice agencies to the feelings of victims may inflict humiliation or embarrassment upon victims of crime, which might lead to the loss of confidence in criminal justice processes or unco-operative attitude toward the administration of criminal justice. This lack of confidence and co-operation will definitely hamper the effective pursuance of social justice.

Thus, the protection of and assistance to victims of crime shall be an urgent concern of all criminal justice personnel, as it has a decisive influence upon the administration of criminal justice.

The third session of General Discussion focused on the issue "Protection of and Assistance to Victims of Crime" to explore various ways and means to strengthen the status of victims.

Procedures to Deal with Accusations or Complaints

The right of victims to trigger the criminal justice process into action shall be facilitated with a view to obtaining timely and accurate crime related information.

At the same time, workable machanisms to prevent false complaints or accusations must be introduced. For this purpose, a screening process at the early stage of investigation is recommended.

Victims must be informed of the progress of proceedings and the disposition of their cases, especially where serious crimes are involved and where they have requested such information.

Victims who are not satisfied with the original disposition shall be given a right to apply for the review of the cases by appropriate bodies. In such cases, these bodies must be given an independent status so that they can render a decision not affected by the original one.

With regard to the procedures to deal with accusations or complaints, it is suggested that a public relation office be established in the courts of magistrates so as to encourage victims to go and place their complaints without the fear of being subjected to harassment imposed by law enforcing authorities.

The disposition of complaints or accusations must be made as soon as possible by those officials who have enough expertise and experience in dealing with these cases. In the disposition of cases, it is recommended that personnel in charge of the case listen fully to victims' views about the offence and offender.

Protection of Rights and Interests of Victims of Crime in Criminal Procedure

The foremost measure to be taken to protect rights and interests of victims is to prevent unnecessary delay of the criminal justice processes.

The investigations and trial must be speeded up without subjecting the victims to undue harassment. Adjournment of trial shall be avoided as much as possible. If delay is necessary, efforts must be made to set a deferred court date at a time convenient to victims and witnesses. Both parties (i.e. prosecution and defence counsel) must produce minimum necessary witnesses before court to expedite proceedings. For expeditious court procedure, informal prehearing consultation between prosecution and defence counsel is indispensable. The case being filed by police or prosecution should be sent directly to the court, well evidenced and nicely processed. Any property which has been seized by the police in relation to the case should be returned to the victim as soon as possible.

Protection of privacy is another issue which requires serious efforts and attention. It is accepted that the reputation of an individual in society is very important in the case of rape or sexual assault. It is observed that most victims are afraid to report the case to the police for fear of harassment from the police. They feel that their privacy is made public as far as that particular crime is concerned. Such crimes are attractive to the news media and much publicity is made.

If the case goes before the court, the victims will face embarrassing questions in court and her feelings will be greatly harmed. In the end the victim often decides not to bring her case before justice.

It must be a responsibility of all criminal justice personnel to save a victim from this terrible plight. Victims shall not be regarded as just a source of information to prove on offender's guilt. Victims have inalienable rights to access to the mechanism of justice for the harm that they have suffered. They are entitled to every possible remedy including restitution, compensation, and necessary material, medical, psychological and social assistance and support. Victims shall be informed of these rights and the availability of various services throughout the legal process by appropriate means. Free legal services to victims must be systematized at the expense of the state.

In rape or sexual assault cases, it is suggested that public rescue centres dealing

with sexual abuse should be set up so as to assist the police as soon as a complaint is made about a rape case. These centres must be provided with well-qualified professionals such as doctors, nurses, psychiatrists, psychologists and counsellors. These services shall be given free of charge and be made available even after the conclusion of criminal proceedings. The police should refer the case immediately to the centre so that the victim can get proper counselling services to make them better witnesses and prepare them for the court procedure.

Crimes against public health or environment need urgent attention. In view of the characteristics of contemporary post-industrial society and the role played by growing industrialization, technology and scientific progress, special protection against criminal negligence should be ensured in matters pertaining to public health, labour conditions, the exploitation of natural resources and the environment and the provision of goods and services to consumers. The United Nations shall assume a leading role in setting workable norms and guidelines to prevent this type of victimization.

Economics crimes also require special attention. Economic crimes often affect a great number of people, causing tremendous harm to economic, social stability of a nation. Quick and secure remedy shall be materialized through the introduction of innovative measures. Victims as a group may be given some legal status in seeking redress with regard to such cases.

With regard to the protection of witnesses, various services shall be implemented such as transportation to and from proceedings and child care during proceedings. Witnesses shall be compensated for the loss of income incurred by attendance at criminal proceedings. As effective victims and witness protection is crucially important for the fair and proper administration of criminal justice, it is essential that law enforcement agencies accord high priority to the prevention of intimidation or retaliation against witnesses. For this purpose, penal legislation to punish these acts must be comprehensive to cover all such acts. Other innovative measures designed for witness protection must be considered and established.

Without official or accurate knowledge of the impact of the offence upon the victim, the court may not be able to decide appropriate disposition. Such knowledge could lead to more humane and just treatment of both offender and victim.

In the United States, efforts have been made to reflect victims' feelings in sentencing. The Victim Impact Statement employed in a number of jurisdictions in the United States is one example.

Concerning measures to reflect victims' feelings on the decision of parole and pardon; the Japanese system for dealing with the issue was most acceptable. In this concern, the feeling of the victim at the time of parole decision plays a very important factor. In order to satisfy this feeling, various efforts are being made in the Japanese system. There are two methods; one is by adjustment of the environment. The law provides that the feeling of the victim must be determined and it has to be put into a report in writing before the determination of parole. In this report in ordinary cases, the feeling of the victim is investigated. If the feeling is changed then new investigations are made. In several states of the United States, victims or their representatives are allowed to attend parole hearings to present their views about parole determination.

Insensitive treatment of victims during the criminal justice processes could lead not only to their isolation but also to secondary victimization. Cumulatively, those factors could create a situation where victims increasingly tend to withhold their co-operation from the criminal justice system. To prevent this, one possible measure is adequate training of criminal justice personnel responsible for investigation, prosecution and trial. Investigation officers must be recruited from persons of good calibre and high qualifications and should receive adequate training in law, criminology, sociology and victimology.

Appropriate guidelines to deal with vic-

tims shall also be developed to ensure proper and prompt aid. The establishment of a victims unit in law enforcing agencies is recommended so that specialization of officers can be promoted, enabling them to handle victims both effectively and compassionately.

Compensation to Victims

It is clearly noticed that most countries have not provided in their constitutions or criminal codes any provisions with regard to compensation of crime victims. The usual practice in such circumstances is resorting to civil proceedings to obtain compensation. However, this process is costly and time-consuming. Moreover, even when orders or decrees granting awards to victims are rendered, the offender might not be able to pay the restitution for which he is liable. Thus, the victims or their families are left to their fate suffering injury and demoralization. When compensation is not fully available from the offender or other sources, the state should endeavour to provide financial compensation to victims who have suffered from significant bodily injury or impairment of physical or mental health as a result of serious crimes. The family of victims who have died or become physically or mentally incapacitated as a result of crimes shall also be compensated. The establishment of national funds for compensation to victims should be encouraged. In countries where the convicted prisoners are paid for the work which they perform in prison, part of their income should be paid to their victims by the prison administration as compensation.

In developing countries where there are no provisions for compensation to victims of crime, traditional mediation and arbitration play a significant role in settling disputes between victims and the accused person. Each country adopts its own system.

In Fiji, the traditional system for mediation or arbitration is called Sevu Sevu. In this system the family of the accused will approach the family of the victim and give some kind of gift. The effect is that the two families will reconcile. The overall effect of the system is that it provides compensation and secondly it provides reconciliation and that might ultimately suspend civil or criminal proceedings.

In Japan traditional arbitration or mediation has an important role because just financial compensation might not in all cases be accepted by the victim or his family. The feeling of personal compensation to the victim or his family is what is sought after.

In Bangladesh, the traditional mediation and arbitration system has worked sometimes more fruitfully than the court proceedings which are civil in nature and take a lot of time.

The participants have expressed a variety of ways and means through which disputes can be tackled peacefully in their respective countries. These informal mechanisms should be utilized where appropriate to facilitate conciliation and redress for victims.

Conclusion

In the course of the discussion, the multi-faceted nature and the technical complexity of the subject has been confirmed. This is partly because the issue has not been throughly confronted previously.

However, the adoption of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power has charted new ground, by setting the various courses of action to be taken to protect victims of crime from trauma and distress.

The implementation of the Declaration shall be taken into consideration on a priority basis in respective countries to promote fair, humane and just administration of criminal justice.

Continuous concern must be given to this issue, and the United Nations shall assume a leading role so that workable norms and standards could be further developed.

No efforts shall be spared until the preservation and respect of victims' rights become an integral aspect of the whole

justice system.

Session 4: International Co-operation, Training and Research

Chairperson: *Mr. Munasinghe Chandra Prema Mendis (Sri Lanka)*
Rapporteur: *Mr. Jacob Rongap (Papua New Guinea)*
Advisor: *Mr. Masao Kakizawa*

Introduction

All nations of the world in their endeavour to develop in social, economical and political aspects are threatened by crimes which have been rapidly increasing not only in number but also in complexity. Furthermore crimes are not confined to national boundaries but have exploded into international contentions. Therefore, intergovernmental agencies whose concern for healthy development of their respective countries have been advocating efficient administration of criminal justice systems.

The international interest for prevention of crime and treatment of offenders prompted the formation of the International Penitentiary Commission (later to be known as the International Penal and Penitentiary Commission) just before The Second World War. The Commission comprising of thirty (30) member countries formulated a constitution and met at five-year intervals except during The Second World War period. The first article of its constitution stated its purpose as being that of gathering data that would enable it "to advise governments on the general measures to be taken to prevent violation of the penal law and to provide for the repression of crime and at the same time to reform criminals."

The formation of the United Nations in 1945 saw the abolition of the Commission but in its stead the United Nations created regional consultation groups of experts whose task was to advise the Secretary-General and the Social Commission on matters of international studies and policies pertaining to prevention of crime and the treatment of offenders. The adoption of a "Universal Declaration on Human Rights" (1948), the "United Nations Standard Minimum Rules for the Treatment of Prisoners" (1955) and the "International Covenant on Civil and Political Rights" (1966) by member countries, incorporating provisions in domestic legislations have endeavoured to promote rights of offenders. However, in reality, difficulties are encountered in the implementation stage due to a number of factors. The problems are more intensified in developing nations due to lack of budget, staff and technical equipments.

In recognition of the need for interchange of information and co-operation between member states, the United Nations with willing assistance from well-to-do nations is promoting fair and humane treatment of offenders and victims through seminars, training courses and research projects. Regional institutions such as UNAFEI have and will continue to enhance international co-operation by providing in addition, consultation or advisory services to governments.

International Co-operation

Nearly every state in the world has provisions in its constitution or basic law for the protection of particular human rights and fundamental freedoms. This is particularly true of countries which adopted their basic legal texts after the proclamation of the Universal Declaration of Human Rights in 1948. Other nations have in most recent years ratified their laws in accordance with some, certain or all, of the provisions of the Declaration.

One of the main aims of international action in the field of human rights is to extend the limits of national protection. States, in voluntarily accepting human rights conventions, undertake to put into effect the domestic laws, regulations or administrative provisions, or to take the judicial measures necessary to give effect to the provisions of those conventions. The

United Nations organs have in providing guidance to member states, continued to seek new ways and means of promoting respect for and observance of the human rights covenant.

Participants agreed that provisions of the Universal Declaration of Human Rights and other related instruments have been accepted in principle by incorporating provisions in the domestic legislation. A participant from the People's Republic of China observed that a number of the Articles of the Covenant have been already included in the country's Constitution whilst discussion on further improvement is still progressing. One would then ask how effective is implementation of those instruments in respective countries.

Member states, especially certain developing nations are not able to effectively maintain standards as required due to circumstances which are beyond their control. Financial and proper training of personnel in the administration of their agencies are only a few of the obstacles. For example in Peru, although a new Penal Code was enacted in 1985, the administrative mechanism in maintaining the prisons in accordance with the Standard Minimum Rules for Treatment of Prisoners is not functioning due to corruption and political influence whereby untrained persons are appointed to prison administration duties. On the other hand, Japan has quite successfully adopted and is implementing all aspects of the Human Rights Declaration including the Declaration of the Elimination of Discrimination Against Women.

Participants then discussed what their respective governments have done in disseminating information to the general public on the international instruments, and how effective such programmes have been. In most countries the mass media is used to educate people of their rights at schools, institutions and homes. However, participants from India and Malaysia were critical of the fact that much more should be done in this regard through mass propaganda and inclusion in school syllabuses. Countries in the region need to follow the example of Japan where government agencies such as the Civil Liberties Bureau of the Ministry of Justice, Courts and Bar Associates conduct seminars on human rights with co-operation of mass media. Every year, a day (Day of Law) and a week (Law Week) are set aside for the purpose of educating the public of their rights.

Again financial constraints restrict the efforts of governments, and there is still a lot to be done in this respect. If one assumes that a normal law-abiding person is not concerned about his rights, then what is the situation with regard to an offender or convicted prisoner? Being deprived of his basic rights at the time of detention, he has every right on admission to a penal institution to be given a modified version of the Standard Minimum Rules for the Treatment of Prisoners.

Discussions then centred on the roles of international bodies such as the United Nations, its regional institutions such as UNAFEI and other international bodies concerned with . the well-being of the human race. The United Nations and other international organizations have, since the adoption and proclamation of the Universal Declaration on Human Rights, worked vigorously to discover ways to promote respect for and observance of human rights and fundamental freedom. A marked achievement in this regard was the adoption in 1966 and acceptance by Member States in 1976 of the International Covenant on Economic, Social and Cultural Rights. Article 1 of the Covenant declares that all people have the right of self determination in political, economical, social and cultural development. Member States are required to furnish reports to the Secretary-General of the United Nations on measures which they have adopted and the progress made in achieving the observance of the human rights.

The participants acknowledged the work of the United Nations with regard to its promotion and acceleration of human rights through establishing various international instruments on human rights which each Member State has incorporated into domestic laws. However concern was raised by the participant from India that although

the United Nations is a respectful organization, its image as a world body to take drastic action against incidents of violation of human rights is very minimal.

Visiting lecturers, Prof. George and Dr. Kunert pointed out that Member States should undertake bilateral and multilateral agreements to facilitate nation-to-nation interaction for the eradication of matters that infringe on human rights outside of their own respective territorial boundaries. Absence of such treaties denies offenders or convicted persons the right to fair and humane treatment.

Regional institutes such as UNAFEI have promoted the aspirations of the United Nations to foster understanding amongst officials involved in crime prevention and treatment of offenders. The participants praised the Japanese Government in taking the initiative in establishing such an Institute which has since 1962 conducted 73 courses for officials. In addition to these courses, UNAFEI has conducted three regional training courses, namely in 1967, 1972 and 1977, on the subject of the protection of human rights in criminal justice administration. The fruits of UNAFEI's efforts are evident in the fact that most of its former participants are greatly contributing to the development of criminal justice, taking important positions in their professions in their own countries. The success of UNAFEI is therefore of high regard and participants declare that more courses should be held at UNAFEI. The Director of UNAFEI, Mr. Hideo Utsuro, in response stated that UNAFEI will continue to make every effort for further development of criminal justice in close collaboration with various governments in the region. The participant from Venezuela was concerned that the regional institute in Latin America, was not doing as much as UNAFEI, whilst the participant from Tanzania wanted to see the operation of the regional institute in Africa to commence as soon as possible.

Training of Officials

Whilst all participants assented that in-service training programs for criminal justice system officials are undertaken in their respective countries there is yet more to be done. The participant from Jamaica advocated that acceptance of personnel into the criminal justice system and in particular, the police and correctional agencies, should not be on academical qualification but on personality. A person who is psychologically and physically calm would achieve more fruitful results in human relationships than a person who is academical qualified but is not practicable.

Dr. B.J. George Jr. and Dr. Kunert in support of comments by the participants from India and Bangladesh commented that sensitivity training should be the essence of training. Trainers should be constantly reviewing their training programme so as to improve on weaker points identified in dealing with offenders or victims of crime.

Training on the national level should encourage seminars and training courses for participants from all government agencies involved in the criminal justice system, so that each agency would appreciate the functions of others and iron out problematic areas of common interest. Such courses should utilize the services of visiting lecturers from the United Nations to provide expert advise on measures to be undertaken in order to ease problems.

Agencies should also utilize the services of local universities in designing relevant courses for senior officials so that their knowledge of social, economical and political situations in their own countries and in the rest of the world would guide them in policy-making in their profession. Countries such as Nigeria and Papua New Guinea have had such programmes in existence for some time now.

Training of personnel should not only be confined to their professional subjects but also include other related areas, including provisions of the United Nations instruments pertaining to treatment of offenders and victims of crime. Agencies endeavour-

ing to perfect their own systems tend to overlook human factors such as behaviour both psychological and physical.

Participants advocated more international seminars and training courses for officials. Such seminars and training courses facilitate exchange of information and experience and also promote co-operation in specific fields. The United Nations should continue to collect and disseminate information on specific countries, including statistics and comments. The United Nations should also consider regional seminars for police officers especially in the field of investigation and in particular use of scientific methods. The United Nations Code of Conduct for Law Enforcement Officials demands certain levels of conduct but at present there is no international exchange of concern. Whilst the prison services in Asia and the Pacific region have an annual Seminar (the Asia and the Pacific Conference of Correctional Administrators), this is not so for the law enforcement officials.

The United Nations fellowships awarded under the programme of advisory services in the field of human rights should be continued to foster betterment of young persons involved in criminal justice administration fields. The advancement of such fortunate individuals will depend largely on individual governments to devise proper career plans so that there is continuity in training in respect of protection of human rights.

UNAFEI, one of the regional institutes, has been contributing much to the Asia and Far East in offering training. It's success is noticeable in individuals who have advanced in their own field and in some cases, returned on invitation to UNAFEI as visiting lecturers.

Research

The development of a country is greatly affected if social disorder is not controlled. Crime and in particular treatment of offenders demands carefully planned approach. To determine the best approach it is necessary to establish the problem and the causes. In order to achieve such an aim, governments should sponsor research work regardless of the expenses involved.

Some countries have had research done on the causes of crime, the effectiveness of criminal justice system and victimology. The problems identified, however, would require time and money to correct. Assistance should be sought from various bodies to undertake research work.

So far much emphasis has been placed on treatment of offenders and little research has been conducted on victimology. Victimology is therefore, a relatively new field in criminal justice system that calls for concentrated research.

In most developing countries, government agencies may need to co-operate with local universities in research work due to cost factors and the availability of human resources. The findings of any research work may not always be practicable for policy makers and therefore some critics in opposing research work say it constitutes more waste of financial and manpower resources. Therefore, close co-operation should be established between scholars and practitioners in order to make the results of research more relevant to policy, more reliable and to better facilitate the implementation of the research. Action-oriented research on human rights will be supported by the governments which consider the well-being of their citizens most important.

Conclusion

The United Nations has greatly contributed to the promotion of the human rights of offenders as well as victms of crime through formulating various international instruments on human rights which have been incorporated in domestic laws in respective countries. However, it is generally agreed that full implementation of such international instruments has been hampered by various reasons, e.g., financial constraint, shortage of manpower and lack of training of officials. Therefore, the United Nations and its related bodies are strongly urged to provide various types of assistance in order to promote human

rights in criminal justice through full implementation of international instruments on human rights.

The training of officials concerned is inevitable for the advancement of fair and humane treatment of offenders and victims of crime. Especially, the importance of sensitivity training should be emphasized since the insensitive treatment of victims by officials during the criminal procedure has sometimes compounded their feelings of helplessness and frustration. The training/seminar will also provide officials from various areas of the criminal justice system with good opportunity to exchange their information and experience.

The lack of research, especially of victims of crime, is pointed out by participants. Action-oriented research which is closely relevant to policy-making is urgently necessary for well-planned and thus effective approach to crime prevention and humane treatment of offenders as well as victims of crime. In order to facilitate the action-oriented research, close co-operation between scholars and practitioners should be established specially in developing countries where the lack of financial and human resources has been the obstacle for research activities in criminal justice.

PART II

Material Produced during the 75th International Training Course on Non-Institutional Treatment of Offenders: Its Role and Improvement for More Effective Programmes

SECTION 1: EXPERTS' PAPERS

New Kinds of Non-Custodial Measures — The British Experience —

*by John Eryl Hall Williams**

Introduction

The opportunity to review new kinds of non-institutional treatment methods for offenders in England and Wales for the 75th International Training Course has provided the chance to assess the situation at a crucial stage in these developments. As will be seen, many different kinds of treatment measures are now available to sentencing courts. The experience with these will be reviewed, and some conclusions offered together with some possible guidelines for future developments. Although it is appreciated that the situation in many countries is not the same, and the possibilities for such extensive developments may be severely limited by resources and local conditions, it is hoped that something can be learned from the experience in western countries, and in particular from the British experience in these matters.

The background against which one must set these developments is one of rising concern about crime, which has escalated in recent years, and the bulging prison population, which by April 1987 had reached a record high level in England and Wales. Clearly, renewed efforts are needed to cope with this situation. The development of so many new alternatives to imprisonment has had some effect, but has not been sufficient to stabilise the prison population, leave alone to reduce it. There are those, like the present writer, who have come to believe that what is now needed is a frontal attack on the use of imprisonment itself. This means tackling the question of the use of remand in custody pending trial – too many offenders being imprisoned in this way, many for long periods – and reviewing the length of prison sentences, as well as the use of custody itself, particularly youth custody for young adult offenders under twenty one.

This paper describes in outline the new developments in the field of non-custodial measures, and attempts to assess the results.

New Kinds of Non-Institutional Measures for Dealing with Offenders in England & Wales

Developments in Connection with a Probation Order

Many of the new measures have been developed by using conditions imposed on the offender as part of a probation order. While it has not been the custom in Britain to allow many conditions to be required in this connection, the law has recently been extended to permit a wide range of requirements to be attached to such an order, always of course with the offender's consent. Negative requirements such as requiring a person to refrain from associating with a person or type of person or frequent certain places such as football grounds, public houses or certain parts of a city area, may be included in a probation order provided the court has first consulted the probation service, but probation officers are not very keen on such requirements since they are so difficult to enforce, and conflict with the probation service's concept of its "helping" role. Positive requirements may be included requiring a person to attend a specified activity during the whole or part of a probation order's duration, or to attend a day centre, but it is no longer permitted to order the offender as part of a

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probation order to pay compensation or make reparation to the victim. A separate power is available to make a compensation order (See below).

In England and Wales 42,000 probation orders were made in 1985, and the total number of persons currently under supervision exceeds 100,000 persons in any one year. One third of those are formally "on probation," one third are under what is called statutory supervision following a custodial sentence, and the remainder are either under voluntary or statutory aftercare, including parole supervision. Cases of "domestic supervision" arising from family problems occupy less than ten percent. There are nearly 6,000 professionally qualified probation officers engaged in field work, assisted by nearly 1,500 ancillary workers.

The imagination and inventiveness of the probation service has spawned a variety of schemes and experiments in connection with probation. Space does not here permit a description of the use of probation to secure that an offender receives medical or psychiatric treatment, but for the sake of completeness this must be mentioned. Indeed "the psychiatric probation order," as it is often called, was one of the first measures adopted in an effort to reduce the use of imprisonment, in this case for offenders needing psychiatric or medical treatment. It must not be confused with the Hospital Order, which has been available to criminal courts since 1959, and has recently been amended in 1983 to provide certain improvements. The hospital order does not require the offender's consent, unlike the psychiatric probation order, but it does require the agreement of the medical doctors, and a place to be found for the offender in a hospital.

The following new developments in connection with a probation order may be mentioned, and some of these will be described:

(1) Day Centres and Day Training Centres

At the time when the House of Commons Expenditure Committee looked at the situation (1987) an important experiment was under way with regard to day training centres in connection with probation. Also a number of probation services had opened day centres.

Day training centres were established experimentally in four areas under the Criminal Justice Act 1972. The Act provided that a court could make it a requirement of a probation order that a person should attend a day training centre full-time for 60 days, five days a week from 9 a.m.–5. p.m. Responsibility for his supervision rested on the probation staff at the centre during this period and an intensive programme of education classes, instruction and discussion was provided, often directed to the improvement of the offender's social skills and self-image. This experience was thought useful for many inadequate petty offenders with a previous record of crime who might otherwise face a short prison sentence.

There was a considerable divergence of views about the day training centre. Some probation staff were obviously jealous of the ample facilities and generous provision of staff in these centres. They were undoubtedly very expensive to run. Others, including the House of Commons Expenditure Committee, gave the innovation a warm welcome. When the next criminal justice legislation was introduced, the Criminal Justice Act 1982, the opportunity was taken to replace the provisions of the 1972 Act with a general power to allow a day attendance requirement to be inserted in a probation order, and it seems that many probation areas now provide facilities for offenders of this nature.[1]

(2) Day Centres

Another development which the Expenditure Committee found interesting was the provision by the probation service of day centres. These are little more than off-the-street shelters to which the homeless and the unemployed can be directed or be advised to attend. A survey conducted in 1980 showed there were 73 day centres in England and Wales, the majority provided and run by the probation service, but a significant minority (31) provided by other agencies, mostly voluntary societies and associations. By 1985 there were 83 day

centres. Some were specialised rather than generic, i.e., they were intended for and catered for special groups such as young adults (24), homeless adults (20), the long-term unemployed (4) or mothers (3). Some only functioned in connection with a probation order. A variety of programmes was provided, and different degrees of formal requirements applied. There appears to have been no evaluation of these centres (Walker 1985, 274) but an account on one centre by Richard Hil is to be found in Pointing (1986).

(3) The Medway Centre Day Training Unit

The Kent Probation Service developed for a while a Day Training Unit at the Medway Centre, which imposed much stricter obligations for those involved, including a detailed check on the offender's activities not only during the day, when a work programme was provided, but also during the evening and at weekends. Strong opposition was expressed to this scheme on the grounds that it conflicted with the traditional "helping" role of the probation officer, and involved the officer too much in the "control" of the offender in the community, and the scheme has now been dropped.[2]

This experience raises an interesting question. If the objective is to reduce the number of offenders receiving a prison sentence, why should there be any restriction placed on the degree of "control" imposed on the offender in order to make his continued presence in the community more acceptable? The matter was addressed in a legal case which went to the House of Lords (the ultimate judicial tribunal) in connection with a similar innovation: *Cullen v. Rogers* (1982) 4 Cr App R. 170.

The court there held that since the object of a probation order was "to avoid passing a sentence," any requirement made in such an order should not "introduce such a custodial or other element as will amount in substance to the imposition of a sentence." This language refers to one of the pre-conditions for making a probation order in England and Wales, which is that the court is of the opinion that it is expedient "instead of sentencing him" to make a probation order. One may well think that the approach to this matter by the English law is unduly restrictive if not idiosyncratic and hypocritical. The answer lies in the strong belief that if a person is fit to be allowed his freedom after being convicted for an offence, then that conclusion carries with it the implication that no undue restrictions of the offender's liberty may be imposed other than those expressly allowed by law. This view must be a serious restriction on the probation service's ability to experiment. In practice however, it does seem that some interesting experiments are taking place.

(4) Tracking

One method which has received some publicity, and which is modelled on an American experiment, concerns a scheme whereby offenders on probation are placed in a programme which involves what is called "tracking" or "intensive tracking." This is used only after calling the offender in to discuss it with the probation officers, and securing his agreement to participate in the scheme. A 28-day period of assessment is requested, with the offender placed on bail by the court for this period. During this time he will be seen at least once a day by his "tracker," who is not a probation officer but a person paid to undertake this role. During the bail period an assessment will be made of his suitability for the scheme. The tracker will liaise with all those who have contact with the young person – his probation officer, social worker, education welfare officer, parents, teachers, employers etc. A report will be prepared for the Court drawing together all the relevant information and including a recommendation as to whether the young person will be placed on the group work element of the scheme or an individual programme which would include less intensive tracking. Once the young person has been placed on the scheme, less intensive tracking will commence in every case, involving contact initially four to five times a week, gradually reduced during the period of four months he is on the scheme. The

tracker will also monitor school attendance, and if the offender is not allotted to the group programme, individual counselling will take place. There will be an attempt to get the offender to face up to any problem concerning his relationships or values and attitudes. With regard to the daily contacts, these are not necessarily by physical encounter at this stage (as at the bail assessment stage) but could be by telephone. The less intensive tracking lasts twelve weeks, after which there is transfer back to the supervising officer.

Group work involves a requirement to attend three nights a week and all day Saturday, for a period of three months – a total of fifteen hours a week. Each group session is staffed by one qualified group worker, one unqualified group worker with previous experience as a Tracker, and one volunteer. The average number in any group is eight young people, mostly aged between 15 and 16 years. The types of offence range from taking motor vehicles to burglary, arson and theft. Most of the young people involved attended regularly and successfully completed the programme. Some were breached, i.e., taken to court for violation, for non-attendance or lateness. The groups have been concerned with discussing and examining the offending behaviour of its members, there are visiting speakers on a variety of problems, and also a varied programme of activities is provided including health and fitness, reparation and motor vehicle technology.

The early research findings about the working of this scheme have been sufficiently positive to encourage the social services department of the local authority to take it on board from October 1986 as an officially backed scheme for young persons under supervision. Naturally there is a high reconviction rate (52%) but this is regarded as within acceptable limits.

(5) The Hampshire Probation Service's Course for Drunk Drivers

Another innovation has been tried out in the south of England by the Hampshire Probation Service for drunk drivers, with the co-operation of the magistrates' courts. This is an eight-week-long course involving weekly meetings of two hours' duration designed to give offenders the information they need to encourage them to change their patterns of drinking. Each week small groups of offenders, sometimes accompanied by friends or spouses, attend the Southampton probation office to recall the day they fell foul of the laws on drunk driving and to learn more about the implications of drinking and driving. They are shown slides and videos to illustrate points such as the low levels of alcohol needed to impair reactions and the ways in which excess alcohol can damage parts of the body. More than 100 offenders have completed the course so far and only five of these have been convicted again on alcohol-related offences. Most of those ordered by the courts to attend are either young offenders or those with high levels of alcohol in the blood at the time of arrest. The scheme, which is still in the pilot stage, is being run in the two neighbouring cities, Portsmouth and Southampton.

(6) Other Probation-based Alternatives

Space does not permit us to offer a description of each of the many probation-based schemes which have been developed in recent years – mainly as an alternative to custody. Accounts are available of some of these in John Pointing's book (1986) and one is beginning to get some assessment of the successes and failures (and failures there have been), and a discussion of the significance of these developments.[3]

Community Service Order

Perhaps the best known innovation in Britain in regard to non-custodial measures of dealing with offenders is the Community Service Order (CSO) introduced in the Criminal Justice Act 1972 as a result of the recommendations of the Wootton Sub-Committee's Report of 1970, *Non-custodial and semi-custodial penalties.* At first the C.S.O. was provided experimentally in probation areas representing different parts of the country. The results were so encouraging that the application of the C.S.O. was extended rapidly to all

probation areas in England and Wales, and has been introduced in Scotland too.

The present law is contained in the Powers of Criminal Courts Act 1973 which was a consolidation measure gathering together nearly all the sentencing powers of criminal courts. We must now examine in detail (1) the legal provisions, then (2) describe the way in which the different C.S.O. schemes are operated and (3) finally, discuss the success of the C.S.O. and the implications.

(1) The Law Relating to the Community Service Order

1) The offender must be aged sixteen or over.

Originally the minimum age was seventeen, but this age was reduced by the Criminal Justice Act 1982 to sixteen. Offenders of all ages and both sexes are accepted for the CSO but naturally the majority of offenders are in the younger age group.

2) The offence must be one which is punishable by imprisonment.

This is partly because the aim is to provide an alternative to prison, and partly to avoid using it unnecessarily for comparatively minor offences.

3) The court must be satisfied that the offender is a suitable person, and that arrangements can be made for him to carry out the obligation – which is described thus: "to perform unpaid work" for a specified number of hours. The court must specify the number of hours.

4) The minimum number of hours for a CSO is forty hours and the maximum two hundred and forty hours, and it is provided that this shall be completed within twelve months.

5) A social inquiry report is a pre-requisite. This is because the court needs to be assured that the offender is "a suitable person to perform work under such an order."

The usual practice is to refer the offender for assessment by those probation officers responsible for the CSO scheme in the area concerned. If the court thinks it necessary it may require the probation officer to give oral evidence.

6) The offender must consent to the making of the order.

This is a condition of any probation order, and although in England and Wales (but not Scotland) the CSO is a separate order, the same pre-requisite applies.

7) The court must explain the meaning of the order to the offender in ordinary language, and supply him with a copy of the order – copies must also be supplied to the supervising officer and the relevant clerk to the justices. Most CSOs appear to be in the region of 120 hours.

There is provision for amendment and revocation and extension of a CSO in the light of experience.

No order can be made which conflicts with the offender's religious beliefs or times of normal work or school attendance.

A CSO can be made for breach of a Probation Order.

Breach of a CSO is, like probation, finable (up to £400) or the order may be revoked and the offender dealt with for the original offence. If the order was made originally by the Crown Court, then the magistrates' court should send the offender to the Crown Court to be dealt with there for the breach.

Obligations of the Offender

The offender's obligations under a CSO are severely limited.

1. to report, and notify any change of address.
2. to work as directed, and do the work to the satisfaction of the supervising officer.

(2) Implementation of CSOs: The Experience

The experimental areas proceeded in slightly different ways to implement the new powers by developing schemes for offenders under community service. The probation officers assigned to this work had to go out and find tasks and "unpaid work" which could be done in the community. An immense variety of different tasks has been provided, such as shopping, painting and decorating and gardening for old people and those who are infirm, renovating publicly provided children's

homes and playgrounds and recreation areas, work assisting the mentally and physically handicapped, public service tasks such as cleaning over-grown footpaths, canal banks and graveyards (including that in Highgate London where Karl Marx is buried!). A wide range of skills can be used in this way, and offenders have been surprised to be asked the simple question, what skills can you offer? This has often been the first time anyone has treated them as if they had any worth. Some offenders have become so involved in the work they were doing that they have asked to stay on after the completion of the order, and have become themselves supervisors.

Evidence received by the Expenditure Committee in 1978 showed that the CSO had become an integral part of the criminal justice system. There were certain differences in the approach to the CSO between different areas, and the Home Office appears to have abstained from giving any strong sense of direction. The result is that in some areas like Inner London the CSO has been treated strictly as an alternative to prison, whereas in other areas the CSO has been regarded as a sentence standing in its own right alongside other non-custodial sentences. This has some significance when it comes to a consideration of success rates and evaluation.

(3) Evaluation of the Effectiveness of the CSO

From the beginning the Home Office, through its research unit, conducted research designed to test the effectiveness of the CSO. Two reports have been published. The first examined the working of the six experimental schemes which were set up in the early period, and was published in April 1975. The report describes the very different approaches adopted by each of the experimental areas, and shows how different criteria were applied to the selection of suitable subjects for the CSO. The conclusion was that the schemes were working well and that the CSO could be regarded as successful judged by the proportion of CSOs satisfactorily completed. The researchers, in a rare fit of optimism, declared the scheme viable and said it could be regarded as representing an exciting departure from traditional penal treatment.

One might add the observation of the Inner London Probation Service in the evidence to the Expenditure Committee (1978) to the effect that one could describe the community service order as "a simple but effective method of training and social control" (Report 1978, para 200, lxxiii). In their experience 70 to 75 percent of orders were satisfactorily concluded.

The second research report from the Home Office Research Unit tried to estimate the proportion of those given community service who were diverted from custody i.e., where the order truly replaced a prison sentence. They reported that in their view the proportion was within the range of 45 – 50 percent of those given community service orders (Report No. 39, Home Office Research Studies, June 1977). So far as reconviction is concerned, the result is given of a one-year study of those given CSOs in each of the six experimental areas. It was found that 44.2% of all those sentenced to community service in the first year of the scheme were reconvicted within a year of the sentence. There was no evidence of systematic change in the level of seriousness of offences committed after a sentence of community service, nor in the time at risk before reconviction. Indeed, the reconviction rate of the community service group is within the same range as that of a group recommended for, but not given, a community service order (Home Office Press Notice, June 1977).

These results may be interpreted in different ways. Some say that they show that the CSO is not really being used as an alternative to prison, and is no more successful than more traditional measures. Others regard the results as quite satisfactory. At least the CSO offenders do not do worse than others not given CSOs, and the majority are not reconvicted, some 55%, according to these figures.

There has been another quite separate concern about CSOs, and that is the suggestion that it does not occupy any clear

place in the sentencing tariff. It is argued that there should be some way of equating the number of hours with a particular period of imprisonment, so that courts can know what choice to make, and use the CSO effectively as an alternative to prison. Thus Pease and West (1977) advocated that "clear and explicit commitment to the use of community service as a tariff sentence (in lieu of a custodial sentence) should be encouraged." These thoughts were echoed by Warren Young in his book on Community Service Orders (1979). Young is highly critical of the confusion which prevails in the philosophy and practical application of community service.

> "The overall tariff position of the community service order was affected by considerable internal disparity, so that in each court the sentence was imposed upon offenders who had committed crimes of widely differing degrees of seriousness. While some were similar to those sentenced to imprisonment, others were at a stage where such a sentence would have been highly unlikely. It has been suggested that this in turn was partly because the philosophy and practice of the community service order was riddled with confusion and ambiguity, so that there was no consensus, either within or between areas and courts, on the types of offenders for whom the sentence was appropriate, the reason for which it should be imposed, or the way in which it should be administered. Thus its critical purpose of effecting a substantial reduction in the prison population was blurred." Warren Young (1979 p. 135).

He goes on to say that the community service order is "evidently no nearer to achieving coherence and consistency, in its application as a tariff sentence and in its penal objectives, than when it was first introduced." Young believes that "if disparities and inconsistencies in the application and implementation of the community service order are to be reduced, the tariff location of the sentence must be clarified and its objectives set in order of priority" (p. 137). He concludes that unless some clarification of the objectives and of the tariff location of the CSO is achieved "there is a distinct possibility that the present enthusiasm for the sentence will give way to pessimism and disillusion" (p. 242).

One might add that some courts and judges have a rather sceptical if not cynical view of the worth of community service orders – but then these very courts and judges may have become cynical through experience about many different aspects of the working of penal measures.

Some support for Warren Young's findings comes from the as yet incomplete research of Tonia Tzannetakis, a graduate of London University (LSE), who is presently studying the way in which several different probation areas are interpreting and operating the community service order. It would seem from this research that there is room for quite different interpretations of the purposes of the CSO and the way in which it should be operated. Some probation areas see it as primarily rehabilitative in function, like a probation order, giving the supervising officer the opportunity to work closely with the offender with a view to influencing his future behaviour and solving his problems. Others see the CSO as providing reparation to the community and serving useful function in respect of building up community relations. Others yet again regard it rather as serving a bureaucratic purpose, and providing the courts with an alternative to prison which is attractive and convenient.

The latest figures for the use of the CSO in England and Wales show that the number starting supervision rose from 15,700 in 1979 to 37,200 in 1985 (2,000 offenders were aged 16). Over 90% of the orders were for indictable (i.e., the more serious) offences. The CSO now accounts for 7.5% of all disposals for indictable offences (Home Office, *Criminal Justice: A Working Paper,* Revised Edition 1986). The Home Secretary in September 1986 in an address to chief officers of probation stated his conviction that "the basic concept of community service as an alternative to custody for relatively seriously offenders is crucial and must stand." So we

can conclude that the community service order in England and Wales is "here to stay," and has already established a firm if uncertain place in the armoury of penal measures.

Other Types of Non-Custodial Measure

Space does not permit a full discussion of three other types of important non-custodial measures available to sentencing courts or the prison administration but a few comments may be made about each. These are:

1. The Suspended Sentence and the Partly Suspended Sentence;
2. Monetary Penalties and Measures;
3. Parole Supervision.

(1) The Suspended Sentence

Introduced in 1967 into English law, the suspended sentence is available where the sentence is one of imprisonment for not more than two years. It is not available, however, in the case of a young adult offender under the age of 21. The period of suspension can be up to two years (originally it was up to three years but that was thought to be too long and the law was changed in 1972). Something like 12–15% of offenders receive a suspended sentence. There are different views about whether this measure has been a success. Some scholars and practitioners believe it has added to the prison population instead of reducing it, but Home Office research suggests otherwise. It seems likely that a reduction of 850–1,900 has been achieved in the numbers in prison, and three out of four such sentences are not breached during the period of their operation.

The partly-suspended sentence is available for sentences up to two years provided it is a sentence of at least three months. The court can order that part of the sentence should be served immediately (not less than 28 days nor more than 3/4) and the rest should be suspended. There are some technical difficulties here in connection with remission and parole.[4]

(2) Monetary Penalties and Measures

The most frequently used monetary measure is of course the fine. This is used in England and Wales not only in the case of the majority of summary offences, but increasingly in indictable offences tried both in the magistrates' courts and the Crown Court. There are certain problems about collecting the monies due from offenders, and the committal to prison of fine defaulters continues to cause concern, since they represent a very considerable work load for the prison staff. Although they constitute only a small portion of the average daily prison population (just 2.2%), they number some 22,000 offenders annually received into prison, most of them committed to prison for very short periods. No alternative to prison has yet been found for the enforcement of payment of fines.

Compensation orders have long been available in English courts but were not widely used until now. The law has recently been re-stated and strengthened so as to encourage courts to make compensation orders more frequently. They may now be made independently from any other penalty, i.e., they need not be made as an additional order supplementary to the main decision of the court, but may stand alone as the only penalty for the offence in question. If the proposals now before Parliament become law, as contained in the Criminal Justice Bill 1986, then courts will be required by law to consider making a compensation order in every case, and in the case of the magistrates' court, to give their reasons if no order is made.

Certain additional powers exist to deprive the offender of property used for criminal purposes and to confiscate assets of offenders convicted of trafficking in drugs. Again, an extension of this last power is currently being proposed, so as to make it possible to confiscate the assets of certain other offenders who are convicted of highly profitable crimes – crimes where the profits are in excess of £10,000.

(3) Parole Supervision

Though not an alternative to imprisonment, the power to release a prisoner on parole may be mentioned as one way of reducing the pressure on prisons, and in England and Wales, where it has been available since 1 April 1968, it has proved most

successful. At any one time it is estimated that over 3,000 prisoners are out on parole. Parole is available after six months of the sentence has been served or one-third – whichever is the longer. Two out of three prisoners are now released on parole. The number who fail by committing fresh offences during the period of the parole licence is small – in 1985 less than 6% of prisoners released on parole in England and Wales had their licences revoked, and not all of these revocations by any means were because they committed fresh offences, many would be because they were "out of touch" with their supervising officer. The probation service provides the supervision of those released on a parole licence. The selection of prisoners for parole is vested in independent local review committees in each prison, and a national Parole Board consisting of over fifty persons drawn from the judiciary and the probation service, psychiatry and criminology, the lay magistrates and several lay persons with suitable experience.

(4) The Use of Volunteers and the Role of Voluntary Agencies

Also one should mention for the sake of completeness the use of volunteers and the role of voluntary agencies in supervising and assisting offenders in the community. As the Home Office Working Paper of October 1986 remarks, "the probation service has a valued partnership with the voluntary sector, where several agencies complement its work" (p. 27). It is also true that we use the help of many thousands of individual volunteers to assist the Probation Service in carrying out their responsibilities. These are called either "voluntary associates" or "probation ancillary workers". I have mentioned that some of the new projects for alternatives to custody such as community service and "tracking" use supervisors who are paid for their services. It is also the case that many minor tasks are carried out by helpers who may be described as ancillaries. There are about 1,000 ancillaries. Many ancillaries are members of court teams who sit in the court to be available where help is needed after sentence, acting in liaison with the probation officer. They are also used in day centres and other projects such as we have described. Voluntary associates are rather different in that they are subject to more in the way of selection and training, and when duly accepted they may carry out quite substantial roles in probation supervision. Some years ago there was quite a vogue for voluntary associates but as the number of probation officers has now been substantially increased, the use of voluntary associates has declined.

The voluntary agencies include not only countless local associations but several nationally organised agencies such as those described in the Working Paper:

NACRO (The National Association for the Care and Resettlement of Offenders)

The Apex Trust (Mainly concerned with helping ex-offenders to obtain employment)

The Stonham Housing Association (Providing homes for the single homeless offenders)

Voluntary agencies run hostels and other accommodation providing currently about 4,500 places for ex-offenders. The future of this part of the voluntary work is currently under review.

Perhaps one should also mention here a fairly recent development of a large number of victims' support schemes, which are now partly supported by Home Office funds through the National Association of Victims' Support Schemes. Experiments are under way in several areas with the probation service in providing speedy support, advice and assistance to victims of crime. In this way the Government is encouraging the development of victims' support schemes, as the White Paper of March 1986 pointed out (para 25, p. 12).

Conclusions & Guidelines for Future Developments

(1) Perspectives on Alternatives to Custody

The point has been reached where we can begin to draw the threads together concerning alternatives to custody, and reach some tentative conclusions:

1) The provision of alternatives to cus-

tody does not guarantee that they will be used as such. The history of the use of the community service order in England and Wales, of the suspended sentence, police cautions and intermediate treatment[5] all show that such measures are used for some persons for whom a custodial disposition would not be likely to be chosen in any event. Thus only a small contribution is made to the reduction of those in custody for whatever reason.

2) Failures during the course of running of these alternatives often lead to a custodial sentence. Such sentences may be imposed in addition to the sentence for the fresh offence, to run consecutively, as in the case of most suspended sentence failures. One is possibly perceiving an offender as a failure at an earlier point than would otherwise be the case. There is the danger of widening the net of persons drawn into the reach of the criminal justice system. In England and Wales more persons are coming into custody than ever before. At an earlier age they are seen as multiple failures, having offended again after a warning and a chance has been given to them.

3) The place of the alternative in the ladder of penal measures is not clear. Often instead of being placed next to custodial sentence, it is employed at an earlier stage. This is true for community service orders and intermediate treatment. There is in consequence much uncertainty about the role and purpose of those measures.

4) Perhaps the time has come in societies such as those where a large number of alternatives to custody are available to cease to search for new alternatives and instead to address the question of custody itself. For whom is it appropriate, we should ask, and at what stage? Are the scarce resources of the custodial system being used to good effect? Are too many persons remanded in custody to await trial? How do we set about reducing the length of custodial sentences while at the same time ensuring that society is adequately protected from dangerous offenders, and that public confidence in the criminal justice system is maintained, and if no strengthened, certainly not weakened.

As John Pointing has said, "alternatives to prison cannot hope to compete (with prison) on the emotional/moral front; they tend not to be viewed as equivalent to prison, being seen instead as 'soft options'" (Pointing (1986) p. 2).

5) Two kinds of alternatives can be distinguished:

1. Those which do not envisage prison as a sanction for breach, such as the bind over, conditional discharge of deferred sentence;
2. Those which do rely on the sanction of imprisonment to add force to their impact, such as the fine, the suspended sentence and the community service order.

Perhaps the time has come to review the role of prison as the ultimate sanction for breach of these alternatives. The search for alternative means of fine enforcement other than prison for fine defaulters may show the way in which this might be done.

6) There is much to be gained by judicious combination of orders in an imaginative way so as to form a package of measures to offer the trial court. Not enough has been done to exploit all the potential which lies in this direction, and there are certain statutory and traditional barriers to some combinations e.g., combining some measures with probation or suspended sentence.

Some years ago NACRO was pioneering experimentation with packages for the courts to be offered by the probation service, where this was thought more likely to appeal than a simple single disposition: House of Commons Expenditure Committee, Fifteenth Report (1978).

7) The public might well be prepared to support such measures. Pointing (1986) refers to there being a more liberal climate of opinion than in currently supposed (p. 5), relying on the evidence produced by the British Crime Survey. "This evidence suggests that there is substantially less support for punitive and custodial sentences than has been assumed hitherto by many politicians, judges and civil servants" (ibid).

8) Moreover the case for diverting offenders from prison, as Andrew Willis has pointed out, rests on the over-use of such

facilities to the point where a significant proportion of inmates, being petty persistent offenders, have become entangled in a "revolving door" relationship to prison (Willis in Pointing 1986 p. 18).

9) The diversity of needs between different groups of offenders must be recognised and "tailor-made" programmes need to be devised to address those needs. We have seen some interesting examples of programmes concerned with the needs of motoring offenders, problem drinkers, and offenders requiring close support and supervision. As Pointing says: "it cannot be stressed too much that the further development of non-custodial programmes has to recognise and act in accordance with this diversity" (Pointing (1986) p. 10).

10) The question whether some of these alternatives represent examples of extending the "control" function of the supervisors, as opposed to the "helping" function, needs to be addressed. This has already given rise to much heart-searching and serious criticism within the probation service. Some probation officers and social workers object to what they see as the erosion of their "helping" role and its replacement by a "control" function. The dilemma identified some years ago by Bottoms and McWilliams (1979) has still not been resolved. It seems there may be ways in which one can view the question in terms of offering practical help which avoid having to answer such deep and difficult questions (Willis in Pointing 1986 p. 15 and p. 162).

(2) Philosophical Doubts

Ever since the paper by Bottoms and McWilliams (1979) raised doubts about the propriety of the "control" function of the probation officer as distinct from the "helping" function, there have been those in the probation service and outside who have felt uneasy about the provision by the probation service of so many new attempts to control the offender's behaviour in the community. Criticism of the Medway Project centred on this feature of the programme, and there are many who argue that the provision of so many alternatives simply adds to the number of chances offenders have of failure, so that they appear before the courts as multiple failures for whom custody is the only answer. The risk of expanding the constituency of the criminal justice system presents itself, through bringing in to its reach many who might otherwise be channeled in some other direction or whose problems might otherwise have been dealt with differently.

The danger of widening the net has been recognised in America by, among others, A.T. Scull in his book on *Decarceration* (1977). The vogue for diversion from the criminal justice system is described in terms of "flights of fancy" dictated not by any knowledge concerning the effectiveness of community-based treatment programmes but by the insistent pressures presented by the sheer growth in the size of the prison population. "A fog of confusion and imprecision" had descended on the whole operation: (Scull (1977) p. 50).

Two other American scholars in a joint study in 1980, Hussey and Duffee, argue that

> "When the magic aura that frequently surrounds recent innovations finally evaporates, much of the optimism now present in discussions on community corrections will probably disappear. When this happens, community correctional programmes will probably be incorporated as standard options within the probation-prison continuum that will be utilised for some offenders in specified circumstances".

They also say that it is doubtful whether community options will replace prisons: "it is probably more accurate to suggest that the question of 'replacement' of one set of strategies by another makes little sense in the first place" (p. 274). They continue:

> "Whatever the various correctional strategies and programmes are called, it is likely that some will include very regimented, strict, and sparse regimes and some will employ much more flexible and individualised organizations of control"

(3) Considerations Relevant to the Development of Minimum Rules

1) The measures which are already being employed under the heading of non-custodial methods of treatment of offenders vary widely. In Europe and North America there is already considerable activity in this field and great variety. In Asia and certain other parts of the world there may be less variety, though it is hoped that one result of the work of UNAFEI might be to inspire new developments (See Appendix I).

2) Already it seems there exist two main streams of provision of non-custodial treatment. On the one hand one has those measures which are premised upon the consent and free and willing co-operation of the offender. Probation and all its various applications through the imposition of conditions, whether they be of attendance, residence, participation in a programme or project; community service orders and parole, all these "treatments" require willingness on the part of the subject to be so dealt with. On the other hand, there are those types of "treatment" which involve police supervision of released offenders or community residential arrangements for prisoners, such as those existing in Sri Lanka, the Philippines and Fiji, which involve dealing with the offender, whether he is an ex-prisoner or still has the status of prisoner, in some way which puts "tabs" on him and shows he is not free. One might argue that the status of the person is thereby differentiated from free citizens. One might go further and say his human dignity is to some degree violated and he is treated as a second-class citizen. In effect, he is a prisoner allowed to circulate freely in the community but under strict conditions of surveillance and supervision.

3) Now while one might accept that some prisoners may be released from prison to attend education courses on day release, going back to the prison to sleep, and some prisoners may be permitted to work outside the prisons as part of the process of release, more difficulty arises in accepting strict controls and surveillance on a person who is not yet a prisoner and who may never have been in prison. The danger of producing in this way a kind of second-class citizen is very great, and it bears an uncanny resemblance to measures which have been adopted sometimes and in some places to deal with prostitutes, vagrants and gypsies. If the U.N. is going to be obliged to accept the existence, and even possibly the extension of such measures, then it should insist on saying something about the need, so far as possible, to respect and preserve human dignity, the right of privacy – which means your status should not be revealed to all and sundry by some public sign or mark, and one should do all that is possible to limit the intrusion into an individual's autonomy. After all, the decision to release such an offender into the community presupposes a measure of trust, and places on him or her the responsibility for his behaviour. Nothing should be done which detracts from that responsibility or which does not have the effect of building on that trust in a positive manner.

4) Beyond this one would like to see some recognition of the following truths:

A. Measures designed to serve as alternatives to prison do not always appear to work in this way, but are sometimes applied to some offenders who do not stand in danger of immediate imprisonment.

B. *Probation Social Inquiry Reports.* The social investigation of an offender for the purpose of a pre-trial report requires his agreement, and should not be ordered where the offender intends to plead "not guilty" since he is denying responsibility for the offence. When a Social Inquiry Report has been prepared, copies of it should be given to the offender or his legal representative. When he disagrees with some factual details in the report the offender should have the opportunity to challenge the parts of the report concerned, and if necessary, to call evidence in support of his claims. There is no need for the contents of the social inquiry report (or any medical or psychiatric report) to be made public by reading it out in open court.

C. Care should be taken to avoid simply

introducing one non-custodial measure to take the place of another already in existence.

D. There is much to be said for a variety of non-custodial measures being developed.

E. Their place in the sentencing system needs to be carefully considered, and wherever possible defined clearly in advance.

F. The combination of various non-custodial measures may provide a better solution than the adoption of only one, and this practice should be encouraged.

G. Failure to respond to a non-custodial measure should not necessarily be regarded as requiring reporting this as a breach or the imposition of an immediate prison sentence. A degree of tolerance of poor performance should be accepted.

H. Evaluation of the effectiveness of a non-custodial measure should always be carried out, and provision should be made for this at the time of its introduction.

I. Sometimes it is appropriate to see the introduction of a non-custodial measure as frankly experimental, the results to be assessed in due course with a view to making decisions about its continuance or extension.

Appendix I

A number of useful and informative reports are available about these developments. These include:

1. U.N. Economic and Social Council, Committee on Crime Prevention and Control, *Alternatives to imprisonment and measures for the social re-settlement of prisoners,* Report of the Secretary-General (January 1984).
2. International Review of Criminal Policy No. 36 (1980) pp. 3– "Alternatives to imprisonment". Prepared by the U.N. Secretariat.
3. UNAFEI Resource Material Series No. 28, December 1985. Reports produced during the 69th International Training Course on Community-Based Corrections.
4. UNAFEI Staff Report, *Alternatives to Imprisonment in Asia* (undated).
5. Masao Kakizawa, 'Overcrowding in Penal Institutions and Alternative Measures to Imprisonment in Asia and the Pacific Region', Journal of Asian Crime Prevention No. 6, (June 1986).
6. Council of Europe, European Committee on Crime Problems, *Alternative Penal Measures to Imprisonment,* Strasbourg, (1976).
7. Swiss National Committee for Mental Health, Working Group of Criminology, Director W.T. Haesler, *Alternatives to Short-Term Imprisonment* (1979).
8. Karl-Heinz Kunert, Alternatives to Imprisonment, UNAFEI paper, 74th Course (unpublished).

Appendix II

1. Accounts of one such centre by Morris Vainstone appear in Pointing (1986).
2. An account by Peter Murray appears in Pointing (1986).
3. The following are some additional examples of probation-based alternatives described in Pointing (1986):
   i) The Supported Work Scheme (Bulldog)
   ii) Alcoholics Recovery Project (Shopfronts)
   iii) The Driver Retraining Scheme (Inner London Probation Service)
4. See David Thomas [1979] Crim L.R. 256; [1984] Crim L.R. 52; [1985] Crim L.R. 799.
5. The subject of police cautions and the use of intermediate treatment in connection with juvenile offenders was examined in the UNAFEI lectures but has had to be omitted here for reasons of space.

References

1. Bottoms A.E. & McWilliams W., 'A Non-Treatment Paradigm for Probation Practice', British Journal of Social Work, Vol. 9, pp. 159– (1979)
2. Home Office Research Study No. 39, Community Service Assessed in 1976, by K. Pease, S. Billingham and I. Earnshaw (1977)
3. Home Office Press Notice, June 1977
4. Home Office Research Study No. 76,

The British Crime Survey: first report. By Mike Hough and Pat Mayhew (1983)
5. Home Office, *Criminal Justice: A Working Paper.* Revised Edition (1986)
6. House of Commons, Expenditure Committee, Fifteenth Report, *The Reduction of Pressure on Prisons.* H.C. 622 (1978)
7. Hussey F.A. and Duffee D.E. *Probation, Parole and Community Field Services* (1980)
8. Pointing, John (ed.) *Alternatives to Custody* (1986)
9. Scull, Andrew T. *Decarceration* (1977)
10. Walker, Nigel, *Sentencing: Theory, Law and Practice* (1985)
11. Wootton Sub-Committee: Home Office, Report of the Advisory Council on the Penal System, *Non-Custodial and Semi-Custodial Penalties* (1970)
12. Young, Warren, *Community Service Orders* (1979)

Non-Institutional Treatment of Offenders in Thailand

*by Atthaniti Disatha-Amnarj**

Introduction

Crimes and punishment have been called social phenomena in every society from the ancient time up to now. In the past, the purpose of punishment was basically for retaliation against the offenders by inflicting harsh punishment upon them in order to show that crime did not pay. For centuries such a theory of retribution stood firmly but later on other theories, namely, prevention, reform and deterrence have been developed and implemented along with retribution in many countries. However, nowadays the objective of punishment begins to incline toward humanity with more stress on the rehabilitation of offenders and the safeguard of society from crimes rather than mere concentration on retribution. In recent decades, correctional activity concerning the treatment of offenders has been developed extensively. Various types of non-institutional treatment measures for offenders have been in use along with institutional treatment. It is found that non-institutional treatment measures are not only able to solve the problem of over-crowded prisons but are also considered to be very humanitarian and very economically efficient when compared with other treatment measures.

In Thailand, non-institutional treatment measures are utilized along with the institutional treatment measures. There are three organizations that are responsible for non-institutional treatment of convicted offenders namely:

1. The Juvenile Court
2. The Central Probation Office[2], Office of Judicial Affairs, Ministry of Justice.
3. The Department of Corrections, Ministry of Interior. Each organization has its own personnel to deal with the treatment of offenders.

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The Juvenile Court

1. Treatment of Juvenile Offenders

The measures of treatment of juvenile offenders through Juvenile Courts were started in Thailand in 1952 by virtue of the Act Instituting the Juvenile Courts of 1951 and the Juvenile Court Procedure Act of 1951.

A Juvenile Court is comprised of two parts (Chart 1):

1.1 The Court itself

1.2 The Administrative Office

The Administrative Office is divided into two main parts:

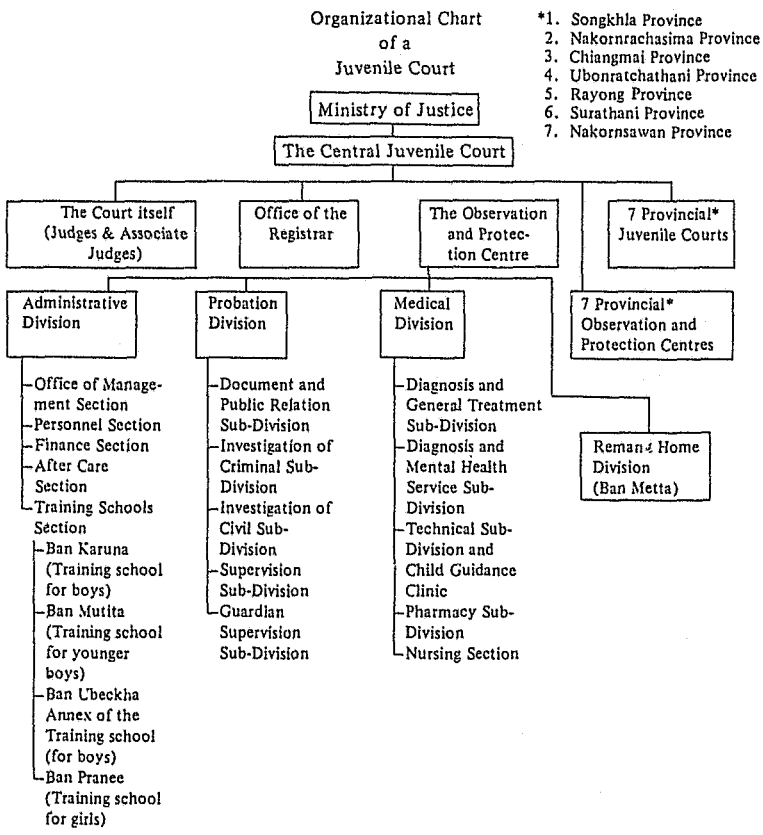
1.2.1 Office of the Registrar,

1.2.2 The Observation and Protection Centre (or Observation Centre).

This Observation Centre is responsible for the custody before trial and the treatment of juvenile offenders. It is staffed by a director and other professional officers, such as probation officers, legal officers, social workers, teachers, physicians and psychiatrists. They conduct studies or search for more facts relating to juvenile offenders and provide services for the social welfare and the treatment of juvenile offenders.

Usually, when a juvenile offender is sent to the Observation Centre, the Director of the Observation Centre will assign a probation officer to make a study and search for more information regarding the age, biography, conduct, intelligence, education, health, mentality, character, occupation and social status of the juvenile as well as of his parents, guardian and persons with

Chart 1.



whom he resides including their environment for the purpose of finding the motive of the delinquent act. This report by the probation officer will be sent to the inquiry official or the public prosecutor in charge of the case and also to the court if the charge is referred to the court. After the trial, the Observation Centre has authority to give treatment to juvenile offenders following the judgement or order of the court. Among various measures, probation and training are mostly ordered by the courts.

2. Probation for Juvenile Offenders

Probation was first used in Thailand in the case of a juvenile alleged to have committed an offence under the jurisdiction of a Juvenile Court since 1952.

Probation treatment by the Observation Centre starts as soon as the court orders a juvenile on probation. The Director of the Observation Centre will assign the case to a probation officer.

Firstly, the probation officer will explain the order and the condition of release to the juvenile offender. The execution of probation must follow the condition laid down by the court. A probation officer with specific knowledge of the cause of the delinquency will draw up a program of supervisory treatment that is suitable for rehabilitating the individual juvenile offender. It is necessary for a juvenile offender to report in person to his probation officer on a fixed date. An attempt must be made to check from time to time whether such program of treatment has been followed. As a counsellor and guide, the probation officer is expected to help the juvenile on probation to improve his behaviour. For this purpose, he may find ways by which the probationer may regain care and affection from his family. He will introduce the probationer to a new good friend, encourage him to have new interests

Table 1: The Major Offences Which Have Been Committed by Children and Young Persons. The Central Observation and Protection Centre, Central Juvenile Court. (Years 1974–1986)

Years / Major offences	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
Theft	1,547	1,225	1,163	1,009	1,290	1,358	1,264	934	967	870	864	1,039	1,014
Bodily harm	255	271	241	245	302	267	188	140	170	132	97	88	108
Gambling	–	158	–	129	–	–	62	55	50	51	28	47	30
Snatching	–	–	–	–	167	–	123	83	85	89	96	86	101
Indecent act	61	44	70	64	52	64	47	52	50	64	58	60	86
Arms and ammunition	467	302	394	245	–	164	160	140	110	150	61	65	73
Criminal association	973	757	662	917	969	934	1,009	221	226	479	460	368	187
Gang robbery	–	–	–	–	–	–	68	49	29	28	33	34	37
Drug addiction	885	755	800	752	557	626	416	337	319	235	280	246	222
Others	836	483	852	468	605	597	273	487	283	382	217	281	250
Total	5,024	3,995	4,182	3,829	3,942	4,010	3,610	2,498	2,329	2,480	2,194	2,314	2,108

Table 2: Punishment and Measures for Delinquent Children Used by the Court. The Central Observation and Protection Center, Central Juvenile Court (Years 1974 – 1986)

Measures used by the court	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
Number of delinquent children referred to the above Observation Centre before trial.	5,024	3,995	4,182	3,829	3,942	4,010	3,610	2,498	2,329	2,480	2,194	2,314	2,018
Number of delinquent children who were adjudged guilty. (referring to delinquent children who were adjudged 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	1,094	1,579	1,611
1. Admonition	41	69	48	64	121	144	88	45	62	38	19	26	17
2. Caution to parent or guardian	428	368	324	354	383	249	319	437	383	317	338	93	411
3. (a) Suspension of judgement or punishment with probation	693	842	778	656	692	692	803	374	183	265	197	494	210
(b) Suspension of judgment or punishment without probation	247	246	215	165	147	282	156	31	65	45	16	74	42
4. Substitute fine by giving corporal punishment	–	–	–	–	–	–	–	–	–	–	–	–	–
5. Fine	23	24	31	45	64	11	24	22	14	15	9	31	27
6. Training School Order	772	649	628	728	827	836	909	555	471	367	313	565	736
7. Annex of Training School	–	–	–	–	–	–	–	–	82	144	199	287	164
8. Imprisonment	4	66	11	16	15	25	3	2	3	1	3	9	4

Table 3: The Results of Probation Orders. The Central Observation and Protection Centre, Central Juvenile Court (Years 1974 – 1986)

Years / Results of probation orders	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
No. 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	2,441	2,518	2,525
1. Discharge from probation	448	482	918	936	881	784	978	760	518	559	448	523	499
2. Revocation of probation	284	215	194	190	229	141	184	174	126	106	79	139	155
3. Dismissal (e.g. death, unknown, etc.)	7	5	4	7	4	8	6	8	3	6	2	3	20

in his study, his work, and his fruitful leisure time, and imbue him with a desire for doing good.

Besides the role mentioned above, a probation officer has another role, that is supervising the probationer on his behaviour with the view of improving it, and making an evaluation on each individual adjustment during the probation period. Should it appear that the probationer has been completely rehabilitated, the Director of the Observation Centre will then make a report to the court to the effect that probation is no longer necessary in the case. The probationer will be discharged of the probation order. On the other hand, if a probationer violated the condition of probation, the Director of the Observation Centre may recommend the court to revoke or terminate probation and adopt a more severe measure suitable to changing circumstances.

It should be noted that probation methods will be more effective if the home conditions of the probationer are favourable and the probation officer has adequate time to supervise the probationer which means that each probation officer must not have too many cases under his responsibility. In Thailand, a probation officer has a heavy caseload (approx. one officer to 200 probationers). The increase in number of probation officers is hardly possible. Therefore, the Ministry of Justice has resort to the use of volunteer probation officers to work hand in hand with the probation officers in juvenile courts as well as in ordinary courts. But it is still in the initial stage, and only a few hundred volunteer probation officers are trained.

3. After-Care Services for Juvenile Offenders

It is the duty of the Observation Centre to do such things as are necessary to ascertain the *modus vivendi* of juveniles released from the Observation Centre with a view to assist them, in so far as may be possible, in the matters of housing, occupation and education.

An after-care program is applied generally in a case where the court releases a juvenile from the training school for a minimum period upon condition until the end of the maximum period. In such a case, a social worker will act in the same manner as a probation officer i.e. taking care of a juvenile and giving advice on how he should behave himself until the condition is lifted. An after-care program usually adopted is to send a juvenile to his own home town, if he came from a province. Besides, the Observation Centre will provide temporary accommodation for a juvenile who is first released and has difficulty in finding a place to live. Usually a juvenile is permitted to remain at a training school of the open type. Moreover, there is a job-finding program for juveniles with good conduct who have to earn their own living. A juvenile may be given employment in the barber shop or beauty salon or welding factory specially set up for the after-care program.

The Juvenile Welfare Committee[3] is appointed by the Minister of Justice and is composed of people in the locality where the Juvenile Court is situated, and has a great role in the job-finding program. This is because most of its members are well-known, respectable and benevolent citizens in that locality; they are businessmen and have their own companies, shops or factories which are able to employ some juveniles released from the Observation Centre. In case there is no vacancy in their own companies, they will try to find some vacancies in some companies of their friends or relatives. A jobless ex-offender is prone to commit further crime; an effective way to prevent further crimes from ex-offenders is to find stable jobs for them.

The Central Probation Office, Office of Judicial Affairs

1. History of Thai Adult Probation

Probation has long been widely recognized as an alternative to terms of imprisonment and as an effective means of reforming and rehabilitating offenders and reducing crime rates. Being the most useful reintegrative strategy, probation permits offenders to remain in society while receiving counselling and assistance. At the same

time, probation attempts to ensure community protection through the monitoring of offenders' behaviour.

Even though probation has initially been introduced into Thailand since 1952 for juvenile delinquents under the Administration of Observation and Protection Centre for Juveniles, it had never been seriously taken into consideration until it was again mentioned in the Penal Code of 1956, Article 56 that empowers the courts to exercise their discretion in applying probation as a part of the suspended sentence.

More than 20 years since such provisions came into force the courts never made use of probation simply because of a lack of budget and qualified personnel to be appointed as probation officers. Meanwhile both government and private organizations held several seminars on probation and related topics. The result of the seminars was to bring about recommendations which urged the courts to use probation and urged the government to provide a budget for this service. Finally, as the result of the same type of seminar being held at Thammasat University in 1976, the government agreed to provide probation services for adult offenders and entrusted the Ministry of Justice with the task to set up and organize a Central Probation Office as a division of the Office of the Judicial Affairs. The task was accomplished in 1978 and one year later, the Probation Procedure Act in accordance with the Penal Code of 1979 was passed by the National Assembly. The first group of probation officers, 36 in number together with its administrator, were appointed on April 1, 1979 and the Central Probation Office began its work on August 7, 1979. Since then the Bangkok Metropolis area has been provided with adult probation services.

Resulting from the satisfactory outcome of probation operations in the Central Probation Office, the government agreed to expand the services into the regions.

In 1983 three probation offices attached to the Provincial Court were set up and started their work in three provinces, namely, Samutprakarn, Chonburi and Chiangmai.

In 1984 six probation offices were set up in six provinces, namely, Songkhla, Udornthani, Ubonratchathani, Chiangrai, Chanthaburi and Ayutthaya.

In 1986 five probation offices were set up in five provinces, namely, Nakornsawan, Nakornpathom, Nakornsithammarat, Phitsanulok and Phuket.

In the present year (1988) five probation offices are expected to be set up in five provinces, namely, Nakornratchasima, Khonkean, Suphanburi, Kanchanaburi and Suratthani.

According to the Government's policy, probation systems will be extended to all provinces throughout the country in the near future.

2. Organization of the Central Probation Office

The Central Probation Office is one of the five divisions in the Office of Judicial Affairs, Ministry of Justice (Chart 2).

Presently, the Central Probation Office is composed of three sections and 14 Provincial Probation Offices, namely:

2.1 Presentence Investigation Section

This section is responsible for

2.1.1 Searching and investigating facts and information concerning defendants according to Section 11 of the Probation Procedure Act

2.1.2 Compiling and submitting presentence investigation reports with recommendations to the court in determining the appropriate sentence and whether to grant probation or not

2.2 Case Supervision Section

This section is responsible for

2.2.1 Supervising and controlling the behaviour of the probationers

2.2.2 Counseling, assisting and admonishing the probationers to comply with the conditions of probation

2.2.3 Reporting to the court about the outcome of probation cases, the violation and the modification of probation conditions, etc.

2.3 Statistics, Evaluation and Planning Section

This section is responsible for

2.3.1 Collecting statistics data concerning defendants and probationers from the

Chart 2: Organizational Chart of the Central Probation Office

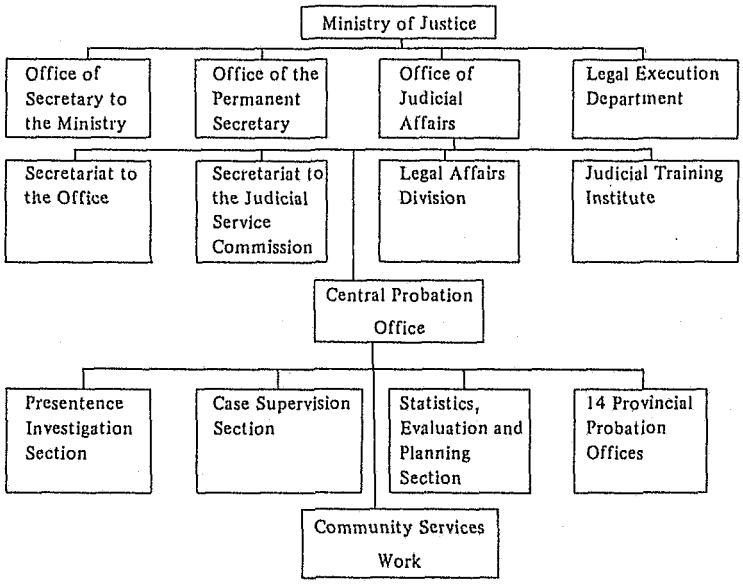
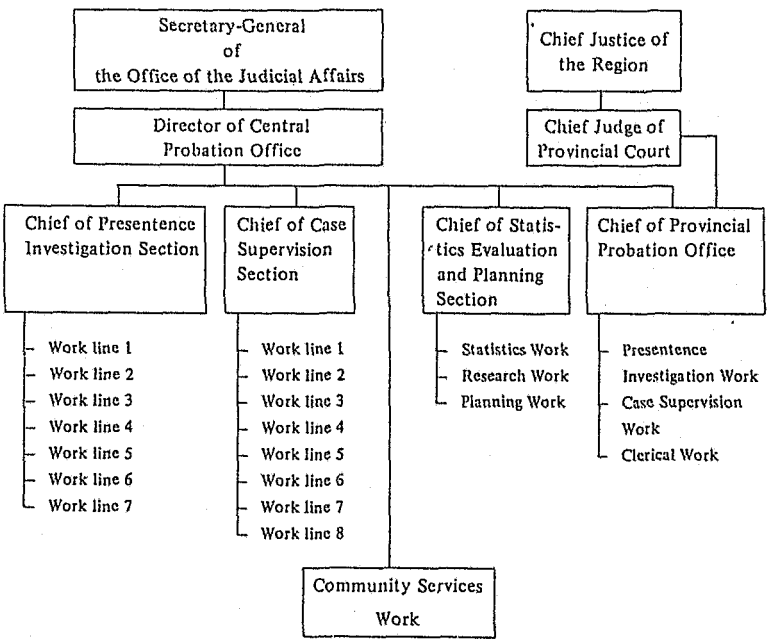


Chart 3: Administrative Chart of the Central Probation Office



beginning till the end of probation process

2.3.2 Studying and researching both in basic and evaluative manner and submitting the research works monthly or annually

2.3.3 Planning of projects and schemes in supporting probation work to proceed effectively under the policies and objectives of government

2.4 Provincial Probation Offices

According to the Court and Ministry of Justice Development Plan, the Central Probation Office is also responsible for the expansion of probation work into provincial areas. It has already opened 14 provincial probation offices as aforementioned, and it is expected that provincial probation offices will be opened in every province throughout the country as soon as possible.

Besides, there is one community service work under the supervisory command of the Director of the Central Probation Office. This community service work is responsible for facilitating social services and aids to defendants and probationers such as in drug treatment, employment, etc. It is composed of three sub-functions:

(1) To procure community resources for aiding defendants and probationers

(2) To carry out the work of Foundation for the rehabilitation of and after-care services for the offenders and the work of the welfare of the probation officers

(3) To carry out the work of the volunteer probation officer

3. Administration and Manpower of the Central Probation Office

The administration of adult probation in Thailand is under the responsibility of the Central Probation Office which is a division of the Office of the Judicial Affairs, Ministry of Justice (Chart 3).

The Secretary-General of the Office of Judicial Affairs is responsible for all its general administration and its works.

The Central Probation Office, being headed by a Director, is composed of three sections and 14 provincial probation offices. Each section and office has a chief who is responsible for its works, especially the Presentence Investigation Section which is divided into seven work lines and the Case Supervision Section which is divided into eight work lines. Each work line has a chief who takes charge of its works together with a team of 6 – 7 probation officers. For the Statistics Evaluation and Planning Section, it is divided into Statistics Work Research and Planning Work. And the Chief Justice of each region and Chief Judge of each provincial court are respectively in line control over each provincial probation office within their own jurisdiction. The chief of the provincial probation office takes charge of the administration of its work which is divided into presentence investigation work, case supervision work and clerical work.

There are, at present (1988), 196 probation officers, two statisticians, two researchers and 56 clerical personnel in the Central Probation Office.

4. Probation Process

The most important features of the probation process consist of the Pre-Sentence Investigation and the Supervision.

4.1 Pre-Sentence Investigation

4.1.1 Concepts of pre-sentence investigation

Pre-Sentence Investigation begins when the courts order probation officers to investigate the defendants (usually who have been found guilty of the criminal acts) and to submit pre-sentence investigation reports to the courts. The probation officer is responsible for finding and collecting facts and information concerning the defendant. Those informations will be analyzed and compiled in reports together with comments and recommendations.

The primary objective of the pre-sentence investigation report is to focus on the character and personality of the defendant, to investigate into his problems and needs, to learn about his relationship with people, to discover those salient factors that underline his specific offence and his conduct in general and to suggest alternatives in the rehabilitation process. It is not the purpose of the report to demonstrate the guilt or the innocence of defendant.

In the pre-sentence investigation reports,

probation officers must give their opinions concerning the offenders under investigation, for instance;

- What kind of persons they really are;
- Whether or not they want probation services;
- Whether or not they will be dangerous to society if they are placed under probation and
- What type of treatment will be suitable to them, considering the safety of society and the benefit of the offenders.

The probation officers shall also recommend the courts about appropriate treatment measures to be imposed on the offenders.

With the aid of a pre-sentence investigation report the court may determine the appropriate sentence to commit a defendant to an institution or to grant probation. However the courts are not bound to follow probation officers' recommendations.

4.1.2 Stage of work in the pre-sentence investigation function

(1) Collecting of documents for probation files

After receiving the court's order to conduct pre-sentence investigation, the probation officer will collect the essential documents from the court files such as indictment, plea, plea of mitigation, trial memorandum and other necessary documents. Then the probation officer will preliminarily examine and study those documents before interviewing the defendant and conducting further investigation.

(2) Interview of the defendant

In case the defendant is released on bail, the court clerk will inform the defendant to meet the probation officer for an interview. If the defendant does not come, the probation officer has the power to issue a summons. But in case the defendant is remanded, the probation officer will file an application to the court for sending the defendant to be interviewed in the temporary custody room in the court's precinct.

The probation officer shall interview the defendant on every detail. If the information obtained from the first interview is not sufficient the probation officer shall conduct another interview.

(3) Examination of the defendant's criminal record

The probation officer has to examine the defendant's criminal record from the public prosecutor's office and from the Criminal Record Divisions of the Police Department.

If the probation officer has known of the defendant's past offence but the criminal record does not appear in the official files, then the probation officer must search for the defendant's criminal record from elsewhere such as a court, prison, police station etc.

The examination of the defendant's criminal record is a very essential part of the pre-sentence investigation because if it appears that the defendant was previously imprisoned and the offence was not a petty offence or was not committed by negligence, such a defendant is not allowed to be placed on probation according to Section 56 of the Penal Code.

(4) Physical and psychological examination

Section 6 (2) of the Probation Procedure Act in accordance with the Penal code of 1979 empowers the probation officer to send the defendant for a physical and psychological examination from a doctor.

In an offence that counters the Narcotic Drug Act or other offences in which the defendant is suspected to be a drug addict, the probation officer will send the defendant's urine to a Medical Institute for drug testing.

(5) Examination of the defendant's residence and environment

The probation officer should examine the defendant's residence and environment. By such examination, the probation officer will know whether the defendant's residence and environment had resulted in the commission of the offence and whether it is suitable for the rehabilitation of the defendant or not.

During the examination of the defendant's residence and environment, the probation officer will also make enquiry from neighbours about the defendant's behaviour including the neighbour's atti-

tude toward the defendant. In case of extreme necessity, the probation officer has the power to enter the defendant's residence or working place at night with permission granted from the court.

(6) Inquiry with other witnesses

The probation officer should try to obtain evidence relating to the defendant's behaviour from other witnesses, such as his parents, spouse, relative children, neighbours, employer, co-workers, the injured person etc. The probation officer may go to see the witness by himself or summon the witness to come for inquiry at his office.

(7) Examination and authentication of documentary evidence and material evidence

The probation officer shall make an examination on the documentary evidence or material evidence possessed by the defendant or witness, including taking notes on their description and other details with certain authentication. The probation officer should inspect into the validity of all documents obtained such as the education or employment certificate, medical certificate, note of compensation etc.

(8) Report writing

When all facts and information concerning the defendant are collected, the probation officer will compile a pre-sentence investigation report and submit it to the court within 15 days from the date of issue of the court's order. If the report cannot be submitted to the court within such period, the probation officer shall file an application to the court for extension of time not exceeding 30 days.

In compiling the report, the probation officer has to analyze every fact and information obtained from the investigation and comments on the image of defendant, the prospects for becoming a law-abiding citizen, the possibility to receive probationary benefits, the supportive factors for the rehabilitation of the defendant.

The following points of consideration are always dealt with in the report:

(8.1) The circumstances of the case

This informative part of the report shows the nature of the offence so committed; whether it is of a serious nature or not and how adversely the society at large is affected. It also reveals the defendant's mentality and his inclination to commit a crime.

(8.2) Past criminal record

This information is very important because it is a requirement that those to be placed on probation must not have already served imprisonment terms before.

(8.3) Family background and marital status

This explains several things in the behaviour of the defendant. A child born in a broken home and raised in a house without parental affectionate warmth may easily be driven to commit a crime. The state of childhood which constitutes the past of the defendant implies that special treatment is required. More often than not, defendants of this category are not very adaptable and are difficult to rehabilitate. On the other hand, a defendant from a comparatively better family background is likely to be given some helping hands from his own family members and is apt to correction.

(8.4) Home and environment

This part of the report usually indicates two important aspects of the defendant's life; firstly, the state of his economy and secondly, the condition in which he lives; whether it is a fine residential area or a gloomy slum area. Of course, these factors count for what he is and what he has done in the past.

(8.5) Education

Levels of education can indicate a lot of things such as the defendant's level of intelligence, his academic disposition, and prospects for jobs. In cases where the defendants are still studying at school or the university, it is found that most of them are corrigible, if placed on probation. The reason may be that school or university environments keep them busy at work and give them some inner discipline which is very useful in their later life. The defendant who fails within the context of academia has a higher chance of the court placing them on probation than others.

(8.6) Occupation

This part of the report shows the re-

cords of the defendant's careers, his devotion to his work and his human relationship with other workers. Sometimes one can detect the cause of the defendant's committing an offence by looking at the yearly earnings. Some defendants were driven to commit an offence just because they did not earn enough to have a decent living. Also past occupations are good indications as to whether the defendant will be able to live an honest life in the community.

(8.7) Disposition and behaviour

This item of information will help the court to see what sort of a person the defendant is. For example, in a drug case, if the defendant is gullible and has the propensity to obey the wishes of others who are similarly inclined to drugs, then the probability is that after being set free, he will follow the bad example of those he associates with and return to drugs again. The probation may not be appropriate treatment.

(8.8) Family responsibility

Finding out whether the defendant has any family responsibility is a very important part of pre-sentence investigation. In the case where the offender has not only the moral obligations to look after his family but also the legal ones to do so, special consideration for probation shall be given. In this way undue hardship on the part of his dependents can be avoided.

(8.9) Mental health

Every act originates normally from the mind. It goes without saying that the defendant's mental condition must always be checked. Very often we discover the cause of his action through mental diagnosis. For example, in 1985 an offender was charged and found guilty for destroying 18 glass windows of a Government office, an act which made a newspaper headline. Upon psychiatric diagnosis, it was found that he had a kind of mental disorder that needed time for curing. There was also a danger that his mental illness might aggravate. After a suspended sentence was given, the probation officer decided to send him to a mental hospital. By now the offender's condition has improved immensely.

(8.10) Past records of drug addiction

It has become a general practice that the defendant's past records of drug addiction is as a matter of course to be checked. For drug addiction, though injurious only to oneself, leads to other crimes usually in connection with theft and other offences against property. On the other hand, if the defendant has a past record of being a drug dealer, naturally he will be regarded as posing genuine danger to the public both as a matter of security and economy. All this will help the court decide whether the defendant, if allowed to go free under probation, is likely or not to cause further harm to the public.

Lastly, the probation officer shall make recommendations on following alternative measures to be used with the defendant:

Institutional treatment is a measure by which the court passes a sentence of imprisonment and sends the defendant to have treatment in a correctional institution.

Non-institutional treatment is a measure by which the court declares suspension of sentence with or without imposing conditions for probation.

The pre-sentence investigation report will be examined by the respective superiors before submission to the court.

In case the court needs more information other than the report submitted, it may issue an order requesting the probation officer to submit additional reports.

(9) Objection to the pre-sentence investigation report

If the defendant makes an objection to the pre-sentence investigation report submitted to the court, the probation officer will have the burden to adduce the evidence to support his report and then the defendant has the right to adduce evidence in his favour.

4.1.3 Outcome

From the beginning of the adult probation services up to the present time, the number of cases required by the courts for pre-sentence reports are increasing year by year (Table 4). And concerning the type of offences, the narcotic drug case ranks highest in the caseload number for the pre-sentence investigation reports ordered by

the courts, that was shown from first operation in 1973 till 1987, among 30,108 cases ordered for a pre-sentence investigation report, 13,619 cases or 45.23% were narcotic drugs cases.

In 1979 – 1986, among 6,913 cases were ordered for a pre-sentence investigation report. The court passed sentence in accordance with suspended punishment and probation recommendations for 2,311 cases or 32.43%, and passed sentence in accordance with imprisonment recommendations for 2,069 cases or 29.93% (Table 5). The effects of recommendations in the pre-sentence investigation reports of the probation officers in relation to the decisions of the courts is evident in that the courts give much significance and trust in the probation work.

4.2 Supervision

4.2.1 Concepts of supervision

The primary purpose of probation is the protection of society. Probation is deemed to be a constructive and humanitarian method of treatment and reformation of the wrongdoer. To release on probation those who are capable of being rehabilitated can serve the best interests of both society and the offender. They will be supervised, guided, assisted, or led toward noncriminality. Probation offers hope and encouragement instead of embitterment and despair and saves the probationers for future useful living.

Supervision begins after the offenders have been placed under probation. In this case some probation conditions[4] are provided by the courts and probation officers are assigned to supervise the offenders under the conditions imposed. The

Table 4: Presentence Investigation Caseload, Central Probation Office in Bangkok Metropolis and Provincial Probation Offices (Years 1979 – 1987)

Years / Type of offences	1979 (Aug.–Dec.)	1980	1981	1982	1983		1984		1985		1986		1987		Total	
	CPO*1	CPO	CPO	CPO	CPO	3PPO*2	CPO	9PPO	CPO	9PPO	CPO	14PPO	CPO	14PPO	Number	Percent
Narcotic drugs	38	80	184	904	1,416	190	1,583	385	1,394	779	1,773	1,303	1,904	1686	13,619	45.23
Gambling	1	–	3	3	4	12	16	11	4	46	21	110	12	83	326	1.08
Property	30	89	132	91	66	182	132	570	301	745	423	1,415	600	1982	6,758	22.45
Weapon law	21	78	68	33	12	45	22	193	50	326	39	329	30	429	1,675	5.56
Assault	7	50	54	60	35	61	85	136	155	217	229	464	326	758	2,637	8.76
Gang fighting	–	1	12	2	3	3	8	4	2	8	7	3	18	2	73	0.24
Negligence	8	26	36	49	52	12	155	35	250	134	347	188	437	311	2,040	6.78
Others	12	33	26	51	52	63	32	308	73	312	119	620	219	1061	2,981	9.90
Total	117	357	515	1,193	1,640	568	2,033	1,642	2,229	2,567	2,958	4,432	3,546	6,312	30,109	100.00
All total	117	357	515	1,193	2,208		3,675		4,796		7,390		9,858			
Monthly average	23	30	43	99	184		306		400		616		822			

*1 C.P.O.: Central Probation Office in Bangkok Metropolis.
*2 P.P.O.: Provincial Probation Offices.

Table 5: Recommendations by Probation Officers and Court Sentences, Central Probation Office in Bangkok Metropolis (Years 1979 – 1986)

Recommendation / Sentence	Suspended sentence/ Suspended punishment	Suspended punishment and probation	Imprisonment		Up to Court's direction	Others	Total	
			Past convicted	No other suitable measure			Number	Percent
Fine	6	21	1	4	9	–	41	0.59
Confinement	–	3	–	–	2	–	5	0.07
Suspended sentence/ Suspended punishment	132	180	11	23	146	3	495	7.16
Imprisonment	13	143	952	1,117	261	5	2,491	36.03
Suspended punishment and probation	24	2,311	23	480	864	28	3,730	53.96
Others	9	29	25	24	47	17	151	2.19
Total	184	2,687	1,012	1,648	1,329	53	6,913	100.00

Notes: In 1979 – 1986 courts made pre-sentence investigation orders in respect of 11,042 persons.
Judgments concerning 6,913 persons were recorded and the rest concerning 4,129 persons were not recorded.

probationers[5] must report themselves periodically to the probation officers. The probation officers must also visit the former at their homes or their places of work at least once a month to see whether or not they behave themselves well and if they have any problems in adjusting themselves either to the home or work environment. The probation officers will make efforts to provide counselling, render material assistance to probationers, in the form of jobs, relief and vocational guidance.

In case of violations of conditions for probation or commission of a new offence, a probation report must be submitted to the court immediately for further consideration. The court may issue a summons or warrant of arrest of the probationer for reprimand, or send him to prison. However, if all goes well and the probationer completes the probation period, a final report is submitted to the court to close the case.

4.2.2 Stages of work in the supervision function

(1) Registration of case

After receiving the supervision cases, the chief of the supervision work will record the case number into his registration book and refer the cases to the probation officers in charge to supervise probationers. The probation officer will fill out the probation form with conditions imposed by the court together with an appointment time for reporting to probation officer.

(2) Collection of preliminary date

In case the supervision results from the pre-sentence investigation report are submitted to the court, the supervising probation officer will attach the report to the supervision case file so that all data and information concerning background and history of probationers contained in the report can be used by the probation officer in finding out the proper and suitable methods for rehabilitating and reintegrating the probationers into society. The effectiveness of supervision is in direct proportion to the extent to which pre-sentence investigations are used and the care with which persons are selected for probation treatment.

If the probationer is still kept in the custody room after being placed on probation, the probation officer will immediately go to see the probationer and issue an order requesting the probationer to appear at the probation office after being released from the confinement. At the same time the probation officer will explain in brief to the probationer about the guideline and how to comply with the conditions of probation.

Apart from the duties as mentioned, the probation officers who are on duty attending at the court must collect copies of the essential documents from the court file such as indictment, judgment and other necessary documents. All data and information compiled from the court file and other places will be analyzed and utilized at the time of interview or in giving guidance to the probationers.

(3) Interviewing the probationer

When the probationer appears at the office for the first time, the probation officer shall furnish to the probationer under his supervision a written statement of the conditions of probation and shall instruct and advise him regarding the same as well as the measures to be taken if the probationer violates the conditions.

In the case where the court grants probation without requiring a pre-sentence investigation report, the supervising probation officer will make an interview in depth in order to obtain all essential information from the probationer and record such data in the supervision case file.

After that the probationer's fingerprints will be made and kept in the office. In offences countering the Narcotic Drug Act, the probationer's urine will be sent to the Medical Institute for drug testing.

(4) Reporting to the probation officer

The probationer must get in touch with the probation officer by reporting periodically to the officer at the time directed. Through interviews and counsellings at the office, the probation officer helps the probationer to develop capacities and resources which will enable him to solve his problems and needs and to live happily in his home as a law-abiding and useful member of the community.

In offences countering the Narcotic

Drugs Act or if the probation officer suspects that the probationer has consumed any kind of narcotic drugs, the probationer's urine must be required and sent for testing. In some cases, the probationers may be physically examined by the doctor.

(5) Surveillance

Principally, the probation officer must keep in contact with the probationer by visiting his home or place of work at least once a month in order to see whether the probationer complies with the conditions imposed by the court and the guidance set by the officer. If the probationer is likely to jeopardize the community or commit a new crime, the probation officer shall reprimand, give warning and report to the court concerning such circumstances.

During the time of visit, the probation officer should question other persons such as relatives of the probationer and neighboring people in order to get the factual information relating to the probationer.

(6) Avoidance of reporting to the probation officer

The following measures are taken if the probationer avoids reporting to the probation officer. Firstly, a warning order issued by the probation officer will be sent to the probationer commanding him to come to the office at the time directed. If the probationer fails to comply with the order or does not contact the officer, the officer shall go to the house or place of work to find the causes of the disappearance and shall report thereon to the court.

The probation officer may examine into the probationer's whereabouts with the aid of the District Administration Office, The Post Office or leaders of the local community. In addition, fingerprints may be sent to the Criminal Record Registration Office for seeking any record of arrest if it is possible that the probationer committed a new offence during his probation period.

(7) Probation report

The probation officers are required to give periodic reports about each probationer under supervision. In case the probationer has violated the conditions, or committed a new offence, or circumstances relating to the supervision have changed, a particular report must be submitted to the court.

(8) Further proceedings

The probation officer shall appear in court according to the court's order due to the reports submitted. If the probationer makes an objection to the report, the probation officer will have the burden to adduce the evidence in supporting his report and then the probationer has the right to adduce evidence in his favour.

(9) Case conference

Each supervision work-line shall conduct a case conference at least once a month so that the difficulties and problems arising from each case can be scrutinized and solved. By this means every probation officer in the same work-line is able to learn how to solve the problems correctly and appropriately.

4.2.3 Outcome

The outcome of probation work in the last eight years since its first operation in 1979 reveals that the number of supervision cases has kept on increasing (Table 6). And concerning the type of offences, the case involving narcotic drugs have the highest rate of increase in the caseload sizes in supervision cases, this being shown from the first operation in 1979 till 1987, in which 45,530 cases were ordered for supervision, and 25,095 or 55.12% were narcotic drugs cases.

5. Volunteer Probation Project

The Volunteer Probation Project was initiated by the Office of Judicial Affairs to overcome the overworking and understaffing of personnel. Based on a job analysis and evaluations, a standard of caseload size has been established by the Civil Service Commission. One probation officer, in his/her effective capacity, should theoretically have 50 probationers under supervision in a year. But in the meantime each officer in the Bangkok Metropolis has to supervise 104 probationers annually on average; so he or she cannot devote sufficient time to rehabilitate and assist all probationers effectively. So this volunteer Probation Project was later approved by the Justice Ministry for further elaboration and then incorporated into the 2nd Devel-

Table 6: Supervision Caseload. Central Probation Office in Bangkok Metropolis and Provincial Probation Offices (Years 1979 – 1987)

Years / Type of offeneces	1979 (Aug.–Dec.)	1980	1981	1982	1983		1984		1985		1986		1987		Total	
	CPO*1	CPO	CPO	CPO	CPO	3PPO*2	CPO	9PPO	CPO	9PPO	CPO	14PPO	CPO	14PPO	Number	Percent
Narcotic Drugs	149	166	1,642	2,908	3,044	399	2,684	1,027	3,059	1,262	1,985	1,966	2,026	2,598	25,095	55.12
Cambling	116	358	475	627	192	23	117	143	159	949	74	1296	56	999	5,644	12.40
Property	25	73	109	77	88	94	112	219	171	366	159	652	171	795	3,111	6.83
Weapon	14	20	35	18	14	54	17	127	51	434	24	939	18	1195	2,960	6.50
Assault	3	43	98	138	118	98	138	154	156	246	182	451	192	677	2,694	5.92
Gang Fighting	–	8	54	12	91	3	4	2	14	12	2	12	14	15	243	0.53
Negligence	2	5	33	64	59	10	162	26	290	117	322	119	323	290	1,902	4.18
Others	11	19	53	76	80	83	57	236	76	513	78	1061	87	1451	3,881	8.52
Total	320	692	2,499	3,920	3,686	764	3,351	1,934	3,976	3,899	2,826	6,576	3,067	8,020	45,530	100.00
All Total	320	692	2,499	3,920	4,450		5,285		7,875		9,402		11,087			
Monthly Average	64	58	208	327	371		440		656		784		924			

*1 C.P.O.: Central Probation Office in Bangkok Metropolis.
*2 P.P.O.: Provincial Probation Offices.

opment Plan of the Judiciary and the Ministry of Justice. And because the principle of the project is in compliance with the government policy, it is consequently annexed in the 6th National Economic and Social Development Plan (1987–1991).

5.1 Organization

The volunteer project is administered through the Project Committee and the Task Forces.

The Project Committee is formed and appointed by the Justice Minister with the Deputy Secretary-General of the Office of Judicial Affairs as chairman, the Director of the Central Probation Office as secretary, five judges from courts of first instance in the Bangkok Metropolitan and other eight senior officers as members of the committee. The Project Committee appoints a Task Force with the Director of the Central Probation Office as chairman in the Bangkok Metropolitan and 14 Task Forces with provincial chief judges as chairman in 14 provinces where probation service is in operation.

Under the supervision of the Task Force, a volunteer will be directly in contact with a probation officer in charge of the jurisdiction in which the volunteer has a residence. The probation officer, in addition to maintaining regular contact, is to direct, control and assist the volunteer in performing his or her assigned job and report vertically to the chief of case supervision in Bangkok or the chief of the provincial probation office. Then the chief has to summarize and report the issues to the Task Force for further appraisal.

When the administration of the Project confronts difficulties or needs some kind of assistance, the Project Committee may request advice from the Advisory Board whose members are highly respected and experienced in criminal justice affairs. The Board actually comprises of the Chief Justice and Deputy Chief Justice of the Central Juvenile Court, Deputy Permanent Secretary of Justice, Secretary-General of the Office of Judicial Affairs, Chief Justice of Nine Regions, and with the Permanent Secretary of the Justice Ministry as chairman.

5.2 Roles of Volunteers

In general, the principle function of the volunteer is to supplement, not replace, the probation officer's efforts by providing individual specialized services to probationers.

According to the guidelines in the Regulations of the Justice Ministry 1985, volunteers are to pursue the promising tasks of supervising and assisting both juvenile and adult probationers. Upon receipt of cases assigned on the basis of job placement and matching, volunteers are supposed to do the following:

5.2.1 To examine the probationer's background, habits, social interactions, offence, probation conditions, etc; in order to understand his/her fundamental prob-

lems and needs for planning suitable approach and strategy to deal with them.

5.2.2 To try to make acquaintance with the probationer and seek to win their trust and confidence for mutual understandings and co-operation.

5.2.3 To pay visits to the home or working place on a regular basis, at least once a month.

5.2.4 To provide the client with counselling, guidance and assistance in order to help them be able to maintain probation conditions, handle and manage daily problems and crisis, and lead a normal life as a law-abiding citizen, in doing so, the volunteer needs to know the source of human and material resources both in the probation agency and in the community.

5.2.5 To report on the probationer's performance to the supervising probation officer, a kind of evaluation or suggestion is really beneficial to the rehabilitation of offenders. Urgent report is very important when public safety is at stake or likely to be threatened by the probationer.

5.3 Outcome and Target of Volunteer Probation Project

The establishment of the volunteer probation officer project by the Ministry of Justice is really in the infant stage of experimentation. However it is remarkable to the probation system in Thailand in that it promotes human resource development, initially draws human and material resources from the private sector into public service, and provides citizens with an opportunity to directly participate in rehabilitating offenders and preventing crime in their community. Generally speaking, the volunteer program can reduce a probation officer's caseload, and offer a variety of services with an increased quality in the probation system at a reduced cost.

By the end of 1986, 49 volunteers in the Metropolis, and 175 in Ubon Ratchathani Province have experimentally been appointed to handle 410 probationers.

For the annual budget of 1987, 17 training programs, 6 in Bangkok and 11 in the provinces, have been planned to be held chronologically. 1,020 volunteers are expected to be appointed by the Ministry. So far 3 programs have already been completed with 195 new volunteers.

During the annual budget of 1988 – 1991, 167 training programs will be held with an estimation of 10,320 volunteers to handle 23,700 supervision cases (Table 7).

6. Trends and Development of the Probation System

Now, the Central Probation Office and 14 provincial offices are actually serving 28 court jurisdictions, 5 for the Central Probation Office and 23 for provincial offices. However, judges in other jurisdictions may order the Central Probation Office to conduct a pre-sentence investigation or supervise probationers as they want. The Central Probation Office, upon receipt of such an order from the court, will assign the case to the provincial office nearby the offender's or client's residence for action.

Probation, especially for adult offenders, seems to show a striking high rate of growth as opposed to other state agencies established by the same period of time. Initiated in Bangkok with 41 officials, 117 pre-sentence investigation cases and 320 supervision cases in 1979, the probation service has been extended to 14 provinces with 196 professional probation officers, 60 clerical staff, 9,858 presentence investigation cases and 11,087 supervision cases in 1988. For nine years the increase of manpower is sixfold the amount of the first year while the increase in pre-sentence investigation cases is eighty-fourfold and supervision cases thirty-fourfold. The percentage of an increase in workloads sounds dreadful, but it is relatively low in comparison with the number of cases, theoretically applicable to probation measures, brought to courts (Tables 4 and 6).

The statistics show the obvious unproportionate ratio of probation granting and presentence investigation orders to the number of all cases theoretically applicable to probation measures. The phenomenon can be blamed on the insufficiency of staff in rendering services. All in all, the commitment of the government to support probation in line with the demand of community would be of great impetus to the expansion of service, which, of course,

Table 7: Target of Volunteer Project During the Annual Budget of 1988 – 1991. Central Probation Office

Years	Area	Metropolis	Provinces	Total
1988	Training program	12	17	29
	Volunteer	720	1,140	1,860
	Caseload	1,000	2,800	3,800
1989	Training program	12	30	42
	Volunteer	720	1,800	2,520
	Caseload	1,500	3,900	5,400
1990	Training program	12	33	45
	Volunteer	720	2,160	2,880
	Caseload	1,700	4,900	6,600
1991	Training program	12	39	51
	Volunteer	720	2,340	3,060
	Caseload	1,900	6,000	7,900
Total	Training program	48	119	167
	Volunteer	2,880	7,440	10,320
	Caseload	6,100	17,600	23,700

Notes: 1. Caseload is estimated from expected probation cases granted by Court. Volunteers are expected to relieve one fourth of all cases.
2. Probation period ordered by court is one year on average. Each case requires field surveillance and report writing once a month or at least once every 2 months.

means a constant increase in workloads, not only in terms of presentence investigation and case supervision but also in terms of aid and assistance.

6.1 Trends and Development of Organization

The probation service not only provides offenders with a second chance to behave themselves and to avoid criminal stigmatization and related side effects of imprisonment, but also reduces tax costs spent for dealing with offenders, and does not deteriorate opportunities of probationers to the pursuit of legitimate careers, obtaining income to support their families, and extending the tax base for government. It is found that, in 1985, the government spent 2,500 baht (US$93)[6] on a probationer per year while it spent 8,100 baht (US$300) on a prisoner.[7] With approximately 5,000 probationers in a year probation could save at least 28 million baht (US$1,037,037). No doubt, such findings make it clear to the government that the benefits of the probation program outweigh the cost. So, the government declared its commitment to the implementation of the probation service nation-wide and to the encouragement of participation by communities in public services. In addition, the National Economic and Social Development Board is eagerly supportive of the probation program and urges the Ministry of Justice to design a concrete plan for the expansion of the probation service.

6.1.1 Establishment of new probation offices

Considering the financial situation of the country, the Ministry of Justice plans to establish 40 new offices in 40 provinces

dispersed in all regions during the five-year plan of 1987–1991. The priority provinces have to be the locations of new offices is determined by many factors, such as, workloads of criminal cases applicable to probation measures, availability of physical facilities, dispersion of offices in the regions, and so forth.

If the plan works well according to its schedule, by 1991 there will be 55 probation offices in total across the country with 632 probation officers and 191 clerical staff. Consequently the probation enterprise will become the biggest division the Ministry of Justice has.

6.1.2 Reorganizational structure of probation offices

The Ministry of Justice proposes a plan to reorganize the structure of the probation enterprise from one of five divisions under the Office of Judicial Affairs to the Department of Probation under the Ministry of Justice to match the size of manpower and workloads, to obtain flexibility and autonomy in administration, to alleviate repetition and redundancy of the service, process, and to maximize productivities with efficiency and effectiveness.

Upon completion of the plan by 1990, the Probation Department will comprise seven divisions and 22 sections, all of which are directly responsible for probation affairs.

6.2 Trends and Development of Rehabilitative Programs

Reform and rehabilitation of probationers cannot be accomplished without rehabilitative programs supplementing the enforcement of probation conditions. Hence, the Ministry of Justice has planned to create and implement supplementary programs with a determined purpose of providing clients with a variety of services in compliance with their problems and needs. Some of the remarkable programs will be mentioned here.

6.2.1 Religious rehabilitation program

The Thai society has long been involved with religious doctrines for centuries. Religions, particularly Buddhism, have deeply influenced the way of life of Thai people from cradle to tomb. Keeping this fact in mind, the program to utilize religious doctrines to reform and rehabilitate probationers has been planned with two main activities.

(1) Religious orientation

New probationers will be assigned to attend a one-day orientation in which religious doctrines are the main thrust incorporated along with general subject matters considered beneficial to maintain probation conditions for success, dealing with daily crises and leading to a better and productive life. This program also applies group therapy techniques to help the probationers manage their own problems in normal society.

(2) Ordainment

Ordainment is the other activity planned for probationers. By this approach the rehabilitative process heavily relies upon the ecclesiastical world. When probationers enter monkhood they are required to keep religious disciplines and maintain no less than 227 precepts. In addition, the new priests will be supervised and guided toward the Noble Path of Lord Buddha by senior priests. Taking this for granted, religious control is much greater than that of probation. It is believed that priesthood is the creation of self-conscience and creates a strong bond between a person and the community; ordainment is therefore presumably one of the most effective means to rehabilitate and reform the deviants. With respect to supervision, probation officers still regularly maintain direct contact with the probationers and collateral contact with their relatives and companions.

6.2.2 Bail program

The objectives of the bail program are to provide defendants with freedom and liberties during the trial, particularly during the pre-sentence investigation period; and to avoid dispensable detention for those who are likely to be granted probation. At the outset the program is to provide defendants, pending for presentence investigation, with bail service in the Bangkok Metropolis. The next step of the program is to extend bail service to the provinces in which probation has been in operation. Only defendants detained in the pre-sentence investigation period are eligible for service. The final step is to bail any de-

fendant who is eligible and appropriate regardless of the types of charges and whether or not presentence investigation is ordered. The bail project in this stage is to operate throughout the kingdom, which will serve by dispensing equal justice to people all over the country.

This program will be financed and supported by the Foundation for the Rehabilitation of and After-care Services for the Offenders (FRASO), which is originally created by the Central Probation Office with the co-operation of private sector, charitable-minded people who are supportive of probation alternatives and all income comes from public donations. So that, from the beginning in 1984 to 1986, the program could help 51 defendants to remain free in the communities during trial and the total amount of surety utilized is 747,500 baht (US$27,685).

6.3 Amendment of Legislation

The administration of the probation service in Thailand is in fact governed by two legislations, Article 56 of the Penal Code and Probation Procedure Act in accordance with the Penal Code B.E. 2522 (1979). For during the eight years of probation administration, many problems and difficulties have arisen, particularly from the insufficiency of legislation. Under Article 56, supervision conditions can be stipulated to a very restricted extent. The court could not order compulsory treatment for drug-addicted probationers, could not order probationers not to leave jurisdiction without permission, could not order probationers to do community service, and so on. The restriction of legislation sometimes interrupts the rehabilitation process because necessary conditions could not be stipulated and adjusted to the demand of circumstances, thereby reiterating the inconsistence of practices and the principle of individualized probation treatment of the offender. In order to bridge the gap between practice and theory and solving problems, the Ministry of Justice has proposed a new amendment of the Penal Code regarding probation provision.

The rationale for the amendment, arguing in the statement of the proposal, is quoted as saying that the Ministry of Justice believes that it is legitimate to utilize rehabilitative and reintegrative approach for offenders by providing them with treatment for drug addiction and other kinds of illness, placing the suitable probationers on community service program to win public sympathy, and vested the court with authority to establish appropriate measures suitable to particular probationers on particular circumstances, such as,

– requiring the probationers to have compulsory treatment for drug addiction and physical or mental illness.

– placing the probationers, upon their consent, in a community service program.

– requiring the probationers to refrain from any behaviour or from association with certain persons that may lead to criminal activities.

The most vital and progressive amendment in the draft is what the court, on its discretion, may stipulate in the way of supervisory conditions, for the sake of prevention of recidivism or rehabilitation of offenders. And, if the parliament passed the draft and promulgated it as a new legislation, it would become a significant tool of the court and the probation officer in an attempt to reform and rehabilitate probationers as well as guarantee safety of the community.

6.4 Policies and Guidelines for Future Administration

Besides the concrete plan to expand probation service into provincial areas, to amend legislation appropriate to the utilization of probation, and to introduce other innovative programs as mentioned earlier, these strategies will also be adopted.

6.4.1 Public relations concerning probation work

Adult probation work in Thailand is now still at the time of imbedding its work system into society as well as extending the work into every part of the country. At this point, the adult probation is rather new for the public. People and agencies both in public and private sectors are quite unfamiliar with this kind of work, resulting in the public having less understanding about the objectives or the usefulness of probation work towards their community.

Such conditions will bring out problems such as difficulty in co-ordinating work with the other agencies concerned, lack of co-operation from the community and other social resources. The Central Probation Office realizes the importance of the public attitude and co-operation towards probation work. Hence it is necessary to continuously disseminate and inform the public of the probation work in order to secure public understanding on its objectives and usefulness. Publicity will be conducted through organizations and mass media, such as official booklets, conversation in drama broadcasts, slides, local press, etc. In addition academic discussions and seminars concerning probation work will be periodically or annually provided.

With regard to co-ordination with other agencies in the communities, The Central Probation Office has planned to campaign for meetings with other agencies concerned in order to facilitate co-ordination with such agencies.

6.4.2 Training or seminar for probation officers

In order to develop and promote the effectiveness and efficiency of probation work, every newly-recruited probation officer has to pass the 3-month-long orientation training course. This course provides both discipline and vocational knowledge which are both necessary for the duties of a probation officer. After this course the probation officer will go for on-the-job training, accompanying a senior colleague for a period of time. The supplementary courses both inside and outside the office will be arranged for the purpose of the improvement and increase in the skills, methods and techniques of doing the work.

It is also desirable to upgrade the professional probation officers to be specialists in particular fields, such as in narcotics treatment, psychotherapy, traffic violation offences and community resource management etc. These will improve the capacity of probation officers appropriate to handle those particular probationers more effectively.

6.4.3 The use of group therapy in the treatment of offenders

The Central Probation Office will begin to use Group Therapy in the treatment of offenders. Such offenders will be classified by each category of offence or by the type of crime and those classified offenders will be committed to different and suitable treatment programs.

6.4.4 The foundation of the probation officer association

The Central Probation Office will promote the establishment of a Probation Officer Association. This association will play a significant role as a professional forum among the probation officers in setting the criteria and standard of probation work and solving other problems concerned.

6.4.5 The use of the micro-film system

Presently, there are a large number of pre-sentence investigation files and supervision files to be kept in service at the Central Probation Office. These number of files are increasing every year not only in the Central Probation Office but also in the provincial probation offices. Therefore, the Central Probation Office is in the process of developing a micro-film system which will be helpful for its benefits of its economy in file volume and conveniency in searches.

6.4.6 International co-operation and promotion of work

The adult probation system has just been implement in Thailand for not more than nine years. It is considered rather young and new when compared with the history of its kind in other countries where an adult probation system has been firmly rooted for many decades. In this regard, the adult probation system in Thailand is still striving its way for improvement and it inevitably requires more knowledge, experience and technical know-how for its personnel to carry out the work. The support and co-operation from countries where the work in this field has been well developed will be very useful for the promotion of adult probation work in Thailand. It is very important to encourage international education and training for the working staff as much as possible. Also the exchange of experts and personnel in this matter is valuable. Therefore, the Central Probation Office is searching for such

international support and co-operation as well as welcoming any form of assistance which will help promote the adult probation system in the future.

The Department of Corrections Ministry of Interior

The Department of Corrections, Ministry of Interior, is mainly responsible for the administration of The Penitentiary Act of 1935 which includes care, custody and rehabilitation of more than 80,000 inmates, youths and adults, convicted and on remand, being confined in the Department's varied correctional facilities dispersed throughout the country. The present administrative organization of the Department is divided into two main parts, central and provincial (Chart 4). There are today 111 penal and correctional institutions under the administration of the Department of Corrections. These include 21 central prisons, 2 remand prisons, 13 correctional institutions, a vocational training reformatory, a central house of confinement, a house of relegation, 56 provincial prisons and 16 district prisons.

1. Non-Institutional Treatment under the Department of Corrections

In addition to institutional programs, several non-institutional treatment programs have also been implemented by the Department of Corrections so as to provide easy transition for offenders from a correctional institution to the community. Realizing that the interruption of an offender's occupational and social life by way of imprisonment adversely affects an offender's chance to readjusting properly to society, the Department of Corrections has put much effort in implementing several non-institutional programs, such programmes including parole, good-behaviour allowances, public work allowances, and penal settlements.

2. Patterns of Non-Institutional Treatment

2.1 Parole

Parole in Thailand is not a right for prisoner but a benefit granted to a selected one. Only convicted prisoners in good, very good and excellent classes who have already served four-fifths, three-fourths and two-thirds of their sentences respectively are eligible for consideration. The process starts from the consideration of a local review committee which consists of a prison warden and other prison officers. The committee, then makes a recommendation to the parole board. The board, which consists of 7 high-ranking officials including the Deputy Director-General of the Department of Corrections acting as a chairman, will review the recommendation of the local review committee, including the prisoner's domestic background or criminal record, circumstances of the offence, conduct during his stay in prison, post-release plans, and some other information so as to make sure that parole will successfully help the prisoner to return to the society. Final decision to grant parole depends largely on the Director-General of the Department of Corrections. A parole granted prisoner is conditionally released from a prison and placed under supervision of a parole officer.

In Thailand a number of prisoners granted on parole is very small. The Department of Corrections mainly relies on the pardon system to alleviate the problem of overcrowded prisons (See Table 8).

2.2 Good-Behaviour Allowance System

Under the Good-Behaviour Allowance System prisoners who have good conduct are released under supervision in the community by sentence remission. Prisoners in good, very good and excellent classes with good behaviour and work performance are able to earn sentence remission. Those who are in excellent class could earn five days a month remission. Ones in very good and good class could earn four and three days a month remission respectively. Only a prisoner with a definite term of sentence who has served his sentence for more than six months is eligible for remission.

The sentence board consisting of representatives from the Department of Corrections, the Police Department, the Public Prosecution Department, the Social Welfare Department and a psychiatrist from the Public Health Department has the

Chart 4: Organizational Chart of Department of Corrections

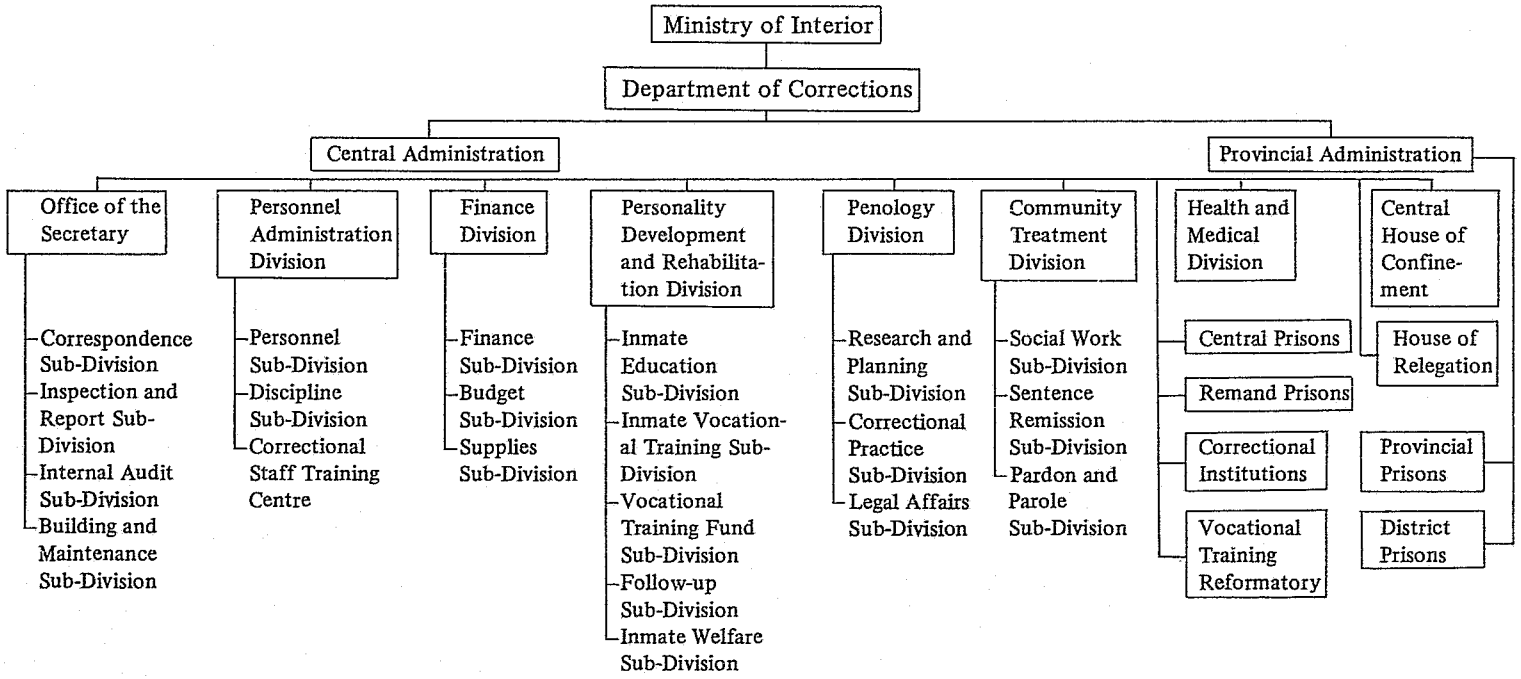


Table 8: Prison Population, Sentence Remission, Parole, Pardon and Public Work Projects, Department of Corrections (Years 1978 – 1987)

Items / Year	No. of prison population (Convicted prisoners)	Sentence remission	Parole		Pardon		Public work projects		
		No. of prisoners granted sentence remission	No. of parole applications	No. of parole grants	Unconditional release	Sentence remission	No. of prisons involved	No. of projects	No. of prisoners involved
1978	47,180	3,787	518	438	–	–	–	–	–
1979	47,757	9,595	692	455	12,033	32,158	–	–	–
1980	55,839	9,727	715	606	16,174	29,661	2	3	55
1981	55,266	7,956	899	602	–	–	34	59	2,319
1982	55,213	9,495	552	420	18,438	36,188	34	52	2,199
1983	58,895	11,401	1,281	1,136	–	–	48	97	2,846
1984	59,817	11,666	1,556	1,470	–	–	70	257	3,500
1985	61,859	11,845	1,808	1,523	–	–	83	442	4,233
1986	64,377	11,294	2,352	2,095	–	–	75	359	4,563
1987	70,102	11,490	1,609	2,034	32,387	*	47	393	4,867

*Data in the process of being collected.

authority by majority vote to grant any sentence remission. Such decision is final.

Upon release, prisoners have to be subjected to supervision for the remaining period of their original sentence. If they do not comply with the supervision or commit another crime, they must be imprisoned for the remaining period. Thousands of prisoners benefit from the Good-Behaviour Allowance System (See Table 8). It has been also used as a device to mitigate the destructive impact of an imprisonment upon prisoners in an over-crowded prison.

2.3 Public Work Allowance

The Department of Corrections is enabled to lawfully employ prisoners for public work outside prison. This program provides an employment opportunity for prisoners and utilize prison labour for public interest. The prisoners who are assigned to work in public work projects would get payment not over 80 percent of the net profit. The officers who supervise the project would get 10 percent and the remaining 10 percent would be put in the investment fund of the prison for public work projects. The other benefit earned by the assigned prisoner is sentence remission by one day for his one day working outside (See Table 8).

2.4 Penal Settlement

This program provides an opportunity for a pre-released prisoner to readjust himself to the community. Prisoners who are qualified for program participation have to serve their sentence in prison for not less than one-fourth of their term and the remaining term being not less than two years, and also have good behaviour and good performance in prison. The penal settlement selection committee would consider all applications with preference for the ones who have previous background in farming and do not have land of their own.

The participant prisoner would get 8 acres of land at a penal settlement site. They are allowed to have their family stay with them. All products of their farming is belong to them. They have to build their own house and are able to stay for life. After his death, the land would be able to be transferred to his successor.

3. Volunteer in Corrections

In 1976 the Department of Corrections established the program for voluntary aftercare officers (See Table 9). The main purpose are to alleviate the problem of shortage in aftercare officers and to foster a better relationship between prisoners and the community. The volunteer has to pass through the screening and training processes before taking the responsibility of supervision over prisoners being conditionally-released on parole or receiving sentence remission either by public work allowances or good-behaviour allowances. Each volunteer approximately takes care of 10 conditionally-released prisoners. Volunteers work, with no salary, under the supervision

Table 9: Number of Volunteers. Department of Corrections
(Years 1976 – 1987)

Items / Year	Number of volunteers in Bangkok Metropolis	Number of volunteers Up-country	Total
1976	48	–	48
1977	–	–	–
1978 – 1980	66	1,226	1,292
1981	–	1,167	1,167
1982	108	1,437	1,545
1983	–	1,327	1,327
1984	287	1,180	1,467
1985	138	1,155	1,293
1986	140	1,079	1,219
1987	–	1,152	1,152
Total	787	9,723	10,510

of and the co-ordination with full-time aftercare officers. The Department of Corrections selects volunteers from the respected persons in the local community. They quickly earn the conditionally-released prisoner's trust and their close relationship provides them a good opportunity to play a significant role in helping the prisoner to readjust to the society.

Notes

1. This article only focuses on The Central Probation Office, Office of Judicial Affairs, Ministry of Justice, and summarizes the activities of the Juvenile Court and The Department of Corrections, Ministry of Interior.
2. Probation system was first introduced into Thailand only for the treatment of juvenile delinquents in 1951, the application of which is under the jurisdiction of the Juvenile Court. It was again mentioned in the Penal Code of 1956 Article 56, which is provided for the treatment of adult offenders. However, it had never been applied until the Probation Procedure Act in accordance with the Penal Code of 1979 was passed by the National Assembly and the Central Probation Office was established in 1979.
3. The Juvenile Court Procedure Act of 1951, Article 10, provided that the Minister of Justice is empowered to appoint The Juvenile Welfare Committee to advise and assist the Director of the Observation and Protection Centre in carrying out his duty for the welfare of juveniles.
4. Conditions are provided in the Penal Code Section 56.
5. The offenders are now called the probationers.
6. Exchange rate: 1 US$ = 27 baht
7. Report of evaluation of probation, Division of Evaluation and Reports, Budget Bureau (1985).

SECTION 2: PARTICIPANTS' PAPERS

Non-Institutional Treatment of Offenders in Hong Kong

*by Walter Wai-wah Wong**

Introduction

There are currently three services in Hong Kong which aim at the treatment of offenders in a non-institutional way. The offender is allowed to go free and return home but has to fulfil certain conditions as prescribed by the court or the supervising officer. The three services are a) probation service, b) community service orders pilot scheme, and c) superintendents' discretion scheme. They will be discussed separately as follows:

Probation Service

1. Overall Objective

Probation is a correctional method under which the sentences of selected offenders may be conditionally suspended upon the promise of good behaviour and agreement to accept supervision and to abide by specified requirements. In Hong Kong, probation is a formal and legal system placed under the supervision and administration of the Social Welfare Department. The overall objective of probation service is to give effect to the direction of the courts on the treatment of offenders through open probation supervision (non-institutional) and residential placement (institutional). It aims at reintegrating offenders into the community through the provision of social work services. (For the purpose of this paper, discussion will be made mainly on the non-institutional aspect of probation in Hong Kong).

2. The Service

Probation in Hong Kong applies to offenders of all ages. It permits offenders to remain in the community under the guidance of a probation officer for a period of one to three years. Probation orders are usually issued after the court has considered carefully the circumstances leading to the offence, the nature of the offence and the character of the offender. There are altogether 10 probation offices serving magistracies, and a team of high court probation officers serving the District Courts and the High Courts in Hong Kong.

The duty of a probation officer concerns mainly the rehabilitation of offenders who are placed under his supervision. Since he is practising social work in a secondary setting, his first vital duty is to serve the Court. His work starts from the preparation of a pre-sentence report to the Court which has ordered the enquiry. The report is based on the information gathered from investigations on the offender's character, family background, work/school records, motivation and capacities for change, interests, health condition and associates. The purpose of the report is to assist the Court in deciding the best method of dealing with the offender. A total of 10,614 social enquiries were conducted by probation officers in Hong Kong during 1985 - 1986.

After an offender is placed on probation treatment, the duty of the probation officer bears more of a social work element and is in fact the major part of the service per se. He is to "assist, advise and befriend" the offender so as to help him turn over a new leaf. During the course of rehabilitation, the probation officer also has the duty to ensure as far as possible that the probationer does not breach the law again. If the probationer has relapsed to crime or fails to comply with any require-

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ment of the probation order, the probation officer has to report it to the Court for the latter's further deliberation. During the year 1985 - 86, 2,252 of a total of 2,774 probationers completed their probation orders satisfactorily. Cases in which the probationers failed to comply with the requirements of the probation order were reported back to the courts for re-sentencing and most of them were subsequently committed to reformatory schools, training centres, detention centers or prisons.

Probation service in Hong Kong has a high success rate, which refers to probationers who have successfully fulfilled the terms of the probation order and are discharged. As already mentioned, in the year 1985 - 86, 2,252 of a total of 2,774 probationers completed their probation order satisfactorily, that is, without reconviction or breach of conditions as specified in the probation order. The success rate thus calculated is 81.2%.

The success of probation may be attributed to the following factors:

(1) Probation is basically a rehabilitative measure, not a punishment. The offender is given a chance to turn over a new leaf. Execution of punishment is suspended subject to the offender's good bebaviour.
(2) Offender receives practically no social stigma as usually only his family members know about his commission of offence.
(3) Offender is allowed to return home where primary emotional support is given.
(4) Offender will continue his schooling/employment and participate in other constructive recreational activities which should lead to very positive social support.
(5) Offender is assisted by the probation officer to reform through social work methods. He will be encouraged, and never coerced, to improve himself by his determination to start anew.

3. Volunteer Scheme for Probationers

(1) Overall Objective

The Volunteer Scheme for Probationers in Hong Kong was put into practice in 1976. Its overall objectives are:

a) to promote a wider positive approach by the public towards helping and reforming offenders and in this way bring about greater community involvement and stronger community action against crime.
b) to meet the specific need of certain probationers through personal services offered by volunteers.
c) to supplement the effort of probation officers in the social rehabilitation of probationers.

(2) Area of Work of the Volunteer

The volunteer will not take over the role of the probation officer who is dealing with the legal side of duties and solving the behaviour problem of the probationer. The volunteer is expected to assist a probationer in activities which require no professional skills such as:

a) to act as tutor for a probationer who has problems with school work.
b) to guide a probationer in proper use of leisure time and direct his interest into wholesome social, cultural and recreational activities.
c) to help develop a probationer's range of interests or hobbies.
d) to give technical information if the volunteer is a professional or skilled personnel.
e) to provide friendship especially to probationers without family support and guidance or those without desirable friends.
f) to offer practical advice and assistance e.g. child care, management of household etc.

(3) Criteria for Selecting Volunteers

a) aged 21 and above
b) preferably of secondary school education standard
c) mature in personality
d) willing to make friends with law offenders
e) willing to sacrifice one's own leisure time for serving others without monetary reward
f) good health and with wholesome

interests.

(4) Operation of the Scheme

The scheme is run by a working committee of the Social Welfare Department consisting of a Senior Social Work Officer (Operations) responsible for probation service and all Supervisors of 11 Probation/ Aftercare Offices. This committee launches annually a territory-wide recruitment exercise, usually around May/June of the year, to recruit a pool of volunteers according to the criteria set out above. The newly recruited volunteers will be given a training and orientation course conducted by the committee before they are considered ready for service.

Based on the need for probation cases, probation officers may select a suitable volunteer from the pool of unmatched volunteers to assist a probationer. When a volunteer is selected, the matching officer will arrange separate meetings to prepare the volunteer as well as the probationer for undertaking and accepting the assignment before actual matching. Once a case is matched, it is the duty of the probation officer to regularly contact the volunteer to keep track of the progress of service and to review its effectiveness on the probationer.

During the period of service, the probation officer should see that the following are observed:

a) the volunteer is adhering to the specific service he has agreed to provide
b) the volunteer is to treat all particulars of the probationer in the strictest confidence
c) the volunteer should not give any direct financial or material assistance or offer loans to the probationer
d) the volunteer should not receive material reward or gifts of money from the probationer or his family
e) the volunteer should not use authority to correct the probationer's misbehaviour but will refer the matter to the attention of the probation officer.

Every year, the public in Hong Kong has given encouraging support to the Scheme. It is widely seen that volunteers, in general, are showing a more open and acceptable attitude towards the work of rehabilitating offenders. Normally the period of service for each volunteer is six months but it can be extended in case of need. During the period from 31 March 1985 to 1 April 1986, volunteer service was provided for 26 probationers in Hong Kong.

Community Service Orders Pilot Scheme

1. Introduction

A Community Service Order (CSO) is a new form of sentence in Hong Kong provided under the Community Service Orders Ordinance, Cap. 378 which was enacted on 23 November 1984. Under the order, an offender is required to perform unpaid work of benefit to the community under the supervision of a probation officer who shall also provide rehabilitative counselling and guidance to the offender.

The order aims at being both punitive and rehabilitative. Under the order, an offender is required to use his leisure time to perform community service as reparation to the harm he has done to the community, and he may, through community service and guidance from the probation officer, gain a changed outlook, a more constructive purpose in life, an enriched sense of self-worth, and hopefully be steered away from committing further crime. A Community Service Order should therefore benefit both the community and selected offenders.

2. Pilot Scheme

This new form of sentence will be tried out in Hong Kong under a two-year pilot scheme effective from 1 January 1987 in three magistracies: Central, Kwun Tong and Tsuen Wan. The Social Welfare Department is responsible for implementing the scheme, and for this purpose has created a team of staff and set up the Community Service Orders Office. At the end of the two-year period, a review will be made to consider whether this new form of sentence should be made available to all courts in Hong Kong or should be brought to an end.

3. The Making of a Community Service Order

As provided by the Ordinance, a sentencing court may make an order requiring a person of or over 14 years of age and convicted of an offence(s) punishable with imprisonment to perform unpaid work for a number of hours not exceeding 240 within a period of 12 months. Such an order may be made in place of, or in addition to any other sentence. The court shall not make such an order unless it is satisfied, after considering a probation officer's report, that the offender is suitable for performing community service and that work placement is available for him, and that the offender consents to the making of the order.

4. Suitability for a Community Service Order

In assessing an offender's suitability, the probation officer will consider the nature of the offence(s), the character, social background and other relevant circumstances of the offender and also see if there is sufficient stability in the offender's situation for him to complete the requirements of the order. The probation officer will also take into account the interests of the community if the offender is to perform community service.

While offences punishable with imprisonment cover a wide spectrum from the serious to the relatively minor ones, serious offences like manslaughter, rape, arson, serious wounding, major drug offences are apparently unsuitable for community service order. Similarly, offenders who are sophisticated in crime, or with a known record of addiction to drugs or alcohol, sexual deviance, criminal violence, mental illness or subnormality are unlikely to be able to benefit from the scheme or are unsuitable in the interests of the community to be placed under a community service order.

5. Obligations of the Offender Under the Order

An offender placed under the order is required to perform the unpaid work for the number of hours specified in the order in a satisfactory manner and to comply with any other additional requirements of the order. He shall also comply with the directions of his supervising probation officer on matters concerning his work placement and rehabilitation, and immediately notify the supervising probation officer of any change in his address.

6. Breach of the Order

An offender who fails to comply with any requirements of the order may be brought back to court and he may be liable to be re-sentenced for the offence for which the order is made.

7. Supervision

The probation officer of the Community Service Orders Office will undertake the supervision of the offenders (known as community service workers) placed on the order, and make arrangements for the work placement as well as provide rehabilitative counselling for the offender.

8. Work Placement

The work will be carried out during the leisure time of the offender, normally over the weekends, public holidays, or weekday evenings, in sessions of four to eight consecutive hours each, and will not disrupt the employment, schooling or religious activities of the offender.

The work is provided by government departments and voluntary welfare agencies and may be carried out in country parks, beaches, hospitals or homes for children, the disabled or elderly.

The community service workers will not be depriving other people of employment opportunities as the work they perform are normally that performed by volunteers or for an improved standard of service. Such work may be of a wide variety, ranging from work not involving direct contact with people such as grass-cutting, minor repairs and cleansing, to work involving direct contact with the service recipients such as assistance in running programmes and caring for the disabled or elderly.

Community service workers are mainly

arranged to work in two ways. The first is placement in a group of six to eight community service workers working on a specific work project under on-the-spot supervision of a site supervisor employed on part-time basis by the department. The second is a single placement of a community service worker by himself on a task with minimal supervision provided by a nominated staff member of the work-providing organization.

The majority of the community service workers will be arranged to work in a group project to start with, and move to a single placement after they have proved to be steady and reliable workers. They may also be arranged to work alongside other volunteers from the community. For all the work placements, the probation officer will visit the work sites from time to time and make themselves available for consultation and discussion whenever necessary.

9. Identity

The identity of the community service worker would normally be revealed only to the responsible staff of the work-providing organisation on a need-to-know basis. The other staff members, clients and volunteers of the work-providing organisation would know him as a volunteer from the Social Welfare Department or a volunteer from the community.

10. Expiry of Order

The community service order will remain in force until the community service worker has completed the stipulated number of hours of work specified in the order, or upon the expiration of 12 months from the date of the order or, if the order is extended, on the expiration of the extended period, or upon revocation of the order, whichever occurs first. The supervising probation officer however will try to ensure that the offender would complete the stipulated number of hours of work within the normal duration of the order which is 12 months, and would bring the case back to court if such is not envisaged to be possible.

11. Statistics

For the months of January to February 1987, the number of referrals for assessment of suitability for CSO was 33. The number of CSOs made by court was 12. Of the 12 CSOs made by court, the number of hours sentenced in any one order ranges from 80 to 240, the norm being 120 hours. There were a total of 24 government or voluntary agencies offering work placement for offenders and the total number of work placement positions offered was 242.

Superintendents' Discretion Scheme

The attorney General in Hong Kong formally approved in 1962, the Scheme whereby police officers of the rank of Superintendent and above exercise their discretion as to whether or not to prosecute, in certain circumstances, a child or young person who has attained the age of 7 years but is under the age of 16 years. The practice, which is known as Superintendents' Discretion Scheme, was first put into effect on 1 January 1963. Under the aforesaid Scheme, the Juvenile who is discharged is required to be visited periodically at his home by a police officer for two years or until he attains his 16th birthday. The purpose of the visit is to ensure the juvenile does not lapse into crime or associate with undesirable characters. The police officer also liaises with other government Departments in Hong Kong on matters which could assist in the rehabilitation and welfare of the juvenile and his family.

When exercising the discretion, the police officer bears in mind the following criteria:

a) whether the child or young person is a first-time offender;
b) whether the child or young person admits the offence;
c) whether the offence is of a minor nature;
d) whether the complainant agrees to no prosecution;
e) whether the child or young person's parent or guardian has agreed to no prosecution and has also agreed that the child or young person might be

visited periodically at his home by officers of the Juvenile Protection Section of the Hong Kong Royal Police Force for a period of two years or until the child or young person attains his 16th birthday;

f) whether any other interest party (e.g. an insurance company) agrees to no prosecution.

The number of offenders discharged by the Superintendents' Discretion Scheme according to age group against types of offence for the period from January - June 1986 is listed as follows:

Offence	7-11	12-13	14-15	16-20	Total
All serious assaults	9	4	11	2	26
All robberies	–	1	2	–	3
Blackmail	–	2	2	1	5
All burglaries	10	11	8	–	29
Criminal damage to property	6	17	18	–	41
Theft from vehicle	5	6	5	–	16
Shop theft	410	453	380	20	1,263
Other miscel-laneous thefts	65	116	108	4	293
Offences against public order	–	–	6	1	7
Major dangerous drug offences	–	–	–	–	–
Unlawful society	–	2	8	1	11
Others	10	19	40	4	73
Total	515	631	588	33	1,767

Most of the offenders discharged were in the age group of 12-13 years (35.7% or 631 out of 1,767) but the highest portion that had been discharged was found in the age group 7-11 years (515 out of 659, i.e. 78.1%). Of the 1,767 offenders discharged, 1,263 or 71.5% had committed shop theft offence.

Conclusion

It is widely accepted by penologists that rehabilitative measures for offenders have a more positive effect than punitive measures. Further, rehabilitation work should not be done by any one profession but all those who are involved in the behavioural science field. An offender, as a member in a society, is subject to all kinds of influences. The three rehabilitative measures, as mentioned, aim at this direction. It is believed that, with sufficient support and professional advice, an offender can be put back on the right track.

Non-Institutional Treatment of Offenders in Thailand

*by Vitaya Suriyawong**

Introduction

Society reacts to crime in a variety of ways. During previous times, offenders (hereafter replaced by "prisoners" in accordance with the existing law) were always punished by ideas of revenge, retaliation or compensation for loss of property. Since then, the said concepts have been developed from time to time and now we can say that rehabilitation is the main purpose of punishment in the modern correctional system of the world.

In Thailand, like other countries, correctional activities are mostly concerned with the treatment of prisoners and of course, they are the responsibilities of the Department of Corrections, Ministry of Interior. The first two goals of the Department are to protect society from convicted prisoners, and to increase a number of convicted prisoners achieving a successful adjustment upon their return to the society. In order to accomplish these goals, the Department adopted many correctional measures in modern correctional philosophy, such as standards and procedures that were then put into practical application. With emphasis on the reformation of prisoners, penal and correctional institutions, under the supervision of the Department of Corrections, throughout the country are operated primarily for custody and rehabilitation, not for punishment.

In addition to the institutional program, several non-institutional treatment programs have also been implemented so as to provide easy readjustment for prisoners from correctional institutions to society. The Department realizes that the interruption of a prisoners' occupation and social life by imprisonment may destroy prisoners' chances to readjust properly to society. The Department has put much effort into implementing several non-institutional treatment programs into practice. At present, the Department is implementing the said programs such as parole, good-time allowance (sentence remission), public work allowance and penal settlement.

The Pattern of Non-Institutional Treatment

Parole

Parole, a correctional device through which a prisoner is conditionally released from prisons and correctional institutions under supervision by a parole officer after serving part of his sentence, has been introduced to the Thai correctional system by the parole statutory which was enacted under the Penitentiary Act of 1936 by the Ministry of Interior. According to the parole statutory, convicted prisoners are eligible for parole consideration by a parole board after part of their sentence has been served.

1) Eligibility for Parole

Rules of the Penitentiary Act of 1936 state the qualifications for prisoners who will be eligible for parole as follows:

(1) Must be a convicted prisoner showing good conduct, progress in education, good production in prison work or rendering excellent services for the official enterprise;

(2) Must have already served more than two-thirds of the term of the sentence which is a time fixed in the warrant of imprisonment, or not less than 10 years in

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case of life imprisonment.

(3) Must be a "excellent class" or "very good class" or "good class" prisoner;

(4) The "excellent class" prisoner may be granted parole for not more than one-third of the time fixed in the final warrant of imprisonment;

(5) The "very good class" prisoner may be granted parole for not more than one-fourth of the time fixed in the final warrant of imprisonment;

(6) The "good class" prisoner may be granted for parole not more than one-fifth of the time fixed in the final warrant of imprisonment.

The parole system in Thailand is quite distinctive from other countries because such a system of parole is not a right for all prisoners. Parole will be beneficial to only a selected few eligible ones. Therefore, not all convicted prisoners who are qualified will automatically earn parole.

The procedure for convicted prisoners to earn parole starts from the consideration by the prison official review committee, which consists of the prison superintendent and other appointed prison officials. The committee then makes a recommendation to the parole board at the departmental level. The parole board will take into consideration the prisoners' background, criminal records, the circumstances of their offence, their conduct while serving a sentence, the post-release plan and some other matters so as to make sure that each parole a granted prisoner will succeed in going through with the program.

The parole board at the departmental level consists of seven high-ranking officials including the Deputy Director-General of the Department of Corrections who acts as a chairman of the board and other relevant officials from concerned departments such as the Department of Public Welfare, Department of Public Prosecution, Department of Public Health and Police Department respectively. The board has to submit its suggestions to the Director-General of the Department of Corrections for final approval. Therefore, the decision to grant parole to qualified prisoners, by the Director-General, is final.

2) Conditions for the Parolee

In addition to Thai Correctional Law, the Director-General of the Department of Corrections imposes fixed departmental regulations in order to supervise and control each parolee's behaviour and to ensure that each parolee will be less likely to turn back to crime. Departmental regulations concerning this matter are as follows;

(1) Refrain from recommitting crime;

(2) Refrain from entering areas determined by competent authorities;

(3) Abstain from consuming narcotics and gambling;

(4) Report in person to the competent authority designated by the Director-General of the Department of Corrections;

(5) Carry on with the occupation arranged and supervised by the competent authority;

(6) Resume former occupation or take occupation arranged and supervised by close friends or relatives; and

(7) Practice religion.

3) Revocation of Parole

Each parolee shall, as far as possible, behave himself strictly in conformity with the conditions prescribed. If a parolee fails to comply with any of these conditions, he may be rearrested without warrant and reimprisoned for the remaining period of his term of sentence, and certainly, disciplinary charges will be inflicted on him. If such a case happens, it means that parole has already been revoked. If, during the parole period, a parolee is again convicted by final judgement of the court for an offence which is not an offence committed by negligence or petty offence, parole will also be revoked automatically.

Parole in Thailand is thus not a right to all prisoners but is limited to a selected few. Therefore, the number of prisoners who are granted parole within a year is very small. The department, however, urges prisons and correctional institutions to give more support and recommendations for eligible prisoners to earn parole and since the year 1983, the number of parolees has been increased gradually and

become an effective non-institutional program of the department in order to increase outflow of prisoners. Besides, the problem of overcrowding has been relieved.

Good Time Allowance (Sentence Remission)

In Thailand, good time allowance is an important measure for treating prisoners in the community rather than in prison or in a correctional institution. As a provision of the said measure, convicts who have good conduct and are qualified are released under supervision prior to the expiration of their sentence.

Good time allowance has been introduced to the Thai correctional system since 1978 to play a role as an incentive for good conduct among prisoners while being confined. It has been used also as a measure to mitigate the destructive impact of imprisonment upon prisoners and a problem of overcrowding in prison.

1) Eligibility of Good Time Allowance

As a provision of the Penitentiary Act 1936 (2nd Amendment 1977) and other related Corrections Department's regulations, convicted prisoners who are eligible for good time allowance have to comply with the following conditions:

(1) Must be a convicted prisoner who is of either "good class," "very good" or "excellent," showing good conduct and adequate prison work performance;

(2) The number of sentence remission days depends also on a prisoner's class: the "excellent class" will earn five days a month, "very good class" will earn four days a month and "good class" will earn three days a month respectively, in contrast to those who are in "fair," "bad" and "very bad";

(3) The eligible prisoners are required to serve a certain period of sentence which should be more than six months of imprisonment. The authority at the prison level has to calculate the term of sentence remission for each of the convicted prisoners after having served a certain period of imprisonment (at least six months). Then they will write up a report and submit it to the committee appointed by the prison superintendent for consideration. The committee, upon receiving such report, will examine all related matters such as the prisoner's domestic background, criminal records, work performance and his/her behaviour while being incarcerated. The final procedure will be at the departmental level, and is under the control of the sentence remission board appointed by the Director-General of the Department of Corrections. The sentence remission board consists of various departmental representatives such as from the Police Department, Public Health Department, Public Welfare Department, Public Prosecution Department and Deputy Director-General of the Department of Corrections who is chairman of the board. A decision, made unanimously by the board at a departmental level, is final.

2) Conditions for Good Time Allowance

The Director-General of the Department of Corrections excercises his power to impose departmental regulations for prisoners who receive good time allowance privileges. Thus, these regulations are as follows:

(1) Refrain from recommitting crime;

(2) Refrain from entering the areas determined by the provisions of departmental regulations;

(3) Abstain from consuming narcotics or gambling;

(4) Report in person to competent authorities designated by the Director-General of the Department of Corrections;

(5) Carry on with previous occupation or take on an occupation arranged and supervised by close friends or relatives; and

(6) Practice religion.

3) Revocation of Good Time Allowance

A prisoner granted good time allowance shall, as far as possible, behave himself strictly in conformity with the regulations precribed. In case a conditionally released prisoner fails to comply with any of such regulations, he may be rearrested without a warrant and reimprisoned for the remaining period of sentence and of course, disci-

plinary charges will be inflicted on him.

Public Work Allowance

The Public Work Allowance scheme was introduced to the Thai correctional system in 1980, initially as a new scheme for non-institutional treatment. In addition to the Penitentiary Act 1936 (4th Amendment), the Department of Corrections was authorized to employ prison labour for public work projects outside prisons and correctional institutions. This program has significantly progressed, the number of projects having been increased from three projects in 1980 to 359 projects in 1986.

Such schemes aim to provide employment opportunities for prisoners and to utilize prison labour to the benefit of public and community interests.

1) Eligibility for Public Work Allowance

Under this scheme, prisoners, who are eligible for public work projects outside prison, are required to meet the following conditions:

(1) Must be a convicted prisoner of "good class" or higher;

(2) The length of the sentence of imprisonment is between 1-10 years and has already been served for more than half of its duration;

(3) The prisoner shows him/herself to be of good conduct and work performance while being incarcerated; and

(4) Is in good physical and mental health, and able to work for construction projects outside prison.

The procedure for prisoners to earn a public work allowance starts at the prison level. When a public work project has been organized, a committee appointed by the prison superintendent will carefully select qualified prisoners according to the conditions mentioned above, then submit the list to the prison superintendent for final approval.

Prisoners who are approved to work outside prison will be assigned to work in various types of public work projects such as construction work, drain cleaning, beach cleaning and canal dredging. Besides, prisoners will earn an incentive payment which is not more than 80 percent of the net profit of each project. Other benefits included in public work allowance is that they will have a sentence remission of one day for every day spent working outside.

2) Revocation

While prisoners are working on public work projects outside their prison, they are always strictly supervised and examined by custodian staffs and prison authorities. If any prisoner misbehaves, his privilege from public work allowance will be forfeited and he will be no longer allowed to work outside prison.

The public work projects, therefore, bring much benefits not only to prisoners who will obtain an incentive payment and sentence remission, but also to the public as a whole.

Penal Settlement

Penal settlement is another type of program which has been set up as a place for the pre-releasing of prisoners as a mediatory stage after prison, so as to help them re-adjust to the community. At present, there is only one penal settlement in Thailand called *Klongpai Penal Settlement.* Klongpai Penal Settlement, which was established in 1977, is located in Nakornrachasima Province (320 km from Bangkok) and the total area is 4,450 acres. Prisoners who are selected for Klongpai Penal Settlement are required to participate in farming and agricultural schemes. They are, of course, given land for living and agricultural purposes; moreover, they are allowed to settle down at the penal settlement although their sentence is expired and their period of stay is unlimited.

1) Eligibility for Penal Settlement

Male prisoners, whose sentence is final, may be selected to get a special privilege to live in a penal settlement rather than in an institution. They are also required to meet the following conditions:

(1) Must be a "good class" prisoner or of a higher class, and have no more trials to undergo in the court system;

(2) Has already served more than half

of the sentence and/or the remaining period of the sentence does not exceed two years;

(3) Comports himself with good conduct and is well behaved while incarcerated; and

(4) Must have previous background in agricultural occupation. If the prisoner has no land and his financial status is unstable, the authority may consider such case to be of high priority.

Qualified and selected convicts are allowed to bring their family to stay with them while being treated in the penal settlement. They are also required to build up their own house or cottage in the provided area in the penal settlement living area where all qualified prisoners, who are regarded as being special prisoners, and ex-prisoners settle down.

Each special prisoner is allowed to occupy eight acres of land for farming plus a piece of land for their own house. Those agricultural products of the farming will, of course, belong to them. Moreover, the possessory right of the land is transferable to a prisoner's or ex-prisoner's descendant(s) in case of his death.

2) Revocation

Those special prisoners, who are selected to live in a penal settlement, are required to comply with the rules and regulations determined by the authority; if not done so, their privileges may be forfeited and they will be re-imprisoned in the institution right away.

Public Participation in the Thai Correctional System (Volunteers in Corrections Services)

We can say that the success of community-based correction programs depends largely on public participation and support. Public participation in community corrections can be seen in various forms but the major one is in the form of volunteer activities.

The most widely publicized volunteer activity in Thai correctional system is the program for volunteer aftercare officers organized by the Department of Corrections. The main purposes of the program is to alleviate the problem of shortage in professional aftercare personnel and to foster better relationships between prisoners and the community. The volunteer aftercare training program was initially established in 1977 with only 43 volunteers in the beginning. At present, they are 9,358 volunteer aftercare officers working for the Department's aftercare supervision program in connection with prisons and correctional institutions all over the country. It is expected that in 1988, each sub-district in Thailand will have at least one or two volunteers attached to it.

After passing through the screening and training process, volunteers will be responsible for the supervision of some conditionally released prisoners who are on parole or have received sentence remission either by public work allowance or good time allowance. Their caseload is about 10 cases but some other may have a bigger caseloads depending on their work performance. For their payment, volunteer aftercare officers will not be paid more than 50 baht per case as a transportation fee. Volunteer aftercare officers have to work in coordination with full-time prison authorities, and will act both as coordinator and supervisor.

Generally, volunteer aftercare officers are selected from amongst respected persons in each community as well as members of other professions such as teachers, lawyers, social workers, monks and retired government officials.

Since volunteer aftercare officers are not members of prison staff, they will be able to develop a close relationship with conditionally-released prisoners. For the past seven years, volunteer aftercare officers in the Thai correctional system have played a significant role in helping prisoners to re-adjust themselves society.

Conclusion

Non-institutional treatment of prisoners in Thailand under the responsibilities of the Department of Corrections comprises of parole, good time allowance, public work allowance and penal settlement. Pris-

oners who are conditionally released under any of these non-institutional programs, will be strictly supervised while they are living in the community. During the supervision period, volunteer aftercare officers will be used to supervise such conditionally-released prisoners. Some qualified and selected prisoners will be transferred to penal settlements in order to prepare themselves prior to their release. All the above mentioned measures are regarded as being part of the non-institutional program for the treatment of prisoners in Thailand. It certainly helps attain the goal of the department which is to increase the number of convicted prisoners achieving a successful readjustment upon their return to the society. Therefore, non-institutional treatment based on community reintegration is of much use to the Department as well as the country as a whole. The following listed benefits provides some other beneficial dimensions to non-institutional treatment conducted under the Department of Corrections, Ministry of Interior, Thailand:

(1) Prisoners will be able to further their education and carry on with their previous occupation;

(2) The system decreases commitments to prisons and it is less expensive than incarceration;

(3) Creates more effective means for reducing recidvism;

(4) Provides prisoners with an opportunity to earn a living while under supervision in the community;

(5) Relieves welfare roles and reduces general welfare costs since the working prisoners can support their own family;

(6) Provides referral services for those prisoners who require specific assistance, such as eye glasses, health care, job placement, etc.;

(7) Provides prisoners an opportunity to deal with their problems in the environment in which they exist, rather than in the sterile and criminogenic prison environment; and

(8) Relieves the problem of overcrowding in prison and reduces costs of prison administration.

Finally, it is hoped that this paper will encourage further discussion and questions about the roles of non-institutional treatment in relation to crime as well as the features of the correctional system, its development and growths for more opportunities to deal effectively with future directions in a free society.

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The Probation System: Philippine Setting

*by Ibra D. Ondi**

The Probation System was formally institutionalized in the Philippines on July 24, 1976 when former President Ferdinand E. Marcos signed and issued Presidential Decree No. 968, popularly known as the Probation Act of 1976. This decree ushered a new era in the Philippine corrections system wherein persons 18 years of age or over who have been convicted and sentenced to a penalty of not more than six years of imprisonment are given the opportunity to reform themselves and to become once again law-abiding and respected members of their communities. The institutionalization of probation in the Philippines enhances the government's thrust towards the humanization and democratization of justice.

Since January 3, 1978, when the application of the substantive provisions of PD 968 went into full force and effect, and up to December 3, 1986, there were 78,027 adult first offenders who had filed petitions for probation with the various courts in the Philippines. Out of this number, 58,467 petitioners were granted probation. A total of 34,247 probation cases have so far been successfully terminated. There are presently 20,990 probationers all over the country who are under the active supervision of probation field officers. In terms of prisoners' maintenance, probation has saved for the government approximately P367,097,309.79 since its operation in 1978.

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Probation: An Alternative to Imprisonment

Although probation is comparatively of recent application in the Philippines, its concept is not new. As early as 1932, juvenile offenders could avail themselves of a form of probation provided for in Article 80 of the Revised Penal Code. In 1935, the Philippine Legislature enacted Act No. 4221 which allowed probation to first offenders of 18 years of age and above who were convicted of certain offenses. It was however, declared unconstitutional by the Supreme Court of the Philippines two years later because certain procedural aspects in matters of its implementation were found not in consonance with the Philippine Constitution (People *vs.* Vera *et al.* 65 Phil. 115). We have also at present the Dangerous Drug Act of 1972 (Republic Act No. 6425, as amended), which allows probation to certain types of violators, and the Child and Youth Welfare Code (Presidential Decree No. 603, as amended), which affords probation to offenders below 18 years of age.

Adult probation in the Philippines is understood as a disposition under which an accused, after conviction and sentence, is released to the community subject to conditions imposed by the court and to the supervision of a Probation Officer. It is a privilege granted by law, and as such, it cannot be availed of as a matter of right by persons convicted of crime. For one to be able to enjoy the benefits of probation, he must first show that he has none of the disqualifications imposed by law.

Salient Features of Probation in the Philippines

1. It can be availed of only once. It is

a single concept probation as opposed to multiple probation being practiced in some countries. This means that an offender who has been granted probation can no longer apply for the same privilege for an offense that he might commit in the future.

2. It is intended for offenders who are 18 years of age and above who are not otherwise disqualified by law. Offenders who are disqualified are those:

a) Sentenced to serve a maximum term of imprisonment of more than six years;
b) Convicted of subversion or any crime against the national security or the public order;
c) Who have previously been convicted by final judgement of not less than one month and one day or a fine of not less than two hundred pesos; and,
d) Who had been once on probation under the provisions of this decree (Sec. 9 PD 968 as amended).

If the offender is below 18 years of age at the time of his commission but reaches 18 years at the time of the trial, the court does not suspend the sentencing of an offender if that person is found to have committed the acts charged but, instead, pronounces judgement. The youthful offender may then apply for probation.

3. Grant of probation is subject to conditions imposed by the court. There are two types of conditions that the probationer must observe and follow. These are the general mandatory conditions and the special or discretionary conditions, both of which are incorporated in every order of probation issued by the court. The mandatory conditions require that the probationer shall:

a) Present himself to the probation officer designated to undertake his supervision at such place and time as may be specified in the order within seventy-two (72) hours from receipt of the said order;
b) Report to the probation officer at least once a month as specified by said officer.

Special or discretionary conditions are the additional conditions imposed on the probationer which are geared towards his correction and rehabilitation outside of prison and right in the community where he belongs. The court may require him to:

a) Co-operate with a program of supervision;
b) Meet his family responsibilities;
c) Devote himself for specific employment and not to change said employment without prior written approval of the probation officer;
d) Undergo medical, psychological or psychiatric examination and treatment and enter and remain in a specified institution, when required for that purpose;
e) Pursue a prescribed secular study or vocational training;
f) Attend or reside in a facility established for instruction, recreation or residence of person on probations;
g) Refrain from visiting houses of ill-repute;
h) Abstain from drinking intoxicating beverages to excess;
i) Permit the probation officer or an authorized social worker to visit his home and place of work;
j) Reside at premises approved by the officer or social worker and not to change his residence without his/her prior approval;
k) Satisfy any other conditions related to the rehabilitation of the probationer which are not unduly restrictive of his liberty or incompatible with his freedom of conscience.

A violation of any of the conditions may lead either to a more restrictive modification of the same or to the revocation of the grant of probation. Consequent to the revocation, the probationer will have to serve the sentence originally imposed.

4. Post-sentence investigation and the submission of post-sentence investigation reports are prerequisite to the court disposition on the petition for probation. For each application, a post-sentence investigation is conducted by a probation officer or his assistant. This includes a thorough

study not only of the criminal record of each offender but also of his character, his family background, his married life, educational and occupational records, interpersonal relationships, and practically all areas of his life which may have a bearing in determining his suitability for probation. The investigation procedure involves interviews of the petitioner, a records check with police agencies, prosecuting officers and the courts, interviews with collateral information sources such as family members, neighbors, and others. When necessary, an applicant for probation may have to undergo a drug dependency test or a psychological evaluation to better assess his potential for probation. The findings in the investigation together with the recommendations of the probation officer for the grant or denial of probation are contained in a post-sentence investigation report (PSIR) which is submitted to the court having jurisdiction over the case, and which aids the latter in its disposition of the case.

5. The decision of the court to grant or deny probation is final and not appealable.

The probation officer merely plays a supportive role to the court. He assists the court in determining who should be granted or denied probation. He provides information to the courts as to whether or not there is a need for modification of the conditions it has imposed and whether the probation should be revoked or terminated. Once the court has granted probation to an offender and established the conditions thereof, the probation officer then works with the probationers to see to it that the conditions are observed and helps him lead a law-abiding and decent life. An order granting or denying probation is final and not appealable.

6. It is a community-based treatment program for offenders. Community support is solicited in a variety of services, such as a volunteer aid service, manpower development, education, medical assistance, employment, recreation and other services, including drug abuse prevention and treatment programs. Rehabilitation work in a community-based correctional program depends much on the availability of community resources. Community support makes easier the integration of probationers into society.

7. The administration of the Probation System in the Philippines is under the executive branch. Unlike in other countries where probation officers work directly under the courts, our system provides that they should be under an agency under the Department of Justice which is a part of the executive branch of the government.

It is our view that a judge does not have the time, training, or orientation to be able to perform probation work in addition to his judicial functions. Probation work is service-oriented in nature. It cannot be handled by the courts whose functions are adjudicatory. It may also be stated that the executive branch of the government has under it all the other subsystems for carrying out court disposition of offenders so that increased interactions and closer administrative coordination with them and the other agencies of the criminal justice system can easily be fostered.

Probation in the Philippines centers mainly on two major functions, namely (a) investigation of applicants for probation for the guidance of the court and (b) the supervision of the probationers after they have been granted probation by the courts. There has been a continued increase in the number of convicted persons who have filed applications for probation. A total of 78,027 offenders have so far applied for

Table 1: Probation Caseloads

Year	Investigation	Supervision
1978	6,154	3,199
1979	7,335	5,336
1980	7,807	5,577
1981	9,631	6,629
1982	10,038	7,883
1983	9,487	7,469
1984	9,695	7,627
1985	9,699	7,728
1986	8,381	6,985
Total	78,027	58,433

probation from 1978 to 1986. Out of these applicants, 58,433 were granted probation, 6,712 were denied, 1,622 were disqualified and 2,194 have withdrawn their applications. About 34,247 cases were terminated. Only 2,205 probation cases were revoked. Presently, there are 20,990 probationers who are under active supervision.

Profile of Probationers

What are the most common offenses being committed by convicted persons who have applied and qualified for probation? A profile study of 10,715 probationers under PD 968 conducted in 1980 by the Probation Administration showed that the majority committed crimes against persons and against property. Of those who committed crimes against persons, 1,857 or 45.83% committed physical injuries; 379 or 9.35% committed homicide through reckless imprudences; 608 or 15.00% committed frustrated homicide; 212 or 5.23% committed attempted homicide; 318 or 7.85% committed physical injuries through reckless imprudences; 12 or 0.30% com-

Table 2: Probation Supervision Caseloads

Year	Total supervision cases during the year	Cases successfully terminated	Cases revoked	Other dropped cases	Active supervision
1978	3,199	300	17	9	–
1979	5,336	1,401	119	39	–
1980	5,577	2,893	164	72	–
1981	6,629	3,879	183	113	–
1982	7,883	4,681	237	138	–
1983	7,469	5,170	273	146	–
1984	7,627	4,854	286	168	–
1985	7,728	5,353	422	209	–
1986	6,985	5,716	504	326	20,761
Total	58,433	34,247	2,205	1,220	20,761

Table 3: Disposition of Petitions for Probation

Year	Granted petitions	Denied petitions	Disqualified petitions	Withdrawn petitions	Others	Petitions pending court dispositions	Active investigation
1978	3,434	574	574	170	2	–	–
1979	4,562	535	181	155	53	–	–
1980	5,307	580	168	168	49	–	–
1981	6,781	797	196	296	106	–	–
1982	8,045	843	214	336	185	–	–
1983	7,535	759	143	275	155	–	–
1984	7,821	854	196	249	274	–	–
1985	7,897	851	164	306	200	–	–
1986	7,085	919	173	239	210	3,871	1,804
Total	58,467	6,712	1,622	2,194	1,234	3,871	1,804

mitted maltreatment; 1 or 0.02% committed parricide; 35 or 0.86% committed murder; 24 or 0.59% committed attempted murder; 72 or 1.78% committed frustrated murder; and 534 or 13.18% committed homicide.

Of those who committed crimes against property, 1,598 or 48.99% committed theft; 607 or 18.61% committed robbery; 421 or 12.91% committed estafa; 214 or 6.56% committed falsification; 140 or 4.29% committed malicious mischief; 264 or 8.09% committed damages to property; and 18 or 0.55% committed arson.

The same study showed that 10,069 or 93.97% were males and only 646 or 6.03% were females.

The profile study also showed the following data of the probationers on:

a) Their civil status: 7,028 or 65.59% are married; 3,242 or 30.26% are single; 103 or 0.96% are separated; 173 or 1.61% are widows/widowers; 166 or 1.55% with common relations; and 3 or 0.03% with no informations;
b) Their number of dependents: 3,754 or 35.03% have no dependents; 1,892 or 17.66% have 1 to 2 dependents; 2,258 or 21.07% have 3 to 4 dpendents; 1,554 or 14.50% have 5 to 6 dependents; 740 or 6.91% have 7 to 8 dependents; 370 or 3.45% have 9 to 10 dependents; 98 or 0.91% have 11 to 12 dependents; 47 or 0.44% have 13 above dependents; and 2 or 0.02% with no information.
c) Their age level: 1,681 or 15.69% are 18-21 years; 2,814 or 26.26% are 22 to 27 years; 2,014 or 18.80% are 28 to 33 years; 1,457 or 13.60% are 34-39 years; 1,153.or 10.76% are 40 to 45 years; 702 or 6.55% are 46 to 51 years; 413 or 3.85% are 52 to 57 years; 256 or 2.39% are 58 to 63 years; 217 or 2.03% are 64 and above; and 8 or 0.07% with no information.
d) Their educational attainment: 2,552 or 23.82% primary; 3,335 or 31.12% intermediate; 2,571 or 23.99% high-school academic; 532 or 4.97% high-school vocational; 734 or 6.85% college vocational; 114 or 1.06% college undergraduates; 340 or 3.17% degree holders; and 537 or 5.01% unschooled.
e) Their employment status: 5,131 or

Table 4: Government Savings through Probation in Terms of Prisoners' Maintenance

(Unit = P)

Year	Prisoners' daily per capita maintenance cost	No. of prisoners/ probationers	Annual maintenance cost of prisoners	Total amount of expenses of the PA	Estimated savings
1978	5.46	3,199	6,375,287.10	11,841,403.23	5,466,116.13
1979	6.58	8,209	19,715,555.30	13,238,165.56	6,477,389.74
1980	7.60	12,227	33,917,698.00	17,513,308.11	16,404,389.89
1981	11.42	15,242	63,533,228.60	21,941,449.00	41,591,779.60
1982	13.14	18,908	90,684,658.80	25,789,052.29	64,895,606.51
1983	12.89	21,626	101,747,086.10	29,363,448.33	72,383,637.77
1984	8.95	23,756	77,604,913.00	29,706,000.00	47,898,913.00
1985	8.50	26,344	81,732,260.00	38,071,118.00	43,661,142.00
1986	12.00	27,536	120,607,680.00	41,357,112.60	79,250,567.40
Total			595,918,366.90	228,821,057.12	367,097,309.78

47.89% employed; 3,968 or 37.03% self-employed; and 1,616 or 15.08% unemployed.

f) Their income status: 1,586 or 14.80% with no income; 7,267 or 67.82% below P500.00; 1,180 or 11.01% with P500 to P899.00; 227 or 2.12% with P900 to P1,129.00; 60 or 0.56%-P1,300.00 to P1,699.00; 38 or 0.35%-P1,700.00 to P2,099.00; 64 or 0.60%-P2,100 and above; and 293 or 2.73% with no information.

A follow-up study on probationers in succeeding years is being conducted but its findings have not yet been compiled.

Probation is a less costly alternative to imprisonment. A comparison of the annual expenditures of the probation on administration and the annual maintenance cost of prisoners reveals that about P367,097,309.78 have been saved by the government through the probation system from 1978-1986.

Another form of savings derived from the adoption of the adult probation system in the Philippines cannot be measured quantitatively for this relates to the humane attributes of probation. Their value cannot be determined but can only be felt, as they involve the preservation and development of an individual's worth and dignity as a person, maintenance of family unity and continued family support, avoidance of the stigma of incarceration, human resource development and utilization, and reduction of the incidence of recidivism.

Non-Institutional Treatment of Offenders—Chinese Style

*by Sun Yongxin**

For the police and personnel of judicial and procuratorial organs from China, the term "non-institutional" seems to sound rather fresh and strange, and its definition is somewhat vague, for the term is not used in China. However, if we do not let the definitions of "non-institutional treatment of offenders" bother us but pay attention to its content and essence, we will discover there exists in our system a few forms and measures which are related or similar to the non-institutional treatment of offenders. For example, "Control and Surveillance" and "Comprehensive Treatment," in which most of us think there is some non-institutional element. Therefore, this paper will focus on Control and Surveillance and Comprehensive Treatment.

Control and Surveillance

As early as the beginning of the 1950s, a system of Control and Surveillance began to be adopted in our country. The objects of Control and Surveillance were then grafters and counterrevolutionaries whose crimes were minor. In 1979, Control and Surveillance was placed into Article 28 of the Criminal Law of the People's Republic of China, as one of five major criminal punishments; and its new definition was given. What is called Control and Surveillance is a method of penalizing offenders who have been convicted by the court according to the law. The offenders receiving this kind of punishment will not be put in prison but reform themselves through labouring under the control of law enforcement units and public surveillance.

The object, content and duration of Control and Surveillance have been stipulated specifically by the Criminal Law of China. The sentence of Control and Surveillance is judged by the court and carried out by public security organs. During the term of Control and Surveillance, the offenders must abide by the following stipulations:

(1) Abide by the government law and decree, receive public surveillance, and participate in collective productive labour or work actively;

(2) Regularly report to the implementing organ on their activities;

(3) Move and leave for other places upon approval by the implementing organ.

The legally permitted minimum time of Control and Surveillance is three months, and the maximum is two years. The sentence time for those who repeat offences cannot exceed three years and be extended. The sentence term begins to be counted from the day of conviction. If detained before the verdict was carried out, one day under the term of detention will be compensated by two days of the sentence term.

At present, the objects of Control and Surveillance are mainly the offenders who committed minor crimes of countering revolution, disturbing social order, stealing, swindling, slipping through the border and robbing. The objects also include hooligans and sorcerers with minor offences. Moreover, the Criminal Law specifies the following points for implementation of Control and Surveillance:

(1) The content does not include the deprivation of political rights;

(2) The convicted offenders under Control and Surveillance enjoy equal pay for equal work during the sentence term. On

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one hand, the offenders are punished; on the other hand, they are paid through participating in labour or work;

(3) At the expiration of one's term of Control and Surveillance, the implementing organ will announce the relief to the offender himself and the masses concerned.

Control and Surveillance is a creation of the criminal penalty of China. Over a long period of practice, it has proved to be a kind of necessary punishment in the struggle against offenders with minor crimes, an effective method of reforming and educating them as well as an ideally compulsory measure to prevent these offenders from repeating crimes. For example, an investigation on 71 offenders of a city, who were serving the sentence of Control and Surveillance, was made and showed that 17 (23.9%) of all these offenders behaved well; 44 (61.9%) not bad; 6 (8.4%) were involved in illegal activities; and only 4 (5.6%) repeated offences.

As above showed, Control and Surveillance has achieved good results in reforming and educating offenders. During the term of Control and Surveillance, the offenders are not separated from their work units and their families, and can enjoy equal pay for equal work like other people, which does not influence offenders' family life, but embodies humanism. This treatment is also economical and conducive to reforming offenders and maintaining public security.

Comprehensive Treatment

In the early 1980s, our government put forward the policy of Comprehensive Treatment, aiming at relying on the strength of the whole society; making full use of means of ideology, economics, culture and law to preserve the healthy growth of the younger generation, to crack down on crimes, to prevent and save youngsters from committing crimes.

Without doubt, families, schools and society are all responsible for preventing youngsters from committing crimes and treating them. Comprehensive Treatment combines the prevention with the treatment. In our country, the way of implementation of Comprehensive Treatment is to rely on government departments, people's organizations, industrial and commercial enterprises, families, schools, neighbourhoods, army and the masses, all which work in full co-operation and with unity of purpose, work together but take on their own responsibilities; to use various means of politics, ideology, organization, economics, culture, education, morality and law, so as to reach the goal of the prevention and treatment of crimes and juvenile delinquency.

In order to show great concern for youngsters and help them grow healthly, we adopt such a method that in practice, units are responsible for their own staff and workers; educational institutions are responsible for pupils and students; neighbourhoods for youngsters residing there; and parents for their children. Units, schools, families and neighbourhoods are together concerned about the growth of the younger generation in every aspect, and frequently observe and help them. At the same time, all institutions and organizations of society take concerted action, create a better social environment and provide more places of activities and recreation for youngsters, such as "youth centres" and "cultural palaces," or run more courses of dance, music, foreign languages and so on in their spare time, so as to help youngsters foster lofty sentiments and cultivate a correct outlook on life, morality and legality, thus weakening or removing the criminal motivation of youth, and putting them under the preservation and education of society.

As for the youngsters who had committed minor crimes and those who had served sentence but are now returned to the society, their units, neighbourhoods, parents and relative police stations bear the responsibility for helping, educating them, and changing them by persuasion. The officials of local police stations should call on their families regularly, inquiring about their thoughts, work and life. The units and neighbourhoods should frequently organize various kinds of activity and re-

creation for them, such as cultural evenings, athletic sports, the popularization course for legal. knowledge and the remedial course of cultural knowledge to help these youngsters improve culturally and morally. The purpose of all this is to make them realize the evil and harmfulness of crimes; to make them disgusted with crimes; and to further reduce the motivitation of their repeating crimes.

According to statistics, 77% of all crimes in Xining were committed by youngsters in 1980. Since then, the percentage of juvenile delinquency has kept on rising, and it increased to 90% in 1986. Obviously, the juvenile delinquency has become a serious problem in society, at the same time, Comprehensive Treatment is getting more and more important than before. Comprehensive Treatment is not only a basic way or method of preventing juvenile delinquency; but also an effective measure to prevent the young offenders, who had committed minor offences, from repeating crimes. Moreover, Comprehensive Treatment can reduce crime rate and prison populations, so it is significant both economically and sociologically.

Summary

This paper has described and discussed Control and Surveillance and Comprehensive Treatment, Chinese style, of non-institutional treatment of offenders. In addition, the paper in part reflects the attitude of our country in its criminal policy for the practical use of non-institutional treatment measures. As showed above, Control and Surveillance and Comprehensive Treatment, like other types of non-institutional treatment measures for offenders, are indispensable and effective means in the struggle against crimes and juvenile delinquency, and are very humanitarian and very economically effective when compared with other treatment measures.

But there still are some problems in implementation of Control and Surveillance and Comprehensive Treatment. For example, some offenders fled to other regions for a long time during the term of Control and Surveillance, so it is easier for offenders to be out of control. The biggest problem in implementation of Comprehensive. Treatment is the co-ordination of the different branches of the government. It different branches of the government. It tends to weaken the function of Comprehensive Treatment because of the failure of co-ordination. Therefore, I think it is necessary to establish a special branch in the government's organs so as to connect and co-ordinate effectively the efforts and activities of judicial organs, police, educational institutions, units, neighbourhoods and families. In short, we should unite the strength of the whole society to reach a tacit agreement and keep in step with the prevention systems and treatment of crimes and juvenile delinquency. Besides, a thorough investigation and study of non-institutional treatment of offenders should be made, and at the same time, it is also necessary to study and draw on the experience of other countries to perfect our own non-institutional treatment measures for offenders.

SECTION 3: REPORT OF THE COURSE

First Draft of Proposed United Nations Standard Minimum Rules for the Non-Institutional Treatment of Offenders

Foreword

This draft covering non-institutional treatment of offenders is presented by the participants of the 75th International Training Course held at UNAFEI from April 20th to June 20th, 1987. The theme of the Course was "Non-institutional treatment of offenders: its role and improvement for more effective programmes." The main objective of the Course was to provide participants, mainly from Asia and the Pacific Region, with an opportunity to study and discuss various contemporary problems concerning the non-institutional treatment of offenders. Emphasis was placed on what the role of such treatment has been and will be played in each country with regard to both the prevention of repeated offences, the operation of treatment measures, and the exploration of ways and means which will make the treatment programme for non-institutional treatment measures more effective.

One may be aware that there are no existing Standard Minimum Rules for Non-Institutional Treatment of Offenders in the world today and thus every step being taken in the preparing and consolidating of such Rules appears to be rather significant. It has to be pointed out that the participants of the 75th International Training Course consisted of professionals who are actually working both in the field of community-based treatment and in related areas throughout the criminal justice administration. Their day-to-day contacts with the offenders result in precious experience and knowledge which evidently was very helpful in the drafting of the Rules.

Before the drafting of the Rules, the participants had an in-depth comparative study on the treatment of offenders. The paper presented by each participant on his/her country was supported by details of statutes, statistics, research and other data relevant to the understanding of non-institutional treatment of offenders in each country. Apart from this, the participants were given lectures by visiting experts in the field of non-institutional treatment of offenders, other ad-hoc lectures on related themes, field studies and visits and ample reading material for personal reference.

In the drafting of the Rules, participants were first divided into four small groups while each group was responsible for the discussion and drafting of the Rules on either one of the following four sub-topics:

(1) For Group I, their sub-topic was "Available forms of non-institutional treatment measures" with focus on the extent of their availability and the actual situation of their use in each country.

(2) For Group II, their sub-topic was "Role of non-institutional treatment of offenders" with focus on:

(a) criteria and procedures of selection for offenders applying to various types of non-institutional treatment programmes and their applicable range;

(b) conditions and revocation of various types of non-institutional treatment programmes.

(3) For Group III, their sub-topic was "Measures to implement non-institutional treatment programmes in a more effective way" with focus on:

(a) evaluation of the various types of current and/or existing non-institutional treatment programmes;

(b) problems and improvement measures in implementation of various types of non-institutional treatment programmes.

(4) For Group IV, their sub-topic was "Merits and demerits relating to the practical use of volunteers in non-institutional treatment measures" with focus on:

(a) the method and the extent of the practical use of volunteers;
(b) the limits and problems of the practical use of volunteers; and
(c) the training methods when volunteers are used.

Each group first met for the election of officials with Group I electing Mr. K. L. Gupta of India as Chairperson and Mr. J. S. Leopando of the Philippines as Rapporteur. Group II elected Mr. P. H. M. Ratnayake from Sri Lanka Chairperson, with Mr. M. bin Osman of Malaysia Rapporteur. Group III elected Mr. I. Canagaretnam of Sri Lanka as Chairperson and Mr. W. W. Wong of Hong Kong Rapporteur; with Group IV deciding upon Mr. I. Jeet of Fiji as Chairperson and Mr. I. D. Ondi of the Philippines as Rapporteur. A list of participants and advisors is annexed.

Each group proceeded to conduct independent discussions upon their designated sub-topics and produced a preliminary group report on the basis of these respective group discussions concerning Standard Minimum Rules. In turn, the group report was presented to all the participants at the General Discussion Session for further discussion and evaluation from a wider and more general angle. Recognition was carefully given to the differences in the social, cultural and economic traditions in each country. More information was therefore incorporated in the group reports plus other amendments and alterations which finally resulted in the production of this Draft Standard Minimum Rules for Non-Institutional Treatment of Offenders.

The Rules set out are meant to be good general principles and practices in the non-institutional treatment of offenders. They aim at presenting the minimum conditions which are accepted as suitable by the United Nations and, as such, are also intended to guard against inappropriate use of treatment methods and the mistreatment of offenders. For reference, the participants have paid special attention and consideration to the development of new international standards for fair and humane administration in the fields of institutional treatment of offenders and Juvenile Justice which are respectively stipulated in the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

Lastly, this first draft on the United Nations Standard Minimum Rules for Non-Institutional Treatment of Offenders will be the theme to be taken up for further discussion by the participants of the Seminar Course held at UNAFEI from February 8th to March 12, 1988. It is envisaged that their contribution and recommendations will continue to pave the way for the formulation and framing of the ultimate Standard Minimum Rules for the Non-Institutional Treatment of Offenders.

I.
Available Forms of Non-Institutional Treatment Measures

Introduction

The 20th century is characterized as a very progressive era in so far as the treatment of offenders is concerned. From a punitive approach it moved to the reformative and corrective stage. Penologists and those directly involved in the field of correction as well as correctional related officers of the world have time and time again recommended various moves to greatly enhance the treatment of offenders. Among these practices Non-Institutional Treatment has proved to be the most humane and to provide updated measures in the field of correction as advocated by the United Nations.

The role of the non-institutional treatment measures has manifested a great impact not only upon offenders but upon the criminal justice system, and the offenders' family and general public. The psychological development of the offender is enabled in a more practical way, and the social and economic influences on the offender have been proved more favorable in almost all countries that practice this method of treatment.

It is within this background that we dealt with the available forms of non-

institutional measures: extent of their availability and the actual situation of their use in each country. Considering the importance of meeting the requirements of modern criminal justice administration and also considering these alternative measures in the context of the economic, social, and cultural conditions prevailing in each country (see, page 9, Alternative to imprisonment, International Review of Criminal Policy, No. 36, 1980 ST/ESA/SER.M/36 prepared by the United Nations Secretariat.), it is desirable that non-institutional treatment methods shall be developed and widely used, both at the stage of investigation by police and prosecutors, at the stage of sentencing by courts and at the penal stage utilized by correctional officers. The greater development and use of such measures must be balanced by features to ensure that they do not cause a threat to the peace, good order and security of society. Therefore, we divided the topics to discuss into three stages, namely: Pre-Trial Stage, Sentencing Stage and the Post-Judicial Stage and then drafted the rules and commentaries.

A. Pre-Trial Stage

1. Diversion

1.1 Consideration shall be given, wherever appropriate, to dealing with offenders without resorting to formal trial by the courts.

1.2 The police, the prosecution or other agencies dealing with criminal cases shall be empowered to dispose of petty/minor cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in the United Nations Instruments on Human Rights and Criminal Justice Administration and the other standards recognized by the international community.

Commentary

The rules mentioned above deal with the various diversion schemes, formal and informal, being practiced in some of the countries, to deal with petty crimes. The concerned agencies are vested with certain powers under the law or conventions to deal with petty cases on the basis of justice, equity and good conscience or on the basis of written guidelines.

In order to avoid unnecessary punitive effects upon the offender, and to abate court congestion and decrease the overcrowding in prison, diversion assumes a profound significance in criminal justice administration.

Diversion, involving removal from criminal justice process, and frequently redirection to community support services, is commonly practiced on a formal and informal basis in many legal systems. This practice serves to avoid the negative effects of subsequent proceedings in criminal justice administration, such as stigma of conviction.

A rule on similar lines has already been adopted by the United Nations in respect of Juvenile Offenders in 1985, popularly called the Beijing Rules.

In some countries in Asia, different diversion schemes for disposing of minor criminal cases at the local level outside the court are in vogue. In India, the Village Panchayat has been delegated certain powers in matters relating to peace and tranquility in the village. The Panchayat consists of elected and nominated members from among the village community who are elected on the basis of adult franchise (popular election) and some of them are nominated by the government/authorities to represent women and weaker sections of the society. They hold office for a period of five years, unless removed by the government by due process of law. The constitution of the Panchayat's election procedures, the details of their work, powers to handing out decisions etc., are governed by the Acts of the state legislatures. In the Philippines, the basic political unit called "barangay" is responsible for maintaining law and order and settling minor cases outside of the court. The barangay is headed by a barangay chairman who is elected by the people within the

barangay along with several councilmen. The barangay chairman and his councilmen, the number of which varies in accordance with the area's population constitutes the barangay council or legislative council. They have the power to administer barangay ordinance and the power to enforce such ordinance within the jurisdiction of the barangay. The barangay council may constitute itself as a Barangay Court pursuant to the Barangay Laws. The barangay court is vested with an authority to settle any disputes between or among the residents of the barangay, in such a manner that the victim of a minor offence cannot file a criminal charge in a judicial court without first obtaining a certification from the barangay court to the effect that reconciliation or settlement of the case in the barangay court failed. In Sri Lanka, the system of conciliation boards based on the traditional Sinhalese idea of settling disputes was introduced in 1958, to handle minor criminal and civil cases in the local community. Some of the advantageous aspects of these practices may be adopted by other nations as well, depending on their social, cultural, economical, historical factors etc., to set up community courts to settle petty/minor cases.

These schemes should operate under written guidelines or on the basis of conventions and usage applicable in the various countries. A proper periodical review to evaluate the outcome of such schemes should be undertaken for guiding future improvement etc. In the operation of these schemes, the aggrieved person should, however, have a right to approach the court so as to ensure equity, justice and fairplay and to prevent miscarriages of justice. These safeguards may be provided in the schemes themselves.

In some countries, the police has the power not to refer the case to the prosecutor in certain petty/minor offences even after a case has been reported to the police station.

In India, the penal code offences are classified into cognizable and non-cognizable offences. Non-cognizable offences are mostly petty offences mentioned in the Criminal Procedure Code and those offences under Special Laws which are punishable with imprisonment of less than three years or with fine only. In a non-cognizable case, the police has no powers to arrest without a warrant. Thus the police are automatically excluded from investigating and prosecuting the petty offences unless there is a strong ground to proceed further. The cognizable offences are those punishable for more than three years' imprisonment and the police has the discretion not to send for prosecution the petty cognizable cases. In China, the police has the discretion to drop the minor/petty offences, e.g., stealing, street fighting, etc., if the offender is willing to repay or compensate the victim who agrees not to prosecute. In Hong Kong, police supervision is placed on such petty offenders for a period of two years or until his 16th birthday. In England and Wales, a system of official police caution has been in operation administered by police officers.

In most of the countries, the traffic law and other special laws allow the police and other law enforcement agencies to impose administrative fines in certain cases for easing the burden on prosecution. In Japan, the Traffic Infraction Notification Procedure (Traffic Infraction Ticket System) was introduced in 1968 to ease heavy court work-loads caused by a sharp increase in traffic violations. This procedure was also designed to avoid the stigmatization of millions of traffic violators as criminals, since a minor traffic violator may be exempted from prosecution if he or she pays a non-penal fine or an administrative fine within a specified time at a post office or bank.

In Thailand, the police has the power to administer a fine for petty penal offences which may be punished by a fine of not more than 2,000 baht.

In order to avoid the stigmatisation accompanying conviction and side effects of short-term imprisonment and to reduce the caseload of the court, some countries have their own system of suspension of prosecution. In Japan and Korea, the public prosecutor is authorized to suspend pros-

ecution at his own discretion in consideration of the interests of society and the offender, even if there is sufficient evidence to prove the guilt of the offender. In Thailand, the public prosecutor directs the police officer in charge of investigation to settle certain criminal cases out of the court, if it is one which may be settled without recourse to prosecution.

In the Philippines, the police tolerate the compromise or amicable settlement of offences, which are not of serious nature and the fiscal (public prosecutor) has the power to agree to have the criminal case settled extra-judicially.

2. Bail

2.1 Bail shall be employed to avoid unnecessary detention to the maximum extent in every stage of criminal proceedings, especially at the pre-trial stage.

Commentary

Bail is being used as a measure for the prevention of unnecessary detention at the investigation and trial stage by the police or the court, in most of the countries. It is one of the best measures to avoid harassment of the person under trial and also the overcrowding in jails until his/her guilt has been proved. In some countries, the first problem concerning bail is that most of the alleged offenders or the accused are poor, and they have to rely on a professional bailor to bail them out. Some bailors are not honest and charge a high fee to the accused, alleging that they have to share some money with the judge who grants the release. This is not true, yet some bailors even produce false documents like title deeds for the proposed release. The other problem is that the authority concerned and the court do not properly exercise their discretion in granting provisional release with bail or without bail in accordance with the provisions of law and so forth. Therefore, there are strong opinions in such countries that in order to enhance the principles of justice and equality before the law coupled with the presumption of innocence, the system of release on recognizance should be accepted and utilized more widely, and the alleged offender or the accused must have the right to appeal to the higher authority or higher court against the order of not granting provisional release. In such Asian countries as Bangladesh, India and Sri Lanka, the offences are divided into bailable and non-bailable offences. In bailable offences, the authority concerned and the court must grant bail because it is mandatory. As for non-bailable offences, the court can exercise its discretion in granting or not granting bail. In India, there is a provision for anticipatory bail which means that when any person has reason to believe that he may be arrested following an accusation of having committed a non-bailable offence, he may apply to the high court or the court of sessions for a direction that he be released on bail in the event of such arrest, which can be considered as an advancement in the system of bail in India. In Thailand, the amount of bail demanded is rather high. The pecuniary requirement should be related to the general economic condition of the country to give maximum benefit to the detained persons. In some countries like Japan, bail is admissible to an offender only after the institution of the prosecution (when he becomes a defendant) mainly because the pre-prosecution detention is limited to a maximum of 20 days. In Peru, the system of bail is virtually non-existent at present.

B. Sentencing Stage

3. Various Disposition Measures

3.1 A large variety of dispositions shall be made available to the judicial authority to provide a greater flexibility and to avoid institutionalization as much as possible. Examples of such measures, some of which may be combined, are as follows:

a) Adonition/Absolute Discharge/ Conditional Discharge
b) Restitution/Compensation
c) Fine
d) Suspended Sentence
e) Probation

f) Limitation of Liberty
g) Community Service Order/Community Attendance Center Order
h) Periodic Detention

Commentary

The court should have other alternatives to sentencing an offender other than imprisonment. The reason is that incarceration may have a derogatory effect upon the offender, and also may be out of proportion to the seriousness of the offence. The re-integration of the offender into society may be more successfully effectuated by treating him in the community and in the process, we can reduce/avoid the overcrowding of the prison population in many countries.

a) Admonition/Absolute Discharge/Conditional Discharge

In many countries, such as Fiji, India, Malaysia, the Philippines and Thailand, an admonition is available for juvenile cases. In some countries, the court is authorized to make an admonition for adults instead of other punishment. For example, in India, admonition is used for the first-time offender who commits an offence punishable with less than two years imprisonment.

Absolute discharge and conditional discharge are used where the court takes the view, having regard to the circumstances including the nature of the offence and the character of the offender, that it is inexpedient to inflict punishment and that a probation order is not appropriate. An absolute discharge is really a complete "let off," while conditional discharge means that the offender is subject to the condition of not committing any further offences during the period fixed by the court. If the offender commits another offence during the period of conditional discharge, he will be liable to be sentenced for the original offence. But how to deal with an offender in breach of a conditional discharge is left entirely at the court's discretion, and the court might take no action.

Absolute discharge and conditional discharge are used in some countries, such as India, Pakistan, Singapore, and are reasonable ways of coping with those offenders whose crimes are not too serious and who do not present a risk of re-conviction.

b) Restitution/Compensation

Restitution is an order made by the court to restore the stolen goods to the aggrieved person. If the offender no longer has the stolen goods, the court may order him to pay an amount of money equivalent to the stolen goods to the aggrieved person.

As for compensation orders, the court may require an offender to pay compensation for any personal injury, loss or damage resulting from an offence.

In some countries, such as Hong Kong, India, England and Wales, these measures may be ordered in addition to another sentence. While in some countries, such as Hong Kong, these measures are also used as independent sentence alternatives to short-term imprisonment.

c) Fine

In many countries, fines are used relatively effectively for a wide range of offenders. For example, in Japan, over 95% of indicted offenders are punished by fine only.

Fines are economical both in terms of money and manpower, practical in terms of management and administration, and humane because they inflict minimum social damage on the offender. But fines cannot be used for a poor offender who cannot pay.

In some countries, such as the Scandinavian countries and Austria, a system of day-fine is available. In this system, the amount to be paid is proportional to the offender's net income, allowing for coverage of basic expenses. In so doing, the gravity of the offence is reflected in the number of days for which earnings have to be paid.

In some countries, many prisoners are committed to prison in default of payment of fine. This situation may contribute to the overcrowding of the prison population

or have a bad influence upon the offender. There may be three available ways to prevent such a situation:

1) Before the court chooses a fine as a punishment, it should consider the financial situation of the offender. And if the offender does not have enough money to pay the fine, the court should impose some other alternative.

2) When the court decides the amount of fine which the offender has to pay, it should take into consideration the financial status, occupation, age and health condition of the offender.

3) In case of default of fine, all possible non-institutional measures should be considered before applying imprisonment as a last resort.

d) Suspended Sentence

In many countries, there are various kinds of schemes to provide offenders with an alternative to incarceration at the sentencing stage, such as the suspended sentence. These schemes are designed for avoiding the adverse effects of incarceration on convicted offenders and helping them to rehabilitate themselves in society.

In Fiji, Hong Kong, Japan, Lesotho, Sri Lanka, Thailand, Turkey and other countries, the suspension of the execution of sentence is provided by the law. By this measure, offenders are sentenced to a certain prison term, varying from a few months to five years, and sanctioned by the pronouncement of the sentence. However, the execution of sentence is suspended for a certain period of time, which varies from country to country. The suspended sentence will eventually be vacated if the offender does not commit a further crime in the operational period. In some countries, such as Japan and Thailand, this measure is sometimes accompanied by an order of probation. Suspension of execution of sentence of imprisonment is frequently used in Japan and the rate of suspension is over 50%.

In Thailand, the court is authorized to suspend the pronouncement of sentence, even if it finds the offender guilty.

e) Probation

Probation is used in many countries as one of the most important and promising alternatives to imprisonment. But the system of probation varies from country to country.

In Fiji, Hong Kong, India, Lesotho, Malaysia and Sri Lanka, probation is ordered by the court as an independent sentencing alternative. In these countries, probation means a combination of conditional freedom granted to an offender by the court and supervision and guidance given him by the probation officer. In the case of violation of the conditions of probation, the court may revoke the probation order and set a sentence for the original offence.

In Japan and Thailand, the court may order probation when it suspends the execution of sentence. In Thailand, the suspension of pronouncement of sentence with probation is also available. In these countries, probation is added to the suspended sentence. If the probationer violates the conditions, suspension may be revoked by the court and the original sentence will be executed or pronounced.

In China, there is a similar system which is called suspended sentence. In this system, the court suspends the execution of sentence and the offender for whom the suspension of sentence has been pronounced is to be turned over by the public security authorities to his neighbourhood unit or to a basic level organization for observation during the period of suspension of sentence; and if he commits no further crime upon the expiration of period of suspension, the punishment originally decided is not to be executed; if he commits any further crime, the suspension is to be revoked and the punishment to be executed for the punishments imposed for the former and latter crimes will be decided according to the stipulations of Article 64 of the Criminal Law and the Criminal Procedure Law.

In the Philippines, the court, after it has convicted and sentenced a defendant to a term of imprisonment not exceeding six (6) years, may suspend the execution of

the sentence and place him on probation. The decision of the court in granting or denying petition for probation is based upon the post sentence investigation by the probation officer.

In many countries, probation is used regularly and successfully. And in some countries, such as Thailand and Lesotho, the government intends the wider use of probation. While in Sri Lanka, it appears that the probation system is not successful. The number of offenders released on probation during the past 15 years show a downward trend. In 1969, there had been a total of 1,840 offenders released on probation, the figures decline to 899 in 1983. Some of the reasons for this unsatisfactory condition may be the apathy of the court and the hostility of the society toward this measure.

f) Limitation of Liberty

In some countries Limitation of Liberty works as an alternative to short-term imprisonment.

In Turkey, the amendment of the Law on the Execution of Punishment of 1986 empowers the court to convert short-term imprisonment (not exceeding 6 months) to a prohibition from going to a certain place or carrying out a particular activity, profession, or trade for a period not to exceed 1 year.

In the Philippines a penalty of exile known as "destierro" is in practice as an alternative to imprisonment for certain kinds of offences. The offender sentenced to "destierro" shall not be permitted to enter the place designated by the court within the radius of 25 kilometers for such a period of time as prescribed in the sentence.

g) Community Service Order/Community Attendance Centre

(1) Existing System

In some countries the Community Service Order (CSO), under which the offender should be engaged in a community work in his leisure hours for the hours specified by the court within the certain period stipulated by the law, and the sentence of the Community Attendance Centre (CAC), under which the offender should attend a community attendance centre in his leisure hours and while in attendance perform work, undergo physical training, or attend education classes, etc. which the officer in charge decides, work effectively as alternative measures to imprisonment.

In England and Wales the CSO has been introduced in 1972. Under the present law the court can sentence an offender of 16 years of age or more who has committed a crime punishable by imprisonment to the CSO. The minimum number of hours for a CSO is 40 hours with a maximum of 240 hours and these shall be completed within 12 months. The consent of the offender is needed for the CSO as well as for any probation order. Breach of a CSO is finable or the order may be revoked and the offender dealt with for the original offence. According to a Home Office publication entitled "A Working Paper of Criminal Justice," (Home Office, 1986), the CSO accounts for 7.5% of all disposals for indictable offences and it is said that the CSO has already established a firm position in the administration of criminal justice.

Fiji has also adopted the CSO in 1981 in order to provide a method of dealing with offenders who would otherwise be sentenced to imprisonment, giving them the opportunity to make some general reparation to the community and to further the notion of community responsibility with offending by involving it with correctional programmes. Under the order, the offender continues to live and work in the community, but during leisure hours gives unpaid service to community groups which can vary from eight to 200 hours. He must consent to undergo this sentence, and the manner in which it is to be served is as a matter for arrangement between him and the organization involved.

In New Zealand the CSO has been introduced in 1981. The consent of the offender is required, and the number of hours is between eight and 200 to be served within 12 months. The CSO can be sentenced not only for any offence punishable by imprisonment but also for non-payment of a

fine imposed by the court. Breaches of the CSO constitute a new offence finable or the probation officer may apply to the court for another sentence to be substituted for the CSO. It can be said that the role of providing an alternative to custodial sentences specifically was reasonably effective.

In Hong Kong, the CSO has been adopted in 1984 and the pilot scheme of CSO is in practice since January 1, 1987. The maximum number of hours is 240 within 12 months and the consent of the offender is needed.

In Sri Lanka the CSO has been introduced in 1973, but it was not actually put in force until 1985. Under the present law the required hours of work are between 40 and 240 within 12 months.

Lesotho has also the CSO for juvenile offenders (15-18). The term of the CSO should not exceed three months and in the case of breach of the order the offender may be sent to a juvenile training school by the court.

In New Zealand the sentence of Periodic Detention was in operation since 1962 before the introduction of the CSO in 1981. It was designed to restrict the convict's liberty to a significant extent but without removing him from the community, or subjecting him to experience of life in a penal establishment. In spite of its naming, the aspect of detention is very weak now and it works quite similarly to the CSO, but contains more supervision than it. Under the present law any person who is convicted of an offence punishable by imprisonment, or who wilfully refuses to pay a fine, may be sentenced to Periodic Detention for any term up to 12 months. The consent of the offender is not needed. Under the sentence the offender is required to attend a work centre on a certain number of occasions each week (usually in practice all day Saturday for adults) and, while in attendance, must attend classes or groups, undergo physical training, or perform work either in the centre or outside of it.

In Malaysia there was a system of Compulsory Attendance Centre. Only first offenders whose term of imprisonment would not exceed 3 months might be sentenced to this sanction. Under this sentence the offender should attend to a centre in leisure hours and do the work which an officer of a centre has decided. But this system does not work presently for the reason of the non-consciousness of the necessity of such non-institutional measures in the society.

(2) Basic Considerations

(a) The CSO and the CAC were introduced for the purpose of creating a new sentencing alternative to imprisonment more intensive and demanding than probation or suspended sentences. Under these orders the offender can serve the specified sanction in his leisure hours without destroying his community life by execution of short-term imprisonment. Although, needless to say, the CSO and the CAC are slightly different from each other in terms of the content of the obligation, the CAC can be thought as a variation of the CSO in terms of the purpose and the function.

(b) Considering that the CSO demands the offender to spend a large part of his leisure hours on unpaid work, an excessive number of hours and an extended length of term in the CSO may become a too heavy burden to the offender and harm his rehabilitation. In order to avoid such results the maximum hours and term of the CSO are desirably 240 hours over 12 months or less. If a longer term supervision than 12 months is needed, it can be solved by combination of the CSO and the probation order.

(c) In many countries the consent of the offender is prerequisite to the CSO. Setting aside whether it is theoretically needed or not, it is obvious that the success of the CSO depends on the willingness of the offender for rehabilitation and reformation of himself. Consequently, the intention of the offender about the CSO shall be examined by a certain method before making the decision of the CSO.

(d) The contents of the community service in which the offender should be engaged must not be those which may infringe the spiritual freedom, such as

freedom of thought and conscience, freedom of religion, etc. of the offender.

(e) It is desirable that the court has a discretion between institutional treatment and non-institutional treatment, such as fines, upon breach of the CSO.

h) Periodic Detention

In some countries Periodic Detention is adopted for the purpose of not destroying the community life of the offender by full execution of short-term imprisonment.

In Turkey if the punishment is not more than 60 days, the offender may serve the punishment by being confined in the prison at not later than 19.00 hours on Friday until the same time on Sunday, and if the punishment is not exceeding 4 months, the offender may serve the punishment by being confined in the prison every day from 19.00 hours until 07.00 in the morning of the next day, by the decision of the court on the request of the offender or others.

Note: The sentence termed Periodic Detention in New Zealand has evolved such that it now operates as a work order mainly on Saturdays and so has the character of a work group style of CSO, and must be distinguished from periodic imprisonment.

C. Post Judicial Stage

4. Various Intermediate Measures

4.1 Efforts shall be made to provide intermediate measures such as work release, home leave and other such appropriate arrangements that may assist offenders in their proper re-integration into society.

Commentary

This rule emphasizes the necessity of forming intermediate measures and the need for a diverse range of facilities and services designed to meet the different needs of offenders re-entering the community.

Work release is a treatment or rehabilitation programme for offenders to work outside the correctional institution for a certian period of time as part of the sentence. This measure has been in practice in various countries such as Fiji, Malaysia, Pakistan, Sri Lanka and Turkey.

Home leave is a rehabilitation programme wherein offenders with exceptional conduct are allowed to go home for a certain period of time which aims at strengthening the family ties as well as promoting offenders' adaptability to free social life. This scheme has been in practice in India, Malaysia, Sri Lanka, Thailand and Turkey.

The authority concerned shall, as far as possible, provide an opportunity to all categories of offenders to receive this scheme at the earliest possible time.

4.2 Conditional Release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time. Such measures include:
   a) Parole/Release on License
   b) Compulsory supervision order
   c) Remission/Good Time Allowance
   d) Pardon/Executive Clemency

Commentary

a) Parole or release on license;

Historically, parole was the only procedure, short of pardon, to diminish an original sentence of confinement. Parole was one method of controlling excessive sentences. It developed, as did probation, with a rhetoric of leniency rather than being regarded as an affirmative tool of corrections. Parole or release on license is a conditional release of an offender from a penal or correctional institution after he has served a part of the sentence. This scheme is being adapted in many countries in Asia, such as India, Japan, Malaysia, Philippines, Republic of Korea, Sri Lanka, and Thailand. In Hong Kong, parole is also available for a prisoner in a special correctional institution for juvenile and young offenders. Parole is applicable after a prisoner has served either one-third, one-half or two-thirds of the term of imprison-

ment. In Japan, a prisoner must have served one-third of his sentence before a grant of the same. In Malaysia, there is the system of release on license for juvenile offenders in approved schools. The period of stay in schools is for a maximum of three years, but offenders may be released on license after one year by the board of visitors on the basis of good progress and conduct as well as willingness of their family to accept. A licensee is supervised by the probation officer for the rest of the probation period. If he should misbehave, he may be recalled to the school to serve the rest of his detention term with or without an extended period of up to six months as punishment. In Sri Lanka, long-term offenders are eligible for release on license. The scheme has existed since 1969 and prisoners who have served six years (or five years for those who have served one year at an open prison camp), or one-half of the sentence of four years and over become eligible to be considered for release on license.

b) Compulsory Supervision Order;

In Fiji, the Compulsory Supervision Order, a similar scheme to parole, is granted to prisoners under Section 65 of the Prisons Service Act whereby the Minister of Home Affairs, in his discretion, directs that a prisoner shall be released on an Order of Compulsory Supervision, for such period as he may think, and the Commissioner shall forthwith comply with such directions. When no order has been made by the Minister of Home Affairs, the Commissioner can make an order providing for the compulsory supervision of prisoners whose sentences are more than three years and where the prisoner has served two-thirds of his sentence, the supervision thereby will not exceed a period of one year.

c) Remission and Good Time Allowance:

Under this system, in the case of remission, prisoners are automatically released from prisons when they have served their term of sentence minus a specified amount of time credited for good behaviour in prison. Remission is different from parole in that it is automatically granted if prisoners attain the requirements. Although released automatically, prisoners so released may be returned to prison to serve the remaining period of their sentence if they violate any of the release conditions. Prisoners released through remission are not placed under supervision but sometimes receive aftercare services which are available to other released prisoners. The justification of this form of release is that it provides prisoners with an incentive for keeping good behaviour and contributing to prison discipline. This form of release procedure exists in many countries of Asia, including Hong Kong, India, Malaysia, Philippines and Sri Lanka while, in Thailand, released prisoners through remission are placed under supervision for which the conditions are the same as parolees. Some countries such as Japan and the Republic of Korea do not use this system. The system of remission or similar procedure differs greatly from country to country. In Malaysia, the amount of remission is one-third of the sentence for offenders of all categories. However, an offender has to serve a minimum of actual imprisonment of one month after the remission. In Thailand, good time allowance is an important measure of treating prisoners in the community rather than in prison or in a correctional institution. As provision of the said measure, prisoners who have demonstrated good conduct and are thus qualified are released under supervision prior to their expiration of sentence. These qualified prisoners are required to serve a certain period of sentence which should be more than six months of imprisonment and to be of good class classification or above. In the Philippines, good conduct time allowance, a similar scheme as good time allowance, is applied to prisoners who have faithfully observed the rules and have not been subjected to disciplinary measures. A prisoner who has been classified as honest or trustworthy is given five days additional allowance for every month of service. A prisoner may be classified as honest or trustworthy after serving one-fifth of his maximum sen-

tence or 17 years in case of life imprisonment.

d) Pardon or Executive Clemency

Pardon or executive clemency has long been in existence as a device for tempering justice with mercy and for righting the wrongs done in the course of Justice. The various forms of pardon available in many countries of Asia are as follows: Amnesty, which nullifies convictions as well as bars prosecution for specified groups of offenders; Individual Pardon, which nullifies conviction and sentence of the individual prisoner; Commutation for sentence, which applies either to specified groups of offenders or individual offenders.

In the Philippines and Sri Lanka, pardoning power is often exercised to commute the death sentence to imprisonment for life or definite terms. Some other countries use it to shorten the term of imprisonment of convicted prisoners thereby reducing prison population. In India, all states implement a programme of giving extensive commutation of sentences for all categories of prisoners in commemoration of Mahatma Gandi's birthday and other special occasions. Thailand uses royal pardon extensively to celebrate national events such as the King's birthday. In Japan, pardoning is usually exercised on an individual basis.

The power to grant Pardon or Executive Clemency is vested to the Head of State such as The President, Prime Minister, King, etc. Such power is purely discretionary on the person concerned, hence, no minimum rules could be prescribed.

II.
Role of Non-Institutional Treatment Measures in Treatment of Offenders

Introduction

With the increasing realization of the importance of non-institutional treatment of offenders, a number of methods have been tried out in various parts of the world and some of these innovations have come to stay in those countries. These methods, in addition to probation which is the oldest form of non-institutional treatment method, have begun to draw the attention of all nations, not only due to economic considerations and the necessity to reduce pressure from overcrowding prisons, but also as they provide more humane, enlightening and effective methods of rehabilitation of offenders.

As more and more countries are beginning to show interest in these methods, it has become necessary to have general guidelines within which these countries may be able to operate their own systems giving due consideration to local conditions, as well as respecting *human dignity* and upholding *basic human rights*. Thus the following draft rules are intended to contain the dual characteristics of the "United Nations Standard Minimum Rules."

On the basis of the above mentioned understanding, this chapter deals with, *inter alia*,

(1) role
(2) criteria of selection,
(3) procedure, and
(4) other conditions,

of various forms of non-institutional treatment so as to prepare the preliminary draft, on which further discussion and crystallization will be developed. The scope of the discussion is focused upon the non-institutional treatment for the convicted offenders; therefore, diversion and some other measures which may be applied for the unconvicted offenders are excluded.

Also it is to be understood that this is yet the preliminary draft which is to be further examined and researched.

1. General Principles

1.1 Non-institutional treatment measures shall be recognized as an integral part of the national policy of treatment of offenders and prevention of crime, and every endeavour shall be made to educate the Criminal Justice Agencies and the public of the importance and the role of non-institutional treatment of offenders.

1.2 The role of the non-institutional treatment methods shall be to keep the

offender in touch with his family, workplace, normal social life and other community resources while exercising adequate supervision over his conduct and assisting him to rehabilitate himself, thus making his rehabilitation less costly to society.

1.3 In dealing with the offender, every endeavour shall be made to resort to non-institutional treatment methods if the risk to community in letting the offender at liberty does not overweigh the damage likely to be caused to the offender by imprisonment, considering the circumstances of the offence and the offender's record.

1.4 The implementation of non-institutional treatment methods shall be carefully designed in order to avoid violation of fundamental human rights of offenders.

1.5 Non-institutional methods shall be systematically developed using the experience gained in various countries in co-ordination with the improvement of the standard of personnel engaged in handling these services.

Commentary

1.1 It is observed that in every country non-institutional methods have been followed in some form or other. However while some countries have adopted few methods, others have been using a wide variety of methods. If these forms of treatment methods are recognized as an integral part of a countries' national policy, it will facilitate the adoption of more methods and also their wide usage. It is also necessary for law enforcing agencies and the general public to know the importance of these rules so that they would not be sceptical of them.

1.2 This rule implies the three important aspects of the non-institutional treatment, namely the offender is allowed to carry on his normal livelihood with his family in the environment he is used to, without any disruption to his domestic life. However he will be supervised by a probation officer in order to prevent him from relapsing to delinquency and will be assisted in his own rehabilitation.

In the process of the implementation of non-institutional treatment measures, the degrees of "supervisory" control may differ from one measure to another, or from one case to another. In some cases, intensive supervision may be required in order to protect society; while in other cases, no such intensive control over the offender's conduct is required.

1.3 Considering the circumstances and the nature of the offence committed by an offender, if it is clear that there is no risk in allowing him to be in a community as a penal sanction, non-institutional treatment should be resorted to. In principle society has no right to send the offender to prison, if the damage caused to him by imprisonment will be greater compared to the risks involved in keeping him in society considering the nature and the circumstances of his crime. The offender should pay society back in terms of punishment only what he owes society and no more.

1.4 This rule is meant to compel the law enforcing agencies to be mindful of the importance of fundamental human rights even in the case of offenders.

For example, confidential information on an offender shall be kept and treated carefully in the process of implementation of treatment.

1.5 It is considered that there are many methods tried by various countries. This rule emphasizes the importance of sharing among all nations the experience gained by one country and the need to develop more non-institutional methods which will fit into many situations.

2. Fine

2.1 The role of a fine shall be to impose sanction on an offender by compelling him to pay some amount of money. It forms basically one of the least harmful sanctions for his liberty.

2.2 A fine shall be imposed on an offender who commits a minor crime for whom society will not demand imprisonment, though a mere admonition does not seem to be enough, and who does not seem to need rehabilita-

tive assistance.

2.3 The court shall take into consideration not only the gravity of the offense but also the means of the offender and his ability to pay in fixing the level of fine.

2.4 When the court imposes a fine on a juvenile, the court shall take into consideration the educative effect of such monetary punishment.

2.5 Imprisonment for fine default shall be avoided as far as practicable.

Commentary

2. Definition: Fine is a monetary punishment imposed by the court upon persons convicted of crime in which the money realized should be paid to the government.

2.1 Fines have been used most frequently for dealing with minor offenses, and their execution is basically easier than other treatments. There are some more monetary penalties other than fines such as Compensation Orders, Deprivation of Property Used for Criminal Purposes, Confiscation of Assets, and so on.

2.2 Some of those offenders on whom a fine is imposed may need welfare assistance. However, this kind of assistance should be provided by social welfare agencies and not by the criminal justice agency.

2.3 The fine in itself is not the alternative for imprisonment but the treatment for minor offences, so we should bear in mind that the measures taken for the fine default, such as imprisonment, should be avoided as much as practicable and be used only for ensuring payment.

Accordingly, at the stage of fixing the level, we should consider the possibility of payment, and also we must be careful not to create discrimination against the poor.

2.4 As a fine discomforts the offender only economically and mentally, a fine is effective as a crime prevention measure only when the offender is mature enough mentally to be motivated by the payment of money.

Especially for a juvenile, before sentencing of fine, it should be considered whether he is mentally matured enough and economically independent.

3. Community Service Order (CSO)

3.1 The role of the CSO shall be that while the offender is being penalized by deprivation of his leisure time, he is provided with an opportunity to make reparation to the community against which he has offended.

3.2 A CSO shall be made on default of a payment of fine or in lieu of imposing a sentence of imprisonment for an offence which is punishable by imprisonment, considering the non-necessity of it in view of the offender's character, nature of the crime, and other circumstances, or as a sentence in its own right.

3.3 Before a CSO is made, a report on the following facts from a probation officer shall be considered:

(1) suitability and the fitness of the offender to serve a CSO in view of his age, health, sex, religious beliefs, employment etc. No unnecessary harm should be caused to him as a result of the CSO.

(2) the offender should be able to report to the place of work from his residence free of unnecessary difficulties and great financial encumbrances.

3.4 No CSO shall be issued without explaining the conditions of the order and obtaining the offender's consent.

3.5 It is recommended that the CSO be made for the performance of an aggregate number of hours of work during a specified period of time.

3.6 The offender shall not be compelled to work in an unsafe place of work or in an unhygienic and undesirable environment.

3.7 The number of hours for a day and the convenient days of the week for work shall be arranged after consulting the offender so that it will not interrupt his employment, education etc.

3.8 Failure to perform CSO work during the specified time due to an illness or any other reasonable ground should not be treated as a breach of CSO. In such situations the offender may be

given an opportunity to explain, and a reasonable extension of the specified period shall be made to enable the offender to carry on with the CSO.

3.9 Even in a case where the offender fails to carry out the CSO within the specified period and/or according to the required manner due to his neglect, an alternative punishment and particularly a sentence of imprisonment shall not be considered unless it is proved beyond doubt that the offender will not carry out the CSO and that there is no other alternative.

3.10 A revocation of CSO shall be done only after a careful examination of facts adduced by both supervisor and offender, and also by the court which made the order.

Commentary

3. Definition: Community Service Order (CSO) is a form of penal sanction which requires an offender to be engaged in community work for a specified period of time for committing an offence which is either imprisonable but could be dealt a lesser punishment considering the nature and circumstances of the crime, or not imprisonable but a punishment is necessary, considering the nature and circumstances.

3.1 The offender will perform unpaid labour for the community during his leisure time as the punishment for the offence. When an offence is committed, society expects a punishment to be given to the offender not only as a measure of retribution but also as a general deterrence. This is realized by placing an offender on CSO. There is also a rehabilitative aspect in getting him to work for the community against which he committed the offence. The offender is allowed to lead a normal life in the community except for a certain degree of restrictions of his leisure time. Society gets the benefit of his work.

3.2 The scope of CSO should be broad enough to accommodate a number of situations thereby avoiding its purpose being limited to a few.

3.3 This report will provide the necessary information which will be required by the court to decide whether the CSO is the appropriate punishment with regard to a particular offender. It will, in a way, safeguard the interests of the offender, too.

3.4 A CSO is bound to fail if the offender is not willing to co-operate.

3.5 The CSO was introduced in Fiji in 1981, in Sri Lanka in 1985 and in Hong Kong in 1987. At present an offender on CSO is required to work for a minimum of 40 hours and a maximum of 240 hours in Sri Lanka and Hong Kong; and 8 to 200 hours in Fiji. Although CSO was originally introduced in the U.K. to be applied to relatively serious offenders as an alternative to imprisonment, CSO in practice in Asian countries is, in most cases, imposed to petty offenders such as alcoholic-related offenders and minor thefts. In Lesotho, duration of CSO is up to three months (one working day per week) and CSO is exclusively applied only to juvenile offenders.

3.6 This rule is to prevent the offender being exposed to risks unintended by law.

3.7 As one purpose of CSO is to avoid any damage caused to an offender's family life, livelihood, education etc, it is necessary to consult him before the programme of work is finalised.

3.8 to 3.10 It is very important to come to a correct assessment of the situation in the event of a breach of the conditions. The factors such as illness which are beyond control of the offender should not be held against him when deciding a revocation.

4. Suspended Sentence

4.1 The role of Suspended Sentence shall be designed to avoid adverse effects of imprisonment on the convicted offender whose offence warrants a term of imprisonment but will be allowed to lead his normal life in society without resorting to crime under the condition of deterrence of the Suspended Sentence.

4.2 An offender who has no advanced criminal tendencies shall be considered

to be placed on Suspended Sentence, provided that the offence he has committed is not so grievous as to demand an immediate imprisonment.

4.3 The revocation of Suspended Sentence shall be considered, (1) if the offender is found guilty of another crime during the period of suspension, or (2) if he is found to have violated certain conditions to be observed during the period of suspension.

4.4 Revocation of Suspended Sentence shall be determined exclusively by the court.

Commentary

4. Definition: This term, "suspended sentence," may mean either (1) a withholding or postponing the sentencing of a prisoner after the conviction, or (2) a postponing of the execution of the sentence after it has been pronounced.

4.1 In some countries the suspended sentence is accompanied by a probation order while it is not so in other countries. In Japan, for example, there are provisions in law for a probation order to be issued on an offender who is given a suspended sentence. In Japan, the suspended sentence plays an important role in sentnecing practise. Except for the fine, this sentence is considered as the basic punishment for non-advanced criminals. There are also facilities available in Japan such as assistance from a probation office or voluntary organization for rehabilitation of offenders even if the suspended sentence does not accompany a probation order.

4.2 If the suspended sentence is given without the probation order, the offender is expected to be free of crimes during the period of suspension without any supervision by a probation officer.

4.3 and 4.4 In the case of suspended sentence in terms of (2) of the definition, revocation will automatically lead him to imprisonment, while in terms of (1) the offender will have to be sentenced to a term of imprisonment by the court.

5. Probation

5.1 The role of probation shall be (1) to assist the rehabilitation of an offender in the community under supervision while sustaining his relationships with his family, workplace and neighbours, and subsequently, (2) to make it possible to avoid undesirable effects of imprisonment on him as well as to prevent the repetition of crime and his delinquent behaviour.

5.2 The criteria of selection shall meet the following conditions:

(1) when taken into consideration such factors as circumstances of the offence and offender's criminal career, imprisonment is not required or not necessary.

(2) the risk, if any to society through placing the offender at liberty is minimal, considering the moral, social and economic factors of the offender.

(3) the offender needs continuing attention, helping or supervision.

(4) the offender is capable of responding to this attention while at liberty.

5.3 In order to clarify the suitability of an offender to be placed under probation, examination shall be done on the following factors:

(1) criminal history,
(2) life history,
(3) mental, emotional and physical factors,
(4) socio-economic situation,
(5) others.

5.4 The probation shall be carried out under the supervision of a probation officer.

5.5 The probation officer shall have professional knowledge and skills so as to provide the probationer with counselling, guidance and other necessary assistance.

5.6 In the process of probationary supervision, social resources shall be fully utilized in order to facilitate the offender's rehabilitation.

5.7 Conditions shall be laid down by the authorities, to maximize the offender's possibility of his successful rehabilitation.

5.8 The nature and circumstances of the breach of the condition(s) of proba-

tion shall be very carefully considered before revocation of probation order is effected.

Commentary

5. Definition: Probation is a method of non-institutional treatment for offenders, which is conducted, in lieu of commitment to confinement, under the supervision of authority in order to prevent the repetition of crime.

5.1 The two important aspects of the role of probation are emphasized in this rule; namely, (1) to supervise the conduct of the offender in order to prevent commission of crimes and also for his rehabilitation, and (2) to avoid unnecessary damage caused to him by imprisonment in allowing him to lead a normal life in society. The period of provation varies from country to country. In most countries the period of probation is from one year to three years, but this period could be reduced by the court if he shows early progress.

5.2 Probation is applied commonly for both juveniles and adults.

5.3 In certain countries, before the probation order is made the court obtains the required information through a probation officer's report at the pre-sentence stage or post-sentence stage. In countries such as Japan this information is obtained independently by the court through evidence. In the interest of justice, the right of an offender to contest, if necessary, the pre-sentence or post-sentence report, as is being done presently in Thailand and Hong Kong, may be preserved.

5.4 and 5.5 In Japan the supervision is carried out by both probation officers and volunteer probation officers. The volunteer probation officers are functioning under the directions and guidance of professional probation officers.

5.6 As prevention of crimes and rehabilitation of offenders is in the interest of everyone in society, every country should endeavour to utilize all social resources available to them.

5.7 The conditions laid down in the probation order may vary from country to country, but the fundamental objective of these conditions should be to assist the speedy resocialization of the offender.

In the Philippines there are two kinds of conditions; namely mandatory conditions and discretionary conditions. Mandatory conditions include:

(1) report in person to the probation officer within 72 hours after the grant of probation,
(2) report in person to the probation officer at least once a month, and
(3) observe the discretionary condition if it is imposed.

Discretionary conditions may depend on the characteristics of the probationer. It may include:

(1) refrain from association with people of bad reputation,
(2) having gainful employment,
(3) refrain from houses of prostitution, and
(4) making no change in residence without permission.

Probationer may have to get permission if he wants to travel outside the area of jurisdiction of his probation officer.

In Thailand, there are basically three types of conditions such as:

(1) order to report to the probation officer regularly,
(2) order to take vocational training, and
(3) order to restrain from bad company.

In Hong Kong, there are two kinds of conditions; namely, general and special conditions. General conditions include:

(1) keeping the peace,
(2) working or studying industriously, and
(3) keeping regular contact with the probation officer.

Special conditions may differ from probationer to probationer, and it may include such conditions as:

(1) receiving regular medical/psychiatric check-up, and
(2) returning home by a specific time.

In Japan, there are also general and specific conditions. General conditions include:

(1) not committing crimes, or being of

bad conduct,
(2) staying at a specified residence, and
(3) engaging in a lawful occupation.

Also the probationer will have to follow the guidance and supervision by the probation officer. If he wants to change jobs or residence, or if he wants to travel, he may have to get permission.

5.8 The desirable basis for revocation can be (1) indication of an offender's will against rehabilitation by committing other crimes or keeping bad company, and (2) making his supervision difficult by violation of conditions such as failure to report to the probation officer or changing his residence without permission.

6. Work Release

6.1 The role of work release shall be:
(1) to resocialise the offender into close contact with the community,
(2) to provide the offender with job experience which will be useful to him and to the community, and
(3) to give an opportunity to the offender to earn an income.

6.2 Selection of prisoners for work release shall be done in a manner so as not to pose any danger to society.

6.3 The prisoner shall have completed a series of institutionally based programmes so that work release becomes the next step in the reintegration process.

6.4 The prisoner shall have served a considerable portion of his sentence and needs to be gradually, rather than abruptly released to society.

6.5 The work release programme shall be carried out outside the penal institution.

6.6 The offender shall work under minimum security or without any direct supervision from Criminal Justice Agencies.

6.7 Programmes or activities, if possible, should be in groups.

6.8 The programmes shall allow the offender to work together with the other employees in the establishment.

6.9 The report of the offender's progress shall be made by the officer in-charge or the supervisor where he works.

6.10 If the prisoner while on work release commits an offence, of which the nature and the circumstances warrants his withdrawal, he may be taken out of the programme and institutionalized.

Commentary

6. Definition: Work release is a treatment or rehabilitation programme for offenders to work outside the correctional institution for a certain period of time as part of the sentence.

Under the work release system, the offenders are allowed to work outside the correctional institutions during the day and return to the institution for the night. This method is also known as a day parole and work furlough.

6.1 The three main problems a discharged prisoner who goes back to the community will have to face are difficulties in adjustment to the community, difficulties to find a suitable employment and difficulties to conquer financial difficulties. The aim of the work release is to help a prisoner before his discharge to identify these problems and to prepare him to face them.

6.2 If the correct selection is not done, society will be exposed to unnecessary danger of having criminals moving freely. It is very important to select correct men for work release. Society cannot be allowed to suffer unnecessarily in rehabilitating the prisoners. In most countries prisoners who have served a good portion of their sentence and also of good institutional conduct are selected to be sent out for work release.

6.3 and 6.4 From the time a prisoner is admitted to the prison, he goes through a series of stages which are meant to rehabilitate him and to reintegrate him to society. In this progressive system, the final stage where the prisoner is connected to the community should be work release.

6.5 The correctional officers will have

to find suitable work for prisoners in the outside community-in factories, farms or other establishments. In employing prisoners one important factor which should be taken into consideration is that no outsider should suffer loss of employment etc. as a result of a prisoner's employment.

6.6 As resocialization is one of the aims of work release, the prisoner should be allowed to work with minimum supervision. Also as the system should operate on trust, strict security would be detrimental to its smooth working.

6.7 and 6.8 This is the only way that the prisoner will be acquainted with the outside society.

6.9 The officer-in-charge or the supervisor of the workplace is not a correctional officer but an independent person who would be in a position to assess correctly the prisoner's application for work and also the progress made by him.

6.10 The offence here means either a criminal act for which he will be further dealt with according to law, or misconduct, or a lapse on his part which is intentional. The lapses in the nature of accidents or circumstances beyond his control should not be considered as grounds of revocation.

7. Parole (Release on license)

7.1 The role of parole shall be to encourage the offender who has served a portion of his sentence of imprisonment, thus having paid a part of the debt he owes the community, to resocialise himself in community, while bearing in mind that he is bound by conditions requiring him to be a law-abiding citizen, the violations of which conditions will result in his losing the privileges he earns with great hardship.

7.2 The offender's criminal disposition, institutional conduct, vocational skills, and his possibility of securing an employment in the community and his acceptance by community shall form the guidelines for selection of an offender for release on parole after his becoming eligible on serving a sufficient length of his sentence.

7.3 As the rehabilitation of offenders is in the interest of both offender and community, governmental and non-governmental agencies concerned with criminal justice shall work in close cooperation to facilitate the rehabilitation process of offenders.

7.4 The programmes for rehabilitation and resettlement of offenders in a community after release on parole shall be carefully planned by the relevant officials in consultation with all parties concerned in advance, which will be in the interest of the parolee and the community.

7.5 The Parole Board shall have the right to exercise its authority to release an offender on parole or to revoke a parole order, after giving careful consideration to all the requirements as stipulated by law, and the circumstances involved in the issue free from bias and prejudice. The officials concerned should provide the Parole Board with all such information necessary for this end.

7.6 The parolee on release shall observe conditions laid down by the Parole Board for effective supervision and rehabilitation of the parolee in a manner which will also safeguard his human rights.

7.7 Violation of one or all of the above conditions may result in revocation of parole provided the Parole Board is satisfied that violation was intentional and serious enough to justify the revocation.

Commentary

7. Definition: Parole is a method of non-institutional treatment in which an offender is released on conditions, before the termination of his sentence.

7.1 Parole (Release on License), which is also called Conditional Release, is the best known non-institutional treatment method in the post-trial stage aimed at reduction of the period of incarceration.

7.2 to 7.4 Release on parole should be effected at the appropriate time when the offender deems to have been rehabilitated to return to society and the community is

prepared to accept him. In order to select the correct offender to be released on parole at an appropriate period of time, (1) observation and evaluation as well as guidance and other correctional services shall be continuously carried out from the very beginning of his term of imprisonment; while on the other hand, (2) environmental readjustment shall be carried out for him so as to make the community (family, workplace, school, neighbours etc.) ready to accept him.

7.5 and 7.7 Release on parole or revocation is determined by the authorities concerned. In some countries, the responsible body is an independent agency such as the Parole Board, while in other countries the responsible body may be the court. Ideally speaking, however, an independent and specialized agency should be established for the purpose of examination of the eligibility of parole. The independent body shall not be composed solely by the prison officers, but shall include, in a well-balanced proportion, all the agencies concerned.

7.6 Conditions to be observed may include the following:

(1) a parolee shall not commit another crime or be of bad conduct.
(2) a parolee shall stay at a specified residence.
(3) a parolee shall engage in a lawful occupation.

The condition should not subject the parolee to the undue publicity, debasement or harassment etc.

III.
Measures to Implement Non-Institutional Programmes in a More Effective Way

Introduction

Crime and punishment have been the accepted norm in society from times immemorial. Whilst some countries inflicted harsh punishment on offenders, others treated them more humanely. Prisons or what is referred to as institutional treatment exist in most countries in the world today. Since the international community accepted that more humane methods should be adopted in treating offenders, non-institutional treatment methods were adopted during this century. Presently such methods as 1. Probation, 2. Suspended sentence, 3. Fines, 4. Community service orders, 5. Parole or release on license, etc. are practised in most parts of the world. These measures are designed to secure rehabilitation of offenders enabling them to lead their normal lives with or without conditions and supervision. The reason for the use of these alternative methods are 1. overcrowding in prisons, 2. reduction in incarceration time, 3. economically more efficient, 4. more humane treatment of offenders.

However some problems have surfaced in implementing these measures such as shortage of probation officers, resulting in probation officers burdened with case loads, fines being discriminatory against poor sections of community who are incarcerated for non-payment, lack of adequate staff to supervise offenders on community service orders including insufficient projects etc. At the same time due to an increase in abuse of hard drugs and conventional crime, the community at large is demanding a closer look into what is the most suitable treatment method. Hence the need to educate the community. Success of rehabilitation depends on active participation by the community. In order to effectively continue the present methods, the following aspects should be studied and implemented.

1. Philosophy or fundamental idea of supervision and duration of supervision.
2. Conditions suitable to the needs of offenders and contents of conditions.
3. Recruitment and training of suitable staff.
4. Ways to encourage public understanding and co-operation.
5. Mutual co-operation and understanding amongst concerned agencies, to wit police, courts, correctional services etc.
6. Research of effectiveness of non-institutional treatment.

In conformity with the recommendations of the United Nations Congresses on the Prevention of Crime and Treatment of Offenders, it is recommended to promote

the non-institutional treatment of offenders in a more effective way. Towards this goal and on the basis of human dignity and rights, it is proposed that draft minimum rules be enacted in accordance with traditions and culture of countries in this region requiring society to endeavour to seek more effective implementation of non-institutional treatment of offenders so as to facilitate rehabilitation of offenders and protect the community from recidivism. In implementing such measures, it shall ensure that human rights and dignity of the individuals are well protected. In order to achieve this goal, it shall focus on positive measures to mobilize all available resources.

A. More Effective Ways for Non-Institutional Treatment of Offenders

1. Philosophy or Fundamental Idea of Supervision of Offenders

1.1 Supervision shall be carried out by leading and supervising the offender to make him observe the conditions as provided in the supervision order, and by giving him guidance and aid realizing that all offenders have the responsibility to help themselves.

1.2 For the practice of supervision, the best suitable method to the individual shall be adopted, taking into full consideration of the age, background, occupation, mental and physical condition, home, associates, environment etc.

Commentary

There are 3 main principles of supervision listed as follows:

(1) The principle of self-help

Supervision shall be carried out under the precondition that the offender has the intention to develop himself as a law-abiding member of the society and that he has the responsibility to help himself. In other words, offenders who lack such intention or sense of responsibility would neglect the guidance of the supervisory organ and commit recidivism.

(2) The principle of necessity and appropriateness:

The treatment methods shall be taken within the framework of necessity and that the confidentiality of an offender's record shall be kept. It is important that excessive interference sometimes spoils the responsibility of the offender to help himself and deprives him of the community ties which he should enjoy and as a result, some form of social stigma would be created. Under this principle, every effort should be made for early discharge of offenders from supervision, to modify the conditions or duration of the supervision order or imposing revocation of the supervision order whenever required.

(3) The principle of individualization

Careful investigation should be made on each offender's age, background, occupation, mental and physical conditions, home, associates, environments etc. so as to deduce the best treatment method. In so doing, flexibility of treatment methods could be carried out e.g. group treatment method may be adopted in addition to, or in place of, the individual treatment method. In Japan, group treatment in the form of lectures about traffic rules and danger of traffic accidents, have been practised. As each offender is an individual, personal elements shall be put into consideration when assisting them to find employment and residence etc.

2. Duration of Supervision

2.1 Duration of supervision should neither be too short or too long.

2.2 The minimum duration governing the supervision is such that correctional and rehabilitative measures could be effectively administered.

2.3 The maximum duration governing the supervision should be limited to the offender's practical need to fulfill the whole of the rehabilitative programme.

2.4 Provision should be given for measures like early discharge, suspended supervision etc. if the offender has responded favourably to the initial supervision period for the purpose of securing complete rehabilitation in the shortest

possible time.

Commentary

Varying from country to country, the duration of supervision ranges from a minimum of a few months to a maximum of a number of years. However, society does exercise flexibility in deciding on the duration of supervision with reference to the following criteria. They are: the nature of the offence which was committed, the general character of the offender, the circumstances leading to the commission of the offence, his risk (if any) towards the safety of the public and his prospect of successful rehabilitation in the community.

The duration of supervision is usually mandated by law or ordinance in almost all countries. Take probation as an example: countries like Fiji, Hong Kong, Indonesia, Singapore and Sri Lanka have set the minimum period of supervision to one year and the maximum to three years. On the other hand, the maximum period of supervision for Thailand is five years and for the Philippines six years.

On the other hand, it has to be noted that the actual duration of supervision being handed down by the competent authority is also important for consideration. Again taking probation as example, in Hong Kong, where the maximum and minimum period of supervision as stipulated by law is one and three years respectively, the average duration actually handed down by the court is two years. For Thailand, though the maximum period for probation is five years, the average period of supervision ruled by the court is two years. In Japan, duration of adult probation supervision is set with the minimum of one year and the maximum of five years. Neither the Court nor the Director of the Probation Office can discharge a probationer from supervision but the Parole Board has authority to suspend probation provisionally upon the request of the Director of Probation Office.

For some countries, early discharge of supervision order is made possible by a favourable recommendation by the supervising officer to the competent authority. Usually, the ground for early discharge is that the offender has shown very satisfactory performance by abiding with the conditions of the supervision order; that it was quite certain that complete rehabilitation has been accomplished and that supervision and guidance by the supervising officer is deemed no longer necessary.

3. Conditions

3.1 For the practice of supervision, the competent authority shall impose conditions suitable to the need of the offender.

3.2 The conditions shall aim at enhancing public safety and increase the possibility of successful social rehabilitation of the offender bearing in mind that there shall be no infringement of human rights.

3.3 The conditions shall be few, practical and precise; but can be modified by the authority whenever it is deemed necessary.

3.4 Serious breach of conditions shall result in revocation of the supervision and the offender shall be dealt with by the competent authority according to fairness with emphasis on the most suitable treatment method of his rehabilitation.

Commentary

General conditions of a supervision order refer to abiding with the law of the society the offender is living in, to work or study industriously and willingness to maintain regular contacts with the supervising officer. The general conditions should be applicable to all offenders.

In theory, it is recommended that prior consent from the offender is to be sought in the making of conditions. The offender must openly agree to the compliance of both the general and the special conditions.

With reference to rule 3-3-1, "competent authority" refers to Court, Parole Board, Chief of Probation Office etc.

Special conditions are added in supervision orders according to some of the special needs of the offenders. Examples

are: prohibition to use stimulant drugs; compulsory attendance to medical or psychiatric treatment; to return home by a certain time of the day or to stay away specifically from some criminogenic companions.

4. Treatment Programmes Suitable to Offenders

4.1 The purpose of treatment programmes shall be the provision of necessary services to the offender with the goal of reducing the probability of continued criminal behaviour on the part of the offender.

4.2 Treatment programmes shall be discreetly designed in such a way that both the general and specific needs of each categorized offender are being met with regard to his rehabilitation.

4.3 In the categorization of offenders, every possible means and tests shall be employed so as to obtain a thorough understanding of the offender's background, personality, aptitude, intelligence, moral values etc. especially the circumstances leading to the commission of the offence.

4.4 Further, categorization of offenders shall be consistent with individual dignity, basic concept of fairness and the provision of maximum involvement on the part of the offender.

4.5 Professionals in the behavioural science field e.g. social workers, psychologists, criminologists, penologists etc. shall be invited to participate in the treatment programmes whenever their expertise is warranted making full use of the scientific discipline concerned.

4.6 Community support in treatment programmes is vital and every effort shall be made to utilize the community resources for the purpose of promoting in the offender a stronger sense of social awareness and community reintegration.

4.7 Treatment programme shall be reviewed regularly to see if alteration, amendment of the programmes have to be made in the light of offender's performance in the community.

4.8 Implementation of non-institutional treatment shall be reviewed periodically by the competent authority so as to secure its fair and effective implementation.

Commentary

To categorize offenders into appropriate supervisory groups, society has used specific techniques like the use of an intelligence test, personality and aptitute tests, clinical observations of behaviour, electroencephalogram examination, medical and para-medical examinations and such other disciplines related to psychology, sociology, psychiatry etc.

Society has developed special treatment programmes for offenders of special needs. For examples, drug addiction treatment centres or drug rehabilitation centres are established for the treatment of drug offenders; special homes and training schools are established for juvenile offenders; special mental institutions are built for offenders with psychiatric problems and open and semi-open institutions/prisons for petty offenders or prisoners who are ready for release into the community.

Treatment programmes include basic individual casework service. However, family therapy, group treatment programmes, community projects and other professional skills and techniques are used, all aiming at rehabilitating the offender both as an individual and as a member in the society.

Varying from country to country, community resources available to offenders include employment assistance, vocational training, public assistance and other forms of financial assistance, hostel service, social groups and volunteer service.

It should be noted that since non-institutional treatment of offenders has to be implemented not only effectively but also fairly, the competent authority such as the court and other bodies with qualifications equal to the court (parole board, probation office, case review committee etc.), shall review and evaluate its implementation.

B. Recruitment and Training of Staff

5. Qualifications of Staff

5.1 There shall be no discrimination in qualifications of staff as regards race, creed and sex.

5.2 Persons who have the following qualifications or equivalent may qualify as officers engaging in community based treatment programmes:

(1) Have a University, Technical or College degree in Psychology, Social Work, Sociology, Law, Criminology or any other behavioural sciences,

(2) Have passed a national examination in his/her respective fields,

(3) Have some practical experience in correctional services, social work or other related fields in the treatment of human behaviour,

(4) Have a good personal background, aptitude, potentiality, or professional competence to handle any kind of client he may come across.

Commentary

There has been a great concern in different countries regarding the basic knowledge and skills that are required of the staff who are engaged in the supervision and treatment of offenders. Society has now employed casework, individual counselling, psychotherapy and other high-skilled techniques which warrant both professional skills and ample academic knowledge. Therefore, the general qualifications of staff in the correctional field have been upgraded from time to time.

On the other hand, staff with specialized qualifications are being recruited with expertise in areas like narcotic treatment, child counselling, psychotherapy, psychiatric analysis etc. so as to be able to formulate and implement more effective treatment methods for offenders with special problems.

6. Training of Staff

6.1 Every effort shall be made to enhance the skills and knowledge of staff for more effective treatment of offenders.

6.2 The competent authority in charge of training shall ensure that the staff do acquire sufficient clinical experience so as to carry out treatment with substance.

6.3 A training institute/section shall be established as a specialized unit in the administration, planning and supervision of the professional development of all staff.

Commentary

Varying from one country to another, the following are three fundamental principles in the training of staff:

(1) To provide a wide range of basic knowledge.

(2) To give instruction on practical aspects of the service e.g. legal and criminal procedures.

(3) To offer knowledge relating to behavioural sciences with a special view to enriching the mind of knowledge and skills concerning treatment of offenders.

In some countries, to make the treatment of offenders more effective, group treatment is being implemented according to the similar characteristics of the subject group of offenders. Therefore, it may also be taken into consideration that in conducting the training of staff, knowledge and skills for group treatment will be required for supervising officers. For more effective treatment of offenders, staff are not only required to have specialized knowedge but their speciality has to be supported by flexibility and creativity. To serve this purpose, staff shall have more exposure into different kinds of cases so as to have their clinical experiences more enriched.

Even when one masters a treatment technique, the idea that he can apply it for all types of clients with the same effect can be quite misleading. Needless to say, we must have a standpoint that we should select and apply different treatment techniques according to the individual needs.

Furthermore, this clinical experience should not stay within the individual level in the state of self-complacency. On the other hand, he should have sufficient

opportunities to share his clinical experience with other supervising officers through informal meetings or case conferences and by delivering lectures to the public. It is also essential that each officer has to be continually supervised by a senior officer so that his work would not only bear his subjective view but an objective view from another person could also be taken into consideration.

C. Public Co-Operation

7. Necessity of Public Participation

7.1 Public participation shall be considered to be one of the crucially important prerequisites to restore the ties between the offender undergoing community-based treatment and his family, relatives, the neighbourhood community, fellow employees etc., and to achieve the ultimate purpose of his reintegration into society.

7.2 Public participation shall be considered essential in order to reduce the workload on the part of criminal justice administration and offer a variety of services with an increased quality in non-institutional treatment at a reduced cost.

7.3 Public participation shall be considered indispensable for citizens themselves to be provided with an opportunity to protect the society from recidivism by directly dealing with rehabilitation and resocialization of offenders.

Commentary

It is widely accepted by penologists and has gained recognition among legal practitioners that the rehabilitative measures for offenders have a more positive effects than punitive measures. Effective criminal justice administration cannot be achieved through the efforts of government agencies alone, instead, every possible social resources must be mobilized to that end. There are, however, substantial problems standing in the way of full implementation of non-institutional treatment of offenders, which include the negative attitude of local residents to the reintegration of criminal offenders into their communities and a shortage of both manpower and financial resources on the part of government agencies concerned. Therefore, human and material resources from the public are to be drawn into the justice service. In so doing, citizens are provided with the opportunities to become directly involved in the treatment programmes. The successful experience of volunteer schemes in some countries is a good example. There are two types of public participation observed: (1) Citizens such as "Volunteer Probation Officers" (VPO) in Japan, Singapore and Thailand who undertake most of the supervisory roles of probation officers, and (2) Citizens such as the ones engaged in "Volunteer Scheme for Probationers" in Hong Kong, and "Big Brothers and Sisters Association" in Japan who assist probation officers by only rendering informal support to meet the specific needs of probationers while the essential role of supervision is always carried out by probation officers themselves.

8. Ways to Encourage Public Understanding and Co-Operation

8.1 To fulfill the requirements provided for in rules 7.1 to 7.3 society shall,
(1) recognize and support voluntary organizations whose function involve community-based corrections of offenders,
(2) encourage and recognize for long service to community-based corrections by awards or some forms of appreciation,
(3) be made known of the importance, desirability and advantages of non-institutional treatment as alternatives to imprisonment.

8.2 Seminars, symposia and other activities shall be organized in their society to enlighten the members on the importance of public participation in the non-institutional treatment of offenders.

Commentary

Society shall take all possible measures

to promote the individual and public welfare by aiding the reformation and rehabilitation of offenders and to deepen the public's understanding of contemporary problems in criminal justice administration and solicit citizen's co-operation with criminal justice authorities.

Law enforcement agencies may employ the communication media and personal contacts to influence public opinion favourably. Inter-agency relationship can be promoted through such activities as newspaper articles and news-releases on radio and television. Other programmes such as distributing information pamphlets could be a way to enhance public participation.

D. Mutual Co-operation amongst Agencies Concerned

9. Mutual Co-operation amongst Agencies Concerned

9.1 For efficient functioning of the criminal justice system, it is imperative that the various agencies involved shall work in close collaboration with each other.

9.2 There shall be established joint committees among the concerned agencies in order to exchange views and ideas and avoid fragmentation and alienation.

9.3 It shall be incumbent on the concerned agencies to visit each other's establishments frequently to enable officers in the field to deepen the mutual understanding of the different limits of their systems.

9.4 It is desirable that information on the success or otherwise of the roles of rehabilitation and treatment initiated be exchanged between the agencies concerned.

Commentary

The component elements of the criminal justice system are the police, prosecutional services, courts and the correctional departments. Mutual co-operation amongst them is vital for the effective implementation of the system. However, it is disturbing to observe that very little co-operation is available in some countries of this region. For example, the relationship of the police with the correctional services sometimes exhibits role conflict.

Hence it has become necessary that the police are well educated to accept the concept of the totality of the system and the fact that each component has a different role to play so that each will influence the effectiveness of the others. Similar role conflicts exist among other agencies as well. To overcome such conflicts a certain country in the region has adopted a compulsory attendance centre whereby the various agencies involved are compelled to meet and discuss regularly matters of concern. However in the absence of interest shown by those concerned, the centre has not had its desired effects. It is therefore vital that the agencies concerned are educated on this aspect. In this direction, the contribution made by UNAFEI is highly commendable. By its regular group training courses and seminars, participants from various countries and several fields of the criminal justice system are invited to discuss their systems. At these seminars and group training courses experts in the field are invited to teach new methods and improve on present methods. After exhaustive discussions and studies, the participants return to their respective countries with knowledge thus gained and discussed methods adopted to their own systems.

E. Research

10. Research

10.1 Research and information mechanisms shall be built into the criminal justice system to collect and analyze the relevant data and statistics on the implementation of non-institutional treatment of offenders.

10.2 Efforts shall be made to involve both public and private organizations to organize and promote research on non-institutional treatment of offenders as a basis for planning and policy-making.

10.3 Research shall be designed and

targeted in close relation to problems which confront the community, the policy-makers and practitioners so that regular review and evaluation could be made for the improvement of the system and the implementation of the non-institutional treatment of offenders.

10.4 Efforts shall be made to exchange information and promote technical co-operation among countries in research activities on non-institutional treatment of offenders.

Commentary

It has been recognized that research is an important mechanism for planning and policy-making of non-institutional treatment of offenders. However, there are still some problems to overcome for further development of research activities.

Rule 10.1 emphasized the establishment of research and information mechanism to collect and analyse the relevant data and statistics. Among several reasons for the lack of research, it has been pointed out that the lack of data and statistics has led to a lack of research activities. Even if data and statistics are available for researchers, some of this information refers only to partial circumstances of crime in a given country. Statistics may refer only to police activities, to prisons or to big cities. In many countries in this region, it is urgently necessary to promote activities for collecting the fundamental descriptive data necessary for research on non-institutional treatment of offenders. Moreover, in rural areas of some countries in this region, minor offences tend to be dealt with informally in local communities and thus they are not reported to the police or other governmental agencies. The underlying idea of this system is that local communities should have a primary responsibility in dealing with minor crimes. This system has helped to allay court congestion and to reduce the number of incoming prisoners to local jails and overcrowded prisons. However, these minor crimes informally dealt with in local communities tend to create large unknown or unreported figures which contribute to the lack of accurate data on non-institutional treatment of offenders in some countries in this region.

Another reason for the lack of research is a lack of interest on the part of public and private organizations with respect to research activities on non-institutional treatment of offenders. The governments of the countries in this region, most of which are developing countries, have placed emphasis on economic development. It is true that research and statistics divisions or institutes have been established within police and correctional departments in some countries in this region. Yet, the research activities conducted by these divisions or institutions have been limited because the budget and the number of researchers with training in research are extremely limited. Rule 10.2 requires the public and private organizations to promote research and ensure funding of research.

Rule 10.3 establishes the standard for integrating research into the process of policy-making of non-institutional treatment of offenders. The research as a basis for planning and policy-making can be defined as action-oriented research. Taking an example of action-oriented research on non-institutional treatment of offenders, the Research and Training Institute, Ministry of Justice, Japan, conducted in 1975 the research on the base expectancy tables (prediction tables) for juvenile probationers which aimed at examining the efficiency of the classification table and, at the same time, explored the possibility of the formulation and validation of new tables. This research and the subsequent researches led to the formulation of new classification tables. It is not necessary to say that close co-operation between scholars and practitioners is inevitable for the development of action-oriented research on non-institutional treatment.

Rule 10.4 emphasizes the importance of close international co-operation and exchange of information. In addition to the role of each country, the roles of inter-regional or regional institutes such as UNSDRI, HEUNI, ILANUD, UNAFRI and

UNAFEI should be emphasized. Since it was established in 1962, UNAFEI has conducted on an yearly basis two international training courses lasting three months and a five-week international seminar course. The production of these international training and seminar courses have been published in the "Resource Material Series" and have facilitated not only international comparative studies, but also the improvement of criminal justice systems in the countries of this region. The main roles of these interregional or regional institutes in the field of research activities appear to be as follows: (1) Provide researchers with training in research; since some countries cannot afford to provide researchers with sufficient training, the role of the institutes in this regard is very important in order to facilitate research activities. (2) Collect data and information to provide researchers with them; for this purpose, co-operation between the institutes and countries is essential. (3) Finally, implement research, especially interregional comparative research which would be facilitated by the exchange of information and data between the institutes.

IV. Merits and Demerits Relating to the Practical Use of Volunteers in Non-Institutional Treatment Measures

Introduction

1. Crimes are complex social phenomena involving almost every aspect of human behaviour. In committing crimes, the offender often exhibits a symptom emanating from a social or psychological disturbance. But it may also be a symptom of failure not only of the offender but of the society as well.

Very often, offenders have had limited access to the positive forces that develop law-abiding conduct, like proper medical facilities, adequate housing, gainful employment, good schools, etc. In most cases, offenders were denied equal opportunities compared with other members of the society because of their low station in life.

2. The prime factor underlying Non-Institutional Treatment is to avoid the incidence of recidivism by guiding the offender to learn to live productively in the community which he has previously offended against. This proceeds from the theory that the best way to attain this goal is to orient the criminal sanction towards existence in the community setting. The aim is to enhance the safety of the community by reducing the rate of crime often committed by persons previously convicted. This is achieved through guidance, assistance, casework and counselling etc. to enable their reintegration into the mainstream of society as law-abiding and responsible citizens. We should regard all offenders as human beings who basically have the real possibility of rehabilitation.

3. In achieving the objective of reintegration of offenders, the entire mechanism of the Criminal Justice System such as the Courts, Prosecution, Law Enforcement Agencies, Correctional Institutions and the community has to be mobilized.

Emphasis should, however, be centered upon the community since the rehabilitation of the offender takes place therein. Although "reintegration" appears somewhat abstract, there are various imaginative ways of putting it into practice. Mobilization strategies will be effective when directed to private sectors. Undoubtedly, granting the access to facilities and services afforded to the ordinary citizen will allow the re-entry of offenders in the community with less stigma and facilitate the building and maintaining of their normal roles and relationships. This calls for the skillful use of Non-Correctional entities and the initiation of public education programmes for the community at large to participate in the reintegration of offenders. Non-Institutional Treatment should not only be taken as the means to relieve overcrowding of prison or because of the lack of budget, but also rather it should be based on the value of human beings.

4. To accelerate the reintegration of offenders, their interests, needs and capabilities must be taken into account and should be based on the wide array of

sources and resources available in the community. There is a need to classify offenders into various types so that appropriate rehabilitation measures be provided. This requires the selective use of diagnostic techniques and the "common sense" recognition that people become involved with the law for an almost infinite variety of reasons. The task is to identify root causes of the problems in order to come up with the right solution. This is an area where the role of the public as beneficial volunteer will come into play. Even if the number of professional probation officers increases, there is still a need for the cooperation of non-professionals who may have some unique values which professionals do not have.

5. The rules cover the role, qualifications, recruitment, selections, training, appointment, matching schemes, and the supervision of volunteers who are authorized by the government to assist probation officers (for example VPO in Japan and Thailand, VPA in the Philippines) in the rehabilitation of offenders. However, this does not mean that all volunteers shall be directly authorized by the government nor that the extent of practical use of the public shall be limited to such authorized volunteers. Or rather there shall be many kinds of volunteers who participate in non-institutional treatment in different roles and ways interacting with each other without direct government control (for example BBS and WARA in Japan), and the government also shall encourage the activities of such kind of volunteer and volunteer organization. But it may not be suitable for these volunteers to provide covering rules, however this rule is able to apply to these volunteers within the limit of each kind of volunteer's character.

6. Accordingly, as the result of the consideration regarding the practical matters such as the method, the extent, the limits and problems of the practical use of volunteers and the training methods for volunteers, the following Standard Minimum Rules are hereby recommended.

A. Role of Volunteers

1. Role of Volunteers

1.1 Volunteers shall have the following major functions:

a) To assist Probation Officers in the supervision of Probationers

b) To provide Probationers with aids & services.

c) To participate in crime prevention activities and educational activities of the rehabilitative idea functionally for the public.

Commentary

"Volunteer" in the Standard Minimum Rules is defined as any person appointed by the government to assist a probation officer in the rehabilitation of an adult probationer in accordance with the idea indicated in Part 5 of the Introduction. "Probationer" in the rules is defined as any adult person convicted of a crime but the execution of his sentence is suspended; this includes a parolee who is placed under the supervision of a probation officer, excluding a juvenile offender because we should limit the rules from overlapping the Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules").

As mentioned in the introduction in the non-institutional treatment of offenders, participation of the public is important and the roles provided by Rule 1-1 cannot only be sufficiently carried out by volunteers, but, as well as this factor, in these roles volunteers are superior in some points to probation officers. First of all, volunteers have the character of non-officialism, and this characteristic makes probationers feel more at ease with volunteers, and lowers the feeling of reluctance often experienced with official probation officers. Moreover, the fact that volunteers engage themselves in the treatment of probationer without any payment will have a good influence on the probationers in their care. Secondly, volunteers have broad knowledge about the local community and know of different kinds of social resources which are difficult for probation officers to become familiar

with, as they are members of the community where the probationers live. This knowledge and social resources are very useful for volunteers not only in the supervision of probationers but also in the mobilization of social resources in order to answer to probationers' needs. Also some volunteers may have special expertise or technical knowledge and skills which they have derived from their occupational experience, and this knowledge and skills may prove very useful to help probationers solve their own problems. Thirdly, from the point of view that the purpose of non-institutional treatment is to re-integrate probationers into the community, volunteers may provide a bridge between probationers and the community. Finally, as crime prevention activities and educational activities of the rehabilitative idea functionally for the public, volunteers are also able to perform very important roles in those activities. Namely these activities cannot achieve sufficient effect without widescale participation by the public, a role volunteers are hoped to perform as the core of the public participation. On the other hand, volunteers are non-professional concerning the treatment of offenders, therefore in order to cover this weakpoint it is necessary that probation officers supervise and support volunteers' activities, and provide them with adequate training facilities for the improvement of volunteers' abilities.

1.2 Volunteer shall be allowed to exercise limited discretion in furtherance of the rehabilitation programme.

Commentary

Although volunteers shall be supervised by probation officers, volunteers should have some discretion to perform their duties. During the probation process there are many possibilities for unusual occurrences and accidents concerning their probationers, and volunteers must have the capacity to quickly respond to such happenings without detailed supervision or guidance of the probation officer. An example of a discretion that may be exercised by the volunteer as contemplated in this rule is like this: the condition of probation forbids the probationer to travel to other places outside of the probation area without prior permission of his probation officer, but in the midst of the night, he has to travel to a far place in order to attend to an emergency involving an immediate member of the family. At this point of time, the probation officer is not around and his residence is far. In such a situation, the probationer may just ask the permission of the volunteer who is living nearby and the latter in the exercise of his discretion may allow the probationer to travel and render a report afterward to the probation officer. In these situations, volunteers would not be able to perform effectively without discretion. But this is not to mean that volunteers shall have unlimited discretion, but a discretion limited for the furtherance of the rehabilitation programme. Probation officers always must give attention to the possibilities for abuse of discretion by volunteers.

B. Recruitment and Training

2. Qualification of Volunteers

2.1 Volunteers shall have the following qualifications:

a) of legal age;
b) able to read and write;
c) willing to work as such volunteer;
d) citizens of good repute in the community;
e) financially stable;
f) mentally and physically fit to work.

Commentary

Treatment of offenders is very important, responsible and difficult work. The result of the utilization of volunteers in non-institutional treatment depends mainly upon the governments ability to get volunteers who are suitable persons for such work. The qualifications of volunteers are, therefore, most important and the above qualifications appear to be the minimum necessary to achieve their role.

a) Volunteers must be of legal age, because volunteers cannot perform their role without full social rights and duties.

b) The ability to read and right is essential for the proper participation in training courses and the performance of duties involving the reading of case summaries and the preparation of supervising process reports.

c) In the treatment of offenders great forbearance is needed and volunteers cannot achieve their duty without willingness and enthusiasm to perform such work.

d) Non-institutional treatment of offenders is never a success without social recognition and support and therefore volunteers must be of good reputation in the community in order to get social confidence and recognition about their activities.

e) The role of the volunteer requires a substantial time commitment, for which the volunteer must have enough free time and financial stability. The meaning of financial stability, however, shall vary depending upon the economical condition of each country.

f) Volunteers should be in good health considering the requirements of the nature of their role; eg. visiting of the probationers' home, and their role demands certain mental characteristics, such as a sympathetic, honest, reliable, and accessible personality. Finally, in the practical application of the requirements of qualifications, each government shall consider the fact that the more strict qualification procedures on application results in a less extended participation of the public.

3. Recruitment and Selection of Volunteers

3.1 Volunteers shall be selected from the qualified residents of the community and recruitment be done through any of the following methods
  a) Advertisement in the mass media
  b) Pooling
  c) Recommendation

3.2 Recruited volunteers shall be screened through the following methods.
  a) Interviews
  b) Background investigation

3.3 The probation officer shall be vested with the following authority to administer this rule.
  (1) The Probation Officer of any Probation Office or unit shall be responsible for the recruitment and selection of volunteers in his area of jurisdiction. His authority covers the training of volunteer as provided for under the succeeding rule.
  (2) He shall recommend the appointment of a volunteer to the appointing power and the termination thereof for cause as herein defined.

Commentary

In the above-mentioned rule as well as Rules 4 and 5, the following terms shall bear the following meanings. Recruitment should be the process by which the potential volunteers for appointment are sought. Selection is the screening process by which suitable persons from the recruited volunteers are nominated for appointment. Appointment is the final and formal decision of authorization and is made by the formal appointing power.

In some countries such as Japan, the Philippines and Thailand, Probation Officers are taking immediate and affirmative action in recruitment and selection of capable and qualified volunteers in correctional roles. The main objective in selecting a Volunteer is to ensure that the person appointed is suitable and fit to undertake such work. The Minimum Standard Rule 3 describes the process by which suitable volunteers come to be appointed.

Mass media, the distribution of promotional materials by way of mail, the press, radio and television are means that can be often undertaken. While the above described sources are recruiting techniques aimed at selecting individuals, these methods are to inform a large, public audience of the programme. Such mass approaches are then followed by more personal procedures for discussion of the programme and more selective screening. A key element in a successful Volunteer project is the care the programme takes in screening applicants, and the opportunity to the applicants to screen the project.

This rule also contemplates the recruit-

ment of former probationers as volunteers provided they possess the qualification prescribed in Rule 2. This idea was included as one of the rules in the original draft of this chapter presented by one of the group workshops, considering that former probationers can greatly contribute to the probation process as Volunteers by using their own knowledge and experience as probationers. However, after thorough general discussion, it was decided that it should be included in the commentary rather than the rules because it was regarded as a very difficult practical matter which, although possibly basically sound, would cause problems for a public not sufficiently broad-minded enough to accept its social applications. Nevertheless, it is hereby encouraged that existing sound, policies and practices be reviewed and revised in light of this recommendation.

There are basically six methods in this two-way screening process; the applicant form, the personal interview, letters of reference, Police checks, self-screening and performance training.

The application form itself can provide a wide variety of relevant information for administrative use. The purpose of the interview is to provide the applicant with more information about the programme while allowing the Probation Officer to determine whether or not the Volunteer can work well in this programme. Interviews both oral and written are necessary and provide a test of the applicant's skill and ability. Applicants during the self screening process can examine his own capabilities, resources, and motivation and decide whether to make the commitment as a Volunteer or not. Before final selection is done it shall be necessary for the Probation Officer to know the background of the Volunteer. Investigation is to be carried out on his conduct, character and financial stability. A Probation Officer upon satisfaction of the selection requirements should then recommend the application to the Appointing Power and upon approval inform the Volunteer of his appointment and the Training Programme. Appointment and termination of a Volunteer's service should be done by the appointing authority upon the recommendation of the Probation Office.

4. Training

4.1 The training course for volunteers shall as much as practicable cover the following subject matters:
- a) Criminal Justice System;
- b) Human behaviour;
- c) Probation process and practice;
- d) Report writing;
- e) Guidance and counselling;
- f) On-the-job training.

4.2 The training shall be implemented in consideration of the following matters.
(1) Training period should be long enough to enable volunteers to acquire working knowledge on the coverage thereof.
(2) Each country shall adopt a continuing training program in addition to pre-appointment or after-appointment training programmes.

Commentary

A significant aspect of any Volunteer programme is training. More than a desire to serve is needed to be effective in Volunteer service. Training shall be given to volunteers to give them an understanding of the needs of the life style common among probationers and to familiarise them with the objectives and problems of corrections. Volunteers are non-professionals, and recruitment and appointment from the ranks of minority groups can serve as success models. As outlined in rule 6 the training shall be carried out in (1) Criminal Justice System (2) Probation process and practices (3) Report writing (4) Counselling and guiding. Volunteers after being properly trained on these areas will understand their roles and responsibilities and understand the important parts that are played by Courts, Police, Probation Officers and probationers. The writing of reports is a very important skill for the volunteer to acquire. They should be familiarized as to how reports are to be made and when it should be made. The training period should be designed in such

a way that it should be long enough for the volunteers to acquire a good working knowledge. In addition to pre-appointment and after appointment training, further training courses such as refresher courses and special courses should be conducted from time to time. Volunteer programme training sessions generally focus upon more general approaches in working with probationers rather than dealing with specific skills developed.

One must remember that volunteers are selected to assist Probation Officers in supervising and rehabilitating probationers. An untrained volunteer having no training may not be able to assist properly, and instead of a probationer being socially reintegrated into the society the situation might end up in disaster. To have fruitful results out of the work of volunteers, training is a necessity.

C. Appointment

5. Appointment

5.1 Upon recommendation by the Probation Officer, the volunteer shall be appointed by the competent authority for a term of two years unless earlier terminated for cause. Appointment shall be renewable for the same term.

5.2 The volunteer shall be terminated when any of the following causes comes about.
- a) Commission of a crime;
- b) Immoral conduct;
- c) Neglect to perform his job;
- d) Refusal to obey an order of the Probation Officer without justification;
- e) Resignation;
- f) Incompetence.

Commentary

Since volunteers have direct contacts with and are involved in the treatment of Probationers and may learn personal and private information of Probationers, it is only natural that strict qualifications be required, and that only those who have these qualifications be appointed as Volunteers by the competent authority upon recommendation of the Probation Officer. Moreover, since they are non-professionals, the term which Volunteers serve should be limited. This term should not be too long, on the other hand, if it is too short, Volunteers' activities may become insufficient. Judging from common sense, we consider that about two years is the appropriate term. However, it should be noted that as long as Volunteers have the qualifications, appointment shall be renewable. On the other hand, if Volunteers fulfill any of the causes of termination listed under Rule 5-2, the term should be terminated at that point.

It goes without saying that if Volunteers who are involved in the treatment of Probationer commit a crime or immoral conduct, they shall also be disqualified as a Volunteer. And it will be quite natural that they shall no longer be qualified as Volunteer in any of the following cases:

1. when they neglect to perform the job as Volunteer, such as neglecting the monthly report to the Probation Officer or failing to maintain regular contact with the Probationer;
2. when they refuse to obey an order of the Probation Officer without justification;
3. when they want to resign for some reason;
4. when they become mentally and/or physically unhealthy.

D. Practical Matters

6. Matching Scheme

6.1 Matching of a Probationer with a volunteer shall be made according to the following factors. A. age, B. sex, C. ethnic background, D. education, E. intelligence, F. occupation, G. community contact, H. interests, I. attitudes, J. religion, K. socio-economic level, L. skills, M. needs, N. nature of the offence.

6.2 Matching formula shall be formulated in view of the foregoing factors.

6.3 The nature of the case shall be taken into consideration in the assignment of cases by matching, complicated cases shall be handled by the probation

officer.

6.4 Matching shall be made at the earliest opportunity.

Commentary

Matching is a very significant mechanism for the success of the utilization of volunteer in rehabilitating offenders. Placing the right probationer under supervision, guidance and care of the right volunteer will increase the probability of success not only in terms of rehabilitation of the offender but also of the volunteer program itself. Effective matching on the one hand will encourage the volunteers to put more active efforts into helping their clients, and the probationers will render more co-operation, trust and confidence to the volunteers on the other, thereby creating good relationships between both sides.

The fundamental idea of matching is to identify the important need of a probationer which will be matched with a volunteer who is the most likely person to make a significant contribution to meeting these needs.

Besides the general characteristics of the probationer and the volunteer, the nature of offence, type and objective of the rehabilitation programme set for an individual offender should also be included in consideration for matching purposes. Even though the relative importance of characteristics may vary from case to case, a general matching scale should be formulated for personnel staff concerned so as to obtain objective matching, and the achievement techniques to maintain consistency and quality of the matching scheme, and to avoid arbitrariness.

Practically, it may be difficult to achieve the best match for all probationers. Such a dilemma may cause a delay of assignment of probationers to volunteers and the passage of time may also discourage the original enthusiasm of volunteers as initially highly expected of involvement in the activities. Therefore, it is suggested that the assignment be made as soon as possible for the best available match.

7. Supervision over Volunteer

7.1 Probation officer shall have the authority to supervise and manage the activities of volunteers.

7.2 Supervision programme shall be based on mutual understanding, co-operation and collaboration between probation officer and volunteer.

7.3 Volunteers' performance shall be monitored and evaluated regularly.

7.4 Encouragement, moral support and educational guidance should be provided by the Probation Agency to volunteers.

Commentary

The performance of volunteers should be regularly supervised, directed, guided and assisted by professional probation officers. A variety of means may be utilized for the mentioned purpose, such as individual contact, group meeting, conference, seminars, training and so on.

Since volunteers are persons voluntarily helping the government in the rehabilitation of offenders without remuneration, emphasis should be placed on co-operation and collaboration of volunteers and probation agencies through mutual understanding rather than control measures. Mutual understanding can be enlarged and strengthened by providing the volunteers with additional educational guidance.

The extent of supervision of the volunteers varies with the roles designated to them; the more discretion is vested in volunteers, the more supervision and monitoring should be done. It is suggested that regular monitoring and evaluation of volunteers' performance be conducted since it could help probation officers adopt appropriate strategies to manage and supervise volunteers.

The contributions of volunteers are derived from a sincere desire to help other people without material benefit. It is therefore, very important to provide the volunteers with moral support and encouragement to maintain and strengthen such a determined will. A sense of mission in helping other people and social prestige recognized by the public will be incentives

and a great impetus for volunteers to put more efforts in their responsibilities. However, it is suggested that necessary expenditure incurred in the course of the volunteer's duty be reimbursed, and the volunteers be entitled to the benefit of compensation when any bodily injury is inflicted in the performing of their duties.

In addition, other forms of rewards of honour should be presented to volunteers whose activities are regarded as great performance of their duties and high dedication to rehabilitation of offenders.

8. Volunteers' Association

8.1 Each Government shall encourage the organization of volunteers' associations and which shall be utilized by probation offices for co-ordinated supervision as well as guidance and training.

Commentary

Organization of a volunteers' association on a national and local level in every country will certainly heighten the spirit of volunteerism in the public. It will strengthen the volunteers' ability as a group to effectively carry out their functions. On the one hand, it will lessen the burden of a probation officer in dealing with them individually especially in a big probation area. It fosters easy contacts and time-saving on the part of the probation office.

On the other hand, the associations can help in formulating effective supervision plans with the probation officer and in the matter of training programmes among its members.

Encouragement can be accomplished in various ways like providing it with assistance and extending it due recognition as a responsible segment of society.

9. Restriction of Volunteers' Activities

9.1 A volunteer must not intrude into the privacy and the human rights of a probationer, unless such intrusion is necessary to secure the conditions of probation.

9.2 A volunteer should not disclose any confidential information concerning personal affairs which he has come to known in performing his duties.

Commentary

Volunteers are deemed as official representatives of the probation officer and as such they may be perceived as sanctioning and authority-imposing figures. In the performance of their duties, and in their desire to reform the offenders, they tend to enforce help which may not be appreciated by the offenders. Along this line, there arises the imperative necessity to impose some restriction on the supervisory activities of the volunteers.

9.1 The concept of privacy is one of the most important features of a civilized society. In its broader sense, it covers the whole spectrum of the human personality demanding that it must be afforded respect deserving of a human being. In a limited sense, it connotes the right of every person to be alone, to be left alone.

Any attempt to intrude or intrusion upon such right is normally viewed as a hostile act, a direct attack upon the dignity of the intruded. In this connection, any supervision programme must avoid raising the hostile reaction of the probationer. While it is true that in many ways probationers are virtually under the power of the system, still the capacity to ruin the rehabilitation plan lies in their hands.

An important policy orientation, therefore, is to make the helping aspect of probation both voluntary and highly participative on the part of the offender. Respect on their privacy will undoubtedly promote this end.

Supervision activities should only be conducted reasonably during day time but never should it be done at the place of work of the probationer or at his residence during the night time while he is enjoying the comfort of his home and his family.

However, the volunteer may intrude upon the privacy of the probationer at any time if the purpose is to prevent him from committing any act in violation of the conditions of his probation. In so doing, the volunteer in effect prevents the rein-

carceration of the probationer.

9.2 This rule prohibits volunteers from the giving out of any information obtained from documents or through interviews and observations, knowledge of which could not have been otherwise obtained if not for his official or semi-official capacity as a volunteer (some volunteers are allowed access to official records concerning their wards).

ANNEX

List of Participants and Advisors

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PART III

Materials Produced during Other UNAFEI Activities

Report of Asia and the Pacific Region International Experts' Meeting on the Protection of Human Rights in Criminal Justice

– Fuchu, Tokyo, Japan, 17 February 1987 –

Preface

Among the most important objectives of the United Nations are the promotion and encouragement of respect for human rights and fundamental freedoms. The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established at Fuchu, Tokyo, in 1961 as a United Nations regional institute, pursuant to an agreement between the United Nations and the Government of Japan. It has contributed to the promotion of human rights in criminal justice, as requested by the United Nations and the governments of various countries in the Asia and Pacific region.

UNAFEI sponsored an ad hoc meeting of Pacific region international experts on 17 February 1987, to consider the topic of the protection of human rights in criminal justice. There were 32 experts from 13 countries in attendance, as well as 11 special participants representing as many countries. This experts' meeting was devised as a means of reviewing current circumstances in Asia and the Pacific region affecting the human rights of both offenders and victims of crime, and of contributing to the further protection of those rights. Moreover, the experts meeting undertook the additional ambitious task of responding for the first time to the recently-promulgated recommendations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milano, Italy, from 26 August to 6 September 1986.

It is a distinct privilege for UNAFEI to submit this report as the first response from the Asia and Pacific region concerning the promotion of human rights in criminal justice in the context of the actions taken and recommendations made by the Seventh Congress.

Objectives

The United Nations has contributed significantly to the promotion and protection of human rights in the course of criminal justice administration through the adoption and promulgation of several international instruments, including the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, and the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners. The nations within the Asia and Pacific region have responded in various relevant ways to these United Nations initiatives directed at protecting the human rights of offenders and victims, promoting the humane treatment of offenders, and appropriate handling of crime victims. Those responses include the incorporation of the language of international instruments into national constitutions and laws. Nevertheless, a number of problems remain to be solved if the human rights of offenders and victims are to be safeguarded completely. Indeed, only in recent years has the importance of protecting crime victims come to be recognised and acknowledged.

Accordingly, UNAFEI convened a meeting of international experts from Asia and the Pacific region to discuss more effective measures to enhance (a) protections for both criminal offenders and victims of crime and (b) appropriate criminal justice system handling of and interaction with both groups. The specific objectives of the meeting were to:

(1) review the current circumstances affecting the protection of human rights in criminal justice; and
(2) explore more effective measures to promote the protection of those

rights.

Election of Officers

After keynote statements from the Director of UNAFEI, Mr. Hideo Utsuro [Appendix A], the participants in the meeting unanimously elected the following officers nominated by Mr. Utsuro:

Chairperson
Mr. H. Abdul Halim Naim, SH
Rapporteur-General
Prof. B.J. George, Jr.
Rapporteurs
Ms. Lu-Chan Ching-Chuen
Mr. Masafumi Sakurai

Consideration of the Current Status of the Protection of Human Rights in Criminal Justice

a. Introduction

The participants in the meeting advanced many concerns relating to the protection of the human rights of suspects and accused persons, and an enhanced recognition of the claims and needs of victims of crime; additional statements were embodied in the national reports submitted by participants in UNAFEI's Seventy-Fourth International Seminar. The following are the principal points raised in these contexts. Emphasis has been placed on those affecting the Asia and Pacific region, but some attention also has been given to described circumstances in other regions.

b. Police Activities

The legal systems of the countries in the Asia and Pacific region, like those elsewhere in the world, are divided into what may be called the Anglo-American and the Roman law systems. When it comes to the matter of police powers of arrest, detention and interrogation, however, that division is not controlling. Instead, one finds a more fluid categorisation of countries (i) that allow or purport to require that police take all criminal offenders into custody, leaving to judicial authorities the decision to release suspects or accused persons pending the completion of criminal proceedings; and (ii) that require advance judicial authorisation for arrest and detention other than in flagrant delict or emergency circumstances. The majority of nations represented at the meeting follow the second pattern. Nevertheless, it appeared to be the consensus that under any fair system, police arrest powers should be limited and swift judicial approval required for other than transient interference with personal liberty. That is the thrust of Article 9 (1) and (3) of the International Covenant on Civil and Political Rights, as well as the more general premise in Article 9 of the Universal Declaration of Human Rights. In effect, all systems represented at the session appeared to meet, and in fact exceed, the requirements of these international instruments.

United Nations instruments are not precise as to the proper scope of police interactions with members of the community short of arrest and detention. Article 2 of the Code of Conduct for Law Enforcement Officials requires only that such officials respect and protect human dignity and maintain and uphold the human rights of all persons with whom they are in contact. The extent to which citizens are predisposed to co-operate actively with public officials, including the police, varies from culture to culture and country to country. In the vast majority of the nations represented from the Asia and Pacific region, citizens and even suspects are strongly inclined to give information requested by police and public prosecutors and, indeed, to report suspicious or criminal conduct on their own initiative. Within such a tradition, a primary concern is that information be protected as confidential to the maximum possible extent so that, until a decision to prosecute has been reached, a suspect's reputation and community standing not be irreparably harmed. That, obviously, is a concern based on Article 4 of the Code of Conduct for Law Enforcement Officials ("matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice

strictly require otherwise").

Not infrequently, the desire of media representatives to gain access to information about pending investigations or prosecutions comes into conflict with the claim of individuals that their privacy be respected; this is reflected in Article 19 (2) and (3) (a) of the International Covenant on Civil and Political Rights. Although the constitutions of some countries guarantee freedom of the press and media in stronger fashion than others, it appears legally possible in every country to maintain the confidentiality of all information in police and public prosecutor files until public prosecution has been instituted in a court, thus allowing authorities to meet the international expectations embodied in United Nations instruments without violating domestic constitutional principles.

Interrogation of persons in official custody seriously implicates the human rights of arrestees and detainees. United Nations instruments touch only on the very basic concern that no torture be used [Universal Declaration of Human Rights Art. 5; International Covenant on Civil and Political Rights Art. 7; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Arts. 3-4; Model Code of Conduct for Law Enforcement Officials Art. 5 ("or other cruel, inhuman or degrading treatment")]. No political or legal system represented at the present meeting encouraged or condoned coercion in any form, including psychological compulsion, as a means of impelling confessions.

The principal issues for member states, therefore, revolved about methods to assure that national and international law be respected in the context of interrogation, at a minimum as required by the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 6. It was suggested that consideration be given to a requirement that only judicial officers, and not police or public prosecutors, be legally eligible to conduct interrogations. That, however, would pose serious legal and administrative problems for many countries in the region and would, in any event, require the implementation of measures to assure that members of a tribunal that ultimately adjudicated guilt or innocence possess the impartiality required by United Nations Instruments [Universal Declaration of Human Rights Art. 10; International Covenant on Civil and Political Rights Art. 14; *cf.* Basic Principles on the Independence of the Judiciary, Art. 6]. Some participants advocated that the right of representation by counsel be recognised before the institution of prosecution and that counsel be allowed to meet with arrestees or detainees before or during interrogation. That in turn would present a question of the applicability of provisions, governing criminal trial proceedings, for representation at national expense of persons financially or otherwise unable to retain private counsel [International Covenant on Civil and Political Rights Art. 14 (3) (d)].

All national systems represented in the international experts meeting met the requirement of Article 12 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that statements resulting from torture or other cruel, inhuman or degrading treatment (however the latter is defined) must be excluded from evidence against the source. However, it is unclear in several nations whether the exclusion of such evidence embraces derivative evidence or serves to protect criminal defendants other than the source of the confession.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Articles 4, 14-15, contemplates that victims be treated compassionately and with dignity, and informed of sources of compensation, assistance and redress, by all authorities including police. This, in turn, is compatible with the premise of Article 2 of the Code of Conduct for Law Enforcement Officials that such officials respect and protect human dignity and maintain and uphold the human rights of

all persons. The degree to which police and other officials effectuate these international expectations turns to a vast extent on cultural and traditional customs; all participants agreed that officials should treat all members of the community politely and with dignity.

However, certain classes of victims, particularly children who have been victimised in cases of intrafamilial violence and women who have been sexually assaulted or subjected to spousal violence, require special treatment by police and prosecutors. Several countries in the Asia and Pacific region, as well as elsewhere in the world, have instituted or contemplate special sensitivity training for law enforcement officers, and have established or contemplate the early establishment of rape crisis and family violence units, usually cutting across jurisdictional lines within the criminal justice system and utilising medical and social services within the community, to work compassionately with victims of these especially traumatic forms of crime.

c. Pre-Adjudication Detention

As noted earlier, all countries represented in the meeting of international experts require swift judicial review of initial police detention of suspects or arrestees, as contemplated in United Nations instruments [International Covenant on Civil and Political Rights Art. 9 (3); *cf.* Universal Declaration of Human Rights Art. 9 (prohibition against arbitrary detention)] Pre-adjudication detention of more than very brief duration (usually twenty-four to seventy-eight hours) requires judicial authorisation in all the nations represented at the meeting. Under United Nations instruments, detained suspects and accused persons should enjoy certain rights, including segregation from convicted persons [International Covenant on Civil and Political Rights Art. 10 (2) (a); Standard Minimum Rules for the Treatment of Prisoners Art. 8 (b)] and humane conditions of confinement [Universal Declaration of Human Rights Art. 5 (no cruel, inhuman or degrading treatment); International Covenant on Civil and Political Rights Art. 10 (1); Standard Minimum Rules for the Treatment of Prisoners (*passim*)].

All nations represented at the international experts meeting were committed, legally and administratively, to compliance with such general international standards, usually supplemented by far more detailed and precise domestic laws and regulations. Nevertheless, overcrowding was a chronic problem which created problems in maintaining appropriate standards of confinement and treatment of detainees as well as convicted persons. Significantly prolonged pre-adjudication detention also results in many countries because of delayed and prolonged judicial proceedings. The principal control over this lies in prompt commencement and completion of criminal proceedings, a matter addressed later in this report.

An emerging problem of great sensitivity is preventive detention of persons who may commit crimes in the future; prevention of terroristic acts is of great concern in certain countries within and without the Asia and Pacific region, faced with acts of depredation by armed insurgent bodies. That is a very volatile issue which requires a consideration of what is denominated the "right of self-determination" in such United Nations instruments as Article 1 of the International Covenant on Economic, Social and Cultural Rights, Article 1 of the International Covenant on Civil and Political Rights, and Articles 2 and 4 of the Declaration on the Granting of Independence to Colonial Countries and Peoples; participants in the meeting declined to address that particular problem.

However, an essentially non-political dimension of the problem has been generated by Article 6 (d) of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which urges that measures be authorised to protect the safety of victims, as well as their family members and witnesses on their behalf, from intimidation and retaliation. Implementation of that principle may well require that suspects or accused persons be detained for the purpose of preventing

violent or intimidating actions against victims or witnesses and the destruction of other than testimonial evidence, even though it is clear that persons detained on that basis will appear for trial when summoned. The result is an essentially irreconcilable conflict between a prisoner's claim to freedom pending adjudication of criminal guilt and a victim's demand for effective protection. Some of the countries represented at the meeting have either instituted preventive detention, subject to appropriate procedural safeguards, intended to safeguard the rights of victims and witnesses as well as criminal justice administration generally, or are considering draft legislation of that nature.

Persons in pre-adjudication detention must, according to United Nations instruments, have some mechanism available to contest the legality of their detention [International Covenant on Civil and Political Rights Art. 9 (4)], as well as a claim to compensation from the state for unlawful detention [*id.* Art. 9 (5); *see also* Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Art. 11)]. All countries represented at the meeting have one or more procedures in place to meet the former expectation, but compensation for unlawful arrest or detention is not available in some of these countries other than through civil litigation.

d. Institution of prosecution

Most of the countries in the Asia and Pacific region adopt the principle of discretionary prosecution; some nations in Europe and other regions of the world are committed to a system of so-called compulsory prosecution, under which judicial action is required before a criminal case commences. United Nations instruments do not affect which of these principles a given nation adopts. Under a system of discretionary prosecution, some countries in the Asia and Pacific region allow police officials to pursue judicial proceedings, while others place exclusive powers and responsibilities in the hands of public prosecutors. A few nations continue a practice characteristic of traditional English criminal procedure, by which victims can commence prosecutions in the name of the government.

Whatever the structure of prosecution, public prosecutors, like other public officials, should treat victims with compassion and respect for their dignity [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Art. 4]. However, they have certain more specific responsibilities, for example, receiving the views and concerns expressed by victims [*id.* Art. 6 (b)], which ought to be considered at the time charging decisions are reached, as well as afterwards. Interventions by the meeting participants suggested a rather wide variation in practice in this context, a variation that to a considerable extent reflects differing traditions concerning the relationship between public officials and members of the community.

Article 7 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power supports the use of informal mechanisms for dispute resolution. Although the practice may not be reflected in legislation, pragmatic procedures for screening and diversion of cases by police, public prosecutors or both utilise devices for informal dispute resolution, which are consistent with long-established traditions in many Asia and Pacific region cultures, as well as in Africa.

Japan makes very frequent use of a system of suspension of prosecution as a means of promoting offender rehabilitation and reintegration of offenders into the community. Although that is not mediation of disputes in a direct sense, restitution to victims can be an important aspect of decisions to suspend prosecution. Representatives of some Asia and Pacific region countries expressed their belief that a similar practice is possible and should be encouraged in their systems as well.

e. Adjudication

The principal sources of United Nations policy affecting criminal pre-trial and trial processes are the Universal Declaration of Human Rights [Arts. 10, 11 (1)] and the

International Covenant on Civil and Political Rights [Art. 14]. Certain aspects of these provisions became the focus of discussions during the international experts meeting and the Seventy-Fourth International Seminar.

One evident concern is that the judiciary be independent [*see generally* Basic Principles on the Independence of the Judiciary]. In some countries in the Asia and Pacific region, as well as elsewhere, the judiciary constitutes an independent branch of government, while in other nations it operates within a ministry of justice. All participants felt that the judges sitting in criminal cases in their countries were independent in the exercise of their official powers; they described various mechanisms to assure that this continues to be so. In some Asian, Pacific and African countries, tribal or indigenous courts have continued in existence or have been advocated, usually with only limited or restricted criminal competence. There appears to be no reason to deny the power under international law and practice to continue or create such courts, as long as the adjudicators are impartial and independent in the exercise of their powers.

Persons charged with criminal offences should have effective legal assistance, at public expense if necessary [International Covenant on Civil and Political Rights Art. 14 (3) (d)]. This right generally is recognised in national law, at least after the institution of formal criminal prosecution. However, for a variety of reasons, including shortages of qualified criminal defence counsel and public funds, some countries reported difficulties in providing defence attorneys for financially unable defendants. Few made any provision for assigned counsel before the filing of criminal charges, and not all recognise a legal status in retained counsel to represent suspects before formal criminal charges have been filed with or approved by a court.

Speedy or prompt trial is a matter of formal United Nations concern [International Covenant on Civil and Political Rights Art. 14 (3) (c)]. Victims as well as defendants have legitimate expectations that criminal proceedings will not be unduly continued or delayed – not only because of the inconvenience that delay may generate, but also because restitution may not be legally available until a judgment of conviction has been entered [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Art. 6 (e), (d)].

There are many reasons for this but, as already noted, an important consideration is the early termination of pre-adjudication detention. Many of the reporting countries have not been able to implement fully the United Nations' expectations of prompt proceedings because of, for example, insufficient judges and supporting administrative personnel, inadequate court facilities and rapidly escalating dockets. There was an apparent consensus that every nation could stand some enhancement of the speed with which it disposes of criminal matters; in some, heroic measures may well be required. Several participants noted that, even if a country's criminal procedure system does not recognise or tolerate the submission of guilty pleas, it is possible to make significant use of accelerated or summary procedures that can reduce markedly the number of criminal cases that must be tried fully.

The United Nations expects member states to afford criminal defendants open proceedings at which they can confront witnesses against them, and offer evidence on their own behalf [International Covenant on Civil and Political Rights Art. 14 (3) (d) - (e)]. All nations represented at the meeting recognise those procedural rights in their constitutions or laws. However, the actual methods of implementing them vary, particularly according to whether documentary evidence amassed at earlier stages of investigatory procedures can form a valid basis for a final judgment or decree. A few countries in the Asia and Pacific region, as well as elsewhere, recognise the possibility of *in absentia* proceedings, but allow a defendant convicted under such circumstances an absolute right to an *in personam* trial and judgment of guilt before a criminal sentence can be

effectuated. This appears to be an acceptable alternative procedure under United Nations policy.

A few countries in the Asia and Pacific region, as well as a substantial number of nations in other parts of the world, have tribal or minority groups the members of which cannot speak or understand the official language of the courts. They make formal legal provision for interpreters, as the United Nations expects them to do [International Covenant on Civil and Political Rights Art. 14 (3) (f)]. Some nations, however, report major difficulties in locating and retaining competent interpreters. This is also a problem when defendants are deaf.

As noted in the context of preventive detention, victims and witnesses should be spared as much inconvenience as possible and should be protected from harassment, intimidation or retaliation [Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Art. 6 (d)]. Only a relatively small number of nations within the Asia and Pacific region have instituted statutory or administrative practices aimed at protecting victims and witnesses against violent or harassing activities, but most at least penalise such activities under their substantive criminal legislation.

The recommendation in the Basic Principles that the views of victims be solicited or received and considered by criminal justice authorities [*id.* Art. 6 (b)] can be viewed to govern the determination and assessment of sentences against convicted offenders. For the most part, however, nations in the Asia and Pacific region, like their counterparts elsewhere, have not legislated procedures according to which victim views on sanctioning can be received and evaluated by courts.

f. Victim Restitution, Compensation and Assistance

The Seventh Congress has recommended adoption by the General Assembly of policy statements urging adequate restitution and compensation systems for victims of crime [*id.* Arts. 8-11 (restitution, 12-13 (compensation), 14-17 (assistance)]. Very few countries in the Asia and Pacific region have provided formally for restitution, although officials may in fact mandate restitution as a condition of probation, parole or provisional or conditional release. Even fewer have established systems of victim compensation, in part because of the very heavy cost to the public fisc inherent in such schemes. For that reason, the small number of compensation programmes in existence are limited to instances of death or serious physical injury, and maximum recoveries are quite low. Non-financial assistance to crime victims is significantly more prevalent in the region, although usually under national public assistance or social welfare legislation, rather than special statutes directed exclusively at victims of criminal conduct.

g. Treatment of Prisoners

The United Nations policy statements governing the treatment of prisoners and persons under detention are embodied in the Standard Minimum Rules for the Treatment of Prisoners, promulgated against the more general background of the United Nations stand against cruel, inhuman or degrading treatment or punishment [Universal Declaration of Human Rights Art. 5; International Covenant on Civil and Political Rights Art. 7; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Arts. 3-4; Model Code of Conduct for Law Enforcement Officials Art. 5]. The detailed national papers presented by the participants of the Seventy-Fourth International Seminar made it abundantly clear that the statutes and regulations of all their countries meet and indeed exceed the expectations of the Standard Minimum Rules. If there are departures, it is because scientific and technical developments have rendered obsolete certain provisions of the Standard Minimum Rules.

Prison overcrowding in most of the countries represented at the international experts meeting has taken its toll in programming and institutional amenities, al-

though not thus far to the extent of dropping a country's conditions and practices below the threshold fixed by the Standard Minimum Rules. Reservations were voiced, however, about certain provisions of the Standard Minimum Rules which may be incompatible with traditional practices and cultural expectations. For example, single-celling, viewed as desirable in Western European countries and the United States, may be considered cruel in a culture in which communal living, with its opportunities for converse, is valued. Similarly, space expectations in some Asian, Pacific and African countries may be limited to the size of sleeping mats, even though more space would seem to be required under the Standard Minimum Rules. In sum, representatives of both developed and developing countries expressed, at least circumspectly, a view that the Standard Minimum Rules should be re-evaluated and revised in the near future.

Some attention was directed during the Seventy-Fourth International Seminar to the transfer of foreign prisoners for service of sentence, as reflected in the Model Agreement on the Transfer of Foreign Prisoners and appended recommendations for the treatment of foreign prisoners endorsed by the Seventh Congress. A very few nations within the Asia and Pacific region have adopted or are negotiating such treaties, usually with nations outside the region. Most of the countries in the region have no significant foreign prisoner population, and are not aware that large numbers of their nationals are imprisoned in other countries. As long as those circumstances prevail, it is unlikely that attention will be directed to negotiating and ratifying agreements of this sort. Nevertheless, there was general recognition that the Model Agreement is a useful resource if a need for such international agreements emerges.

h. Probation, Parole and Conditional Release

United Nations instruments essentially are silent on the matter of probation or provisional release, other than in cursory references to prisoner after-care [Standard Minimum Rules, Arts. 80-81]. Some form of early release appears possible in every country of the Asia and Pacific region, and incarceration can be forestalled through suspension of the execution of sentences of imprisonment, although not always under probation or equivalent supervision. Such programmes are certainly compatible with the emphasis in the Standard Minimum Rules on individualised treatment [Arts. 59, 60 (2), 61, 65-66], even though, as mentioned, there is little direct United Nations guidance concerning them.

i. Juvenile and Youthful Offenders

Policies adopted by the United Nations General Assembly relating to juveniles and youthful offenders are rather limited: accused juveniles should be separated from adults [International Covenant on Civil and Political Rights Art. 10 (2) (b); Standard Minimum Rules Art. 8 (d) (young prisoners)], brought speedily to adjudication [International Covenant on Civil and Political Rights Art. 10 (2) (b)], adjudicated under procedures that take account of age and the desirability of promoting their rehabilitation [*id.* Art. 14 (4) ("juvenile persons")], and accorded treatment appropriate to their age and legal status after conviction [*id.* Art. 10 (3)].

More detailed provisions governing the administration of juvenile justice [United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules")] have been transmitted to the General Assembly by the Seventh Congress for further consideration and adoption. Several of the participants in the Seventy-Fourth International Seminar addressed in some detail the consonance of their national systems with the Beijing Principles; for the most part, they appeared to be in compliance.

j. Education, Training and Research

In some nations of the Asia and Pacific region, the governments have sponsored (i) publicity covering human rights of offenders and crime victims through the media, (ii) special national emphasis weeks

and (iii) government publications containing international documents like the Universal Declaration of Human Rights, as well as domestic constitutional provisions, legislation and administrative regulations, bearing on the protection of human rights. In some countries within and without the region, basic United Nations instruments on human rights have been incorporated into national constitutions or laws. However, in many countries of the region and world, little or nothing has been done to apprise the national community of these important matters.

In a few countries, notably Japan and Sri Lanka, a special organisation, commonly denominated a human rights commission, has been established to inquire into asserted violations of human rights and to sponsor public information campaigns to make citizens aware of the scope of basic human rights, the causes of discrimination and other sources of human rights infringement, the role of citizens in preventing human rights violations and remedying infringements, and the mechanisms available to enforce human rights. Such organisations have played an important role in educating the populace.

The extent to which human rights materials are incorporated in entry and in-service training programmes for employees and officials of criminal justice agencies varies widely from country to country, usually depending on the state of economic development and the availability of government funds. There was consensus that training and education in the field of human rights are indispensable to the effectuation of those rights. The participants acknowledged as well that for the most part little or no attention had been given to sensitivity training and other education germane to helpful and positive interaction between law enforcement officials and victims of crime.

The level and scope of criminal justice research also vary from nation to nation; once more, natonal economic circumstances largely dictate the availability of facilities, equipment and personnel. The participants in the international experts' meeting recognised that research is needed in the new field of victimology; Venezuela has undertaken what may prove to be prototypical studies in that area. In most Asia and Pacific region countries, enhanced statistical information needs to be compiled to establish a basis for more qualitative inquiries concerning the status of victims.

k. Regional and International Co-operation

Each United Nations Congress on the Prevention of Crime and the Treatment of Offenders, including the Seventh Congress, has stressed the importance of regional and international efforts in crime prevention and control, treatment of adult offenders and juvenile delinquents, education and training, and research. Several nations in the Asia and Pacific region have developed effective international co-operation in the prevention and suppression of drug trafficking; most if not all countries in the region co-operate in gathering and transmitting evidence of crime and in extraditing offenders.

UNAFEI was acknowledged by the participating international experts to be an outstanding example of a training and research institution that can and does promote international awareness and implementation in many fields of criminal justice administration, including the protection of human rights of both victims and offenders. Hopes were expressed that UNAFEI might expand its role, for example, through frequent jointly-sponsored advanced seminars like that held in Singapore in December 1986, and through annual or biennial replications of the present meeting of international experts, convened in the context of UNAFEI international seminars or courses. It was also noted that as other United Nations regional crime prevention institutes or centres are established (for example, that recommended by the Seventh Congress for Africa [Seventh Congress Report at 69]), UNAFEI can be of immense use in an advisory capacity, including the provision of consultants and sample course agendas and materials.

Recommendations

The participants in the meeting of international experts have formulated the following recommendations under four primary topical headings. Some are directed principally to the attention of individual countries within the Asia and Pacific region, while others solicit attention and responses from United Nations entities.

1. Measures to Promote the Protection of Human Rights of Suspects, Accused Persons and Persons Undergoing Imprisonment or Treatment

(1) Governments should be urged to reduce and ultimately eliminate extensive delays in reaching final adjudications in criminal cases, particularly those involving pre-adjudication detention.

(2) Legal assistance should be available during the stage of arrest and investigation for suspects, particularly juvenile offenders and adult offenders suspected of serious crimes, financially or otherwise unable to retain private counsel.

(3) Special investigation units should be established, perhaps involving police, public prosecutors, public health agencies and social work organisations, for the investigation and prosecution of certain crimes, particularly sexual assaults and intrafamilial violence, to promote the treble objectives of effective criminal investigation, appropriate safeguards for crime victims and suitable protections for the human (procedural) rights of suspects and accused persons.

(4) Law enforcement agencies should be supplied with high-technology forensic and detection equipment as a means of facilitating effective criminal investigations and minimising abuses of the criminal justice system.

(5) Sentencing alternatives, particularly community-based corrections, should be considered, both to promote the goals of offender treatment and rehabilitation and to reduce prison overcrowding.

(6) Increased attention should be given to protecting the privacy rights of persons under investigation but not yet formally charged, by keeping directory information confidential and inaccessible to the mass media.

(7) Governments should institute and fund programmes to compensate persons under criminal investigation who are unlawfully arrested, detained or abused by public employees.

2. Protection of the Human Rights of Crime Victims

(1) Governments, particularly in developing countries, should establish victim-oriented programmes as swiftly as possible.

(2) Governments should establish (A) restitution as a sanction flowing from criminal convictions, and (B) publicly-funded compensation programmes for the benefit of crime victims who do not receive restitution or are not covered by private insurance contracts.

(3) National, state and local bodies should be established to co-ordinate, develop and promote the rights and claims of victims. Community-based centres should be created to advise and counsel crime victims.

(4) Special victim-assistance officers should be designated in every police facility.

(5) Law enforcement agencies and public prosecutor's offices should establish mechanisms to provide constant monitoring of criminal investigation activities, for the purpose of detecting and remedying actual or potential violations of the human rights of persons under investigation or prosecution, or inappropriate treatment of crime victims.

(6) Special funding should be established to assist victims and witnesses experiencing financial difficulties during criminal proceedings.

(7) Crisis counselling centres should be

funded and staffed to provide assistance to victims experiencing psychological difficulties as a consequence of criminal acts.

(8) Police, public prosecutors and courts should be required to keep victims and witnesses apprised of all pending and completed determinations regarding the progress of criminal prosecutions affecting them.

(9) Private insurance carriers should be encouraged by regulatory governmental agencies to establish or expand coverage for crime victims against death, physical injury and property destruction, with premiums fixed as low as actuarially sound.

(10) Governments should establish some form of inquiry organ like a human rights commission or ombudsman office to which members of the community, including victims and witnesses, can turn for information about their human rights and redress for violations.

(11) Governments should study officially the Basic Principles of Justice for Victims of Crime and Abuse of Power, and develop legislative and administrative programmes to implement them fully even before their ultimate approval by the General Assembly.

3. Education, Training and Research

(1) Governments should promote public awareness of fundamental human rights through such measures as inexpensive publications containing the text of United Nations instruments in the national language and local tongues, and an annual human rights day or week given appropriate publicity and official financial and staff support.

(2) Governments, perhaps through law enforcement agencies and the courts, should disseminate information to the public about victims' and witnesses' rights and obligations. Primary and secondary school curricula might well incorporate such materials at the direction of the national ministry of education or other appropriate organ.

(3) Law enforcement officers, public prosecutor's office staff members, judges and court administrative personnel should be provided both entry and in-service education and training concerning victims' rights and the appropriate and sensitive protections of those rights in the context of criminal justice administration. Special sensitivity training should be provided for those interacting with victims of sexual offences and intra-familial violence.

(4) Governments should sponsor and fund research in the field of victimology as a basis for refining procedures affecting victims and witnesses and identifying the scope of appropriate victim compensation and assistance schemes.

(5) Governments should sponsor and fund researches on the causes of and appropriate responses to prison overcrowding, including that in detention centres for those under pending criminal charges.

4. Recommendations for Regional and United Nations Actions and Activities

(1) The United Nations Crime Prevention Branch should sponsor and encourage the establishment of regional committees to consider problems in the coverage and implementation of the Standard Minimum Rules for the Treatment of Prisoners, based in part on the annual reports by member-state governments to the United Nations Secretariat. In the Asia and Pacific region, this might be best accomplished through UNAFEI, for example, in the form of a special meeting of designated experts annually during a UNAFEI international seminar or course.

(2) The United Nations Crime Prevention Branch should sponsor researches, perhaps on a regional basis, into the causes of prison

overcrowding, sentencing alternatives to incarceration, community-based corrections, and prison administration. UNAFEI and other regional institutes might appropriately serve as co-ordinating agencies. Essential funding should be provided by the United Nations.

(3) The United Nations should endeavour to provide financial and personnel support to developing countries to assist them in acquiring forensic equipment and providing staff training designed to promote a more effective and humane administration of criminal justice.

(4) The United Nations General Assembly should give early attention to the consideration and adoption of the Declaration of Basic Principles of Justice For Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Administration of Juvenile Justice.

(5) The United Nations should organise a Human Rights Year within the near future, as a means to promote a universal awareness of and commitment to the protection of all human rights, including those of criminal offenders and victims of crime.

(6) The United Nations should provide financial and technical assistance to developing nations in reviewing and revising their criminal justice systems to promote the humane treatment of criminal offenders and proper protection of the rights of crime victims.

(7) The United Nations should consider the establishment of a consultation and monitoring service, perhaps under the Crime Prevention Branch, based on voluntary participation by member states, to assist developing countries in the development of fair and humane procedures affecting offenders and crime victims.

(8) The United Nations, through the Crime Prevention Branch, should continue to strengthen and encourage international, including regional, co-operation toward continually enhanced promotion of protections for the human rights of both offenders and victims of crime.

(9) The relationships between and co-operative activities conducted by governments in the Asia and Pacific region and UNAFEI should be further deepened and strengthened.

APPENDIX A

Opening Declaration and Keynote Remarks

*Hideo Utsuro**

It is a great honour and pleasure for me, as the Director of the United Nations Aisa and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) to open this Asia and Pacific Region International Experts Meeting on the Protection of Human Rights in Criminal Justice.

Since its establishment in 1961 as a United Nations regional institute, by virtue of an agreement between the United Nations and the Government of Japan, UNAFEI has contributed substantially to the promotion of regional co-operation in criminal justice administration through a number of its activities. These activities have included regional training courses on the protection of human rights in criminal justice, some of which were conducted at the request of the United Nations itself and others of which were requested by national governments in the Asia and Pacific region.

Thus, in 1963 the Economic and Social Council (ECOSOC) requested the Secretary-General of the United Nations to consider the organisation of regional training courses on human rights in criminal justice administration. It is a matter of considerable pride that UNAFEI conducted the first regional pilot training project in 1967. Since then, it has hosted two additional regional training courses, one in 1972 and a second in 1977. The 1972 training course, held at UNAFEI attracted 19 participants representing Asian and Pacific region countries as well as African countries. The 1977 human rights training course on safeguards against deprivation of the rights of persons to liberty and security, held once more at UNAFEI, attracted 24 participants, chiefly from Asia and the Pacific region.

As part of this tradition of continuing efforts toward the promotion of human rights, UNAFEI has organised its Seventy-Fourth International Seminar around the subject of "The Advancement of Fair and Humane Treatment of Offenders and Victims in Criminal Justice Administration." That seminar, which is now in session, has attracted 28 participants from Asian and Pacific region, African and Latin American nations. The objective of the Seventy-Fourth International Seminar is to analyse current circumstances affecting the treatment of both offenders and victims of crime, and to explore effective measures to promote the humane treatment of offenders and appropriate protections for crime victims. I very much hope that this seminar will prove extremely fruitful and thereby contribute to the further promotion of human rights in the countries represented by the seminar participants. Indeed, this meeting of international experts has been convened to take advantage of the presence during the Seventh-Fourth International Seminar of persons expert in the fields of criminal justice and human rights.

The objectives of this meeting of international experts are to afford an opportunity for the participants to exchange their expertise and experience in safeguarding human rights and to explore increasingly effective means of promoting the dual goals of humane treatment of offenders and appropriate protection for crime victims. Great progress has been made in the recognition and protection of human rights from the time of the adoption by the United Nations of the 1948 Universal Declaration of Human Rights. That has been especially true in the field of criminal

* Director, UNAFEI

justice, in which much effort has been expended toward improving the lot of offenders, for example, through incorporating within national law such international instruments as the International Covenant on Civil and Political Rights and the United Nations Standard Minimum Rules for the Treatment of Offenders.

Nevertheless, several problems remain to be resolved if human rights are fully to be safeguarded. Many of them flow from existential reasons like shortages of personnel, inadequate financial resources and overcrowding in penal and correctional institutions and detention centres. In addition, concerns must extend beyond the human rights of offenders to embrace fair and effective means and procedures to protect the rights and interests of crime victims. Only recently has it come to be recognised that victims of crime, however they are delineated, have received insufficient attention from the criminal justice system. Therefore, it is important in the context of this international experts meeting to extend our deliberations beyond the field of humane treatment of offenders to consider appropriate safeguards for crime victims. In that way, we may be able to devise integrated policies and measures to protect both groups equally.

Useful as our discussions today may be for the future professional activities of the participating international experts following their return to their respective countries, UNAFEI hopes that an additional major result will flow from these deliberations. Specifically, the report with recommendations that will perpetuate the day's activities will be transmitted by UNAFEI to the United Nations as the first regional response to the recently-adopted decisions of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, particularly the Declaration of Basic Principles of Justice Relating to Victims of Crime and Victims of Abuse of Power.

Finally, I trust that today's deliberations will utilise to the maximum extent the information and recommendations embodied in the country papers submitted by participants in the Seventy-Fourth International Seminar and in the discussions based on each of them. Nevertheless, what we accomplish today should reflect an international or regional perspective, rather than purely domestic concerns, and should focus on regional as well as purely national responses to problems at the international level. Granted the wealth of experience and profound insights possessed by those participating in this afternoon's deliberations, we should have little difficulty in achieving our goals. Thank you.

APPENDIX B

List of Participating Experts

1. Overseas Experts

Prof. B.J. George, Jr.
New York Law School, U.S.A.

Mr. Nor Shahid bin Mohd. Nor
Director,
Security and Regime Division,
Malaysia Prisons Department,
MALAYSIA

Dr. Yolande Diallo
Principal Human Rights Officer,
United Nations Centre for Human Rights,
UNITED NATIONS

Mr. A.M.M. Nasrullah Khan
Deputy Inspector-General of Police,
Criminal Investigation Department,
BANGLADESH

Ms. Chen Jing
Deputy Chief of Third Division,
Public Order Department,
Ministry of Public Security,
CHINA

Ms. Nazhat Shameem Khan
Senior Legal Officer,
Office of the Director of Public Prosecutions (DPP),
FIJI

Ms. Lu-Chan Ching-Chuen
Senior Clinical Psychologist,
Correctional Services Department,
HONG KONG

Mr. Suresh Chandra Dwivedi
Chief Vigilance Officer,
Indian Tourism Development Corporation (Deputy Inspector-General of Police),
INDIA

Mr. H. Abdul Halim Naim, SH
Head of the Prosecution Administration Sub-Directorate,
Attorney General's Office,
INDONESIA

Mr. Hohd Sedek B. Hj. Mohd. Ali
Assistant Director,
Criminal Investigation Department (Research and Planning),
Royal Malaysia Police,
MALAYSIA

Mr. Jacob Rongap
Staff Officer,
Operational Secretariat, Royal Papua New Guinea Constabulary,
PAPUA NEW GUINEA

Mr. Mnasinghe Chandra Prema Mendis
Co-ordinating Officer of Puttlam District,
Senior Superintendent of Police in Charge of Chilow Police Division,
SRI LANKA

Mr. Wisai Plueksawan
Director, Central Hospital;
Chief, Health and Medical Centre,
Department of Corrections,
THAILAND

Mr. Sirichai Swasdimongkol
Chief Judge,
Phra Nakorn Si Ayutthaya Provincial Court,
Ministry of Justice,
THAILAND

2. Local Experts

Prof. Kuniji Shibahara
Faculty of Law,
Tokyo University

Prof. Tetsuya Fujimoto
Faculty of Law,
Chuo University

Mr. Mamoru Iguchi
Director,
General Affairs Division,
Civil Liberties Bureau,
Ministry of Justice

Ms. Chikako Taya
Attorney,
Criminal Affairs Bureau,
Ministry of Justice;
Member, United Nations Committee on Economic, Social and Cultural Rights

Prof. Hideo Utsuro
Director,
UNAFEI

Prof. Kunihiro Horiuchi
Deputy Director,
UNAFEI

Prof. Yasuro Tanaka
Chief,
Training Division,
UNAFEI

Prof. Yoshio Okada

Chief,
Research Division,
UNAFEI
Prof. Yukio Nomura
Chief,
Information and Library
Service Division,
UNAFEI
Prof. Shu Sugita
UNAFEI
Prof. Yasuo Shionoya
UNAFEI
Prof. Masao Kakizawa
UNAFEI
Prof. Koichi Watanabe
UNAFEI
Mr. Seishi Fujimoto
Director,
First Examination Division,
Secretariat of Kanto Regional
Parole Board
Mr. Tateshi Higuchi
Assistant Director
(Superintendent of Police),
Investigative Planning Division,
Criminal Investigation Bureau,
National Police Agency
Ms. Mioki Kuga
Professor,
Training Institute for
Correctional Officials,
Ministry of Justice
Mr. Eiji Matsunaga
Principal Researcher,
Second Research Division,
Research and Training Institute,
Ministry of Justice
Mr. Masafumi Sakurai
Public Prosecutor,
Tokyo District Public Prosecutors
Office
Mr. Jyotoh Shimanouchi
Judge,
Tokyo District Court

3. Special Participants

Mr. Cesar Oswaldo Carrera-Chinga
Immigration Chief,
Guayas Province, Ecuadorean Police,
ECUADOR
Ms. Rosario Palma-Villacorta
Professor,
National Police Academy (ANAPO),
HONDURAS
Mr. Basil E. Grant
Regional Manager,
Department of Correctional Services,
Ministry of Justice,
JAMAICA
Mr. Filemon Kimutai Kirui
Acting Deputy Principal
Probation Officer,
Probation Department, Vice-President's
Office and Ministry of Home Affairs,
KENYA
Mr. Stephen Olaiya Abeji
Controller of Prisons in Charge of
Lagos State Prisons Command,
Nigerian Prisons Services,
NIGERIA
Mr. Guillermo Enrique Arauz-Caicedo
Supervisor of Jail System,
National Department of Investigations,
PANAMA
Mr. Orlando Tafur del Aguila
Legal Advisor and Secretary
to the War Tribunal,
Supreme Court for Military Justice,
PERU
Mr. Zaki Asad Rahimi
Jeddah Area Prisons Director,
Ministry of Interior,
SAUDI ARABIA
Mr. Mohamed Ahmed Hashim
Director of Police,
El Gezera Province,
SUDAN
Mr. John Casmir Minja
Deputy Director,
Legal Affairs and Rehabilitation,
Prison Headquarters,
Ministry of Home Affairs,
TANZANIA
Ms. Arminda Oquendo-Romero
Head,
Division of Criminological Research,
National Administration for Crime
Prevention,
Ministry of Justice,
VENEZUELA