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Development in the Treatment and Rehabilitation of Offenders—The Hong Kong Experience

*by Cheng Chi-leung**

I. Introduction

As one type of social institution, penal establishments, their mission, management and social structures are, without exception, affected by changes and developments which take place in the wider society. Penal practices have undergone a number of transformations over the past few decades. Many of the changes are induced by social, economic and political factors, the development of a more humanitarian outlook, and of new concepts about the nature of man and society. Long gone are the days when criminals were stereotyped as deviants with biological defects, pathological personalities or mental diseases. Society's treatment of lawbreakers has become more rational and more concerned with rehabilitation.

Despite years of practice and evaluation, correctional administrators are still hesitant to say with certainty that they have found definite ways to reduce recidivism significantly, or that one mode of treatment is more or less effective than another. Although many people are sceptical of the ever-changing rehabilitative philosophy, rehabilitation is still a necessary part of a humane correctional process. Against the social and cultural background of Hong Kong, this paper examines the development in the field of corrections, and describes the recent experience of a working party currently conducting a review of treatment programmes administered by the Correctional Services Department.

II. The Historical Development of Penal Philosophy

Prison management and treatment of inmates to an extent reflect the contemporary ideologies of our criminal justice system as well as cultural values. Hong Kong, as a predominantly Chinese city under British rule, has been caught in the current of Western and Eastern cultures. The development of its penal philosophy and system has long been under the influence of both Western thought and Chinese traditions. Its penal practices and programmes are basically inherited from those of Great Britain, with some modifications and adaptations to serve local needs. For instance, Training Centres are run on lines quite similar to the now-defunct Borstals whereas the Detention Centre programme much resembles the "Brisk" regime of the English Detention Centre. Moreover, the Hong Kong prison rules cover much the same ground as those stipulated for prisons in England and Wales.

In the 1940's, emphasis of prison programmes was on punishment and it was compatible with the old Chinese tradition that accepted prison almost exclusively as a retaliatory and deterrent measure against law offenders. The penal system which op-

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erated under these objectives was characterized by an authoritarian approach of prison management, a low staff-to-prisoner ratio and the sharing of power between staff and a small group of selected "inmate leaders." The structure might help the under-manned prison management to control a large penal population with a certain degree of stability within a short period. Nevertheless, the custodial staff would never be able to wield total power over the inmate population. With the development of such a system, some staff devolved to "inmate leaders" a degree of responsibility for maintaining day-to-day order within the inmate community, and allowed them to have influence on who should be assigned the best jobs, better accommodation, and privileges. As a result, inmate leaders used informal sanctions to achieve "inmate adjustment." Prison was more and more dominated by values and attitudes originating in the lower reaches of the hierarchy. To a considerable extent, order was reliant on the goodwill of particular groups of selected inmate leaders. This would of course encourage the growth of gang-controlled activities, and the most influential group would become the behind-the-scenes operator in the running of the institution.

With the emergence of the "Rehabilitative ideal" in the 50's and 60's, programmes such as the Training Centre (1953) and the Drug Addiction Treatment Centre (1968) were introduced to provide alternatives to imprisonment for offenders of different age groups and social background. Some ancillary professional groups, such as social workers and qualified school masters were also recruited to work in penal institutions. Yet, rehabilitation had been hindered by a lack of adequate control over the inmate community. Strenuous efforts were then made to eliminate gang groupings and eradicate illicit activities. However, in the absence of any support, these attempts merely served to aggravate the situation. The undercurrent of unrest first surfaced during a conflict between staff and inmates in an open prison in Christmas 1970. This incident saw a further weakening of control, and a marked deterioration in the order and discipline in the penal institutions. The confrontation culminated during Easter of 1973 in the infamous disturbances of Stanley Prison (the largest prison in Hong Kong).

The disorder had caught public attention, and following the riots, a report compiled by two visiting consultants from the United Kingdom made numerous constructive recommendations to improve facilities, ease overcrowding, enhance security installations and measures, and raise the quality of personnel working in the correctional field. The implementation of these recommendations marked a milestone in the history of penal developments in Hong Kong. More penal institutions of different types have since then been built to ease overcrowding. Installations and construction were carried out to meet specifications and requirements laid down as basic criteria for maximum, medium, and minimum security institutions. Programmes were fine-tuned to enhance their effectiveness. Pay and conditions of service for staff were improved to narrow the disparity between correctional officers and their counterparts in other disciplined services. Basic entry qualifications were raised to upgrade the quality of recruits. Additional posts were approved to rationalise the manning level. And, in-service training and specialist courses were organised to develop the career of staff.

All these positive steps had enabled the authorities to wrest back complete control from inmates and adopt a discipline-oriented approach towards inmate management. Consequently, the power formerly enjoyed by the manipulative inmate leaders and their cohesive influence on inmate population gradually perished. The inmate community was no longer ca-

pable of settling its disputes by itself. The penal managements were thus able to instil among inmates an acceptance of discipline and social control.

Incorporated with the change in management style was a firm discipline and fair treatment accompanied with busy routine. Fairness and firmness applied not only to inmates but to staff also, which sets a basic trust among staff and inmates towards the administration of justice within the penal community. Close co-operation with the Independent Commission Against Corruption was developed to demonstrate the determination of the correctional administrators that corruption within the service would not be tolerated.

Developments after the Stanley Prison riots created an environment quite restrictive yet conducive to rehabilitation. Firmness and fairness continued to be the guiding principles in managing inmates. Mindful of the concepts of "Humane containment" and "Re-integration" prevailing at the time, continued efforts were made to apply rehabilitative theories to work. A series of new projects were initiated. These included the formal set-up in 1977 of a Psychological Unit staffed with Clinical Psychologists to provide services to inmates in custody. Legislation came into effect in May 1980 to provide supervision of young prisoners who are under 25 years of age at the time of release for up to 12 months following their release. The half-way house programme for both male and female young offenders was launched in 1983 and later extended to cater for adult offenders in 1988. In 1986 and 1987, scouting, the Duke of Edinburgh's Award Scheme, guiding, and Outward Bound courses were included as activities in Training Centres.

III. Role of the Hong Kong Correctional Services Department

The Hong Kong Correctional Services Department bears the brunt of detaining and rehabilitating offenders, and their eventual re-integration into the community. Known as the Prisons Department before 1982, it functions in accordance with the following ordinances:

(a) Prisons Ordinance (Cap 234, Laws of Hong Kong, 1954);
(b) Training Centres Ordinance (Cap 280, Laws of Hong Kong, 1953);
(c) Drug Addiction Treatment Centres Ordinance (Cap 244, Laws of Hong Kong, 1968);
(d) Detention Centres Ordinance (Cap 239, Laws of Hong Kong, 1972);
(e) Criminal Procedures (Amendment) Ordinance (Cap 221, Laws of Hong Kong, 1980); and
(f) Prisoners (Release Under Supervision) Ordinance (Cap 325, Laws of Hong Kong, 1987).

Its objectives are to:

(a) give effect to court sentences involving custody;
(b) facilitate the re-integration of offenders into the community; and
(c) provide purposeful employment for offenders in order to reduce the likelihood of unrest and to enhance their ability to resettle eventually into the community.

In fulfilling these objectives, the Department has, over the years, developed the following correctional programmes catering for different groups of inmates:

(a) detention centre programme;
(b) training centre programme;
(c) drug addiction treatment programme;
(d) prison programme for young offenders; and
(e) prison programme for adults.

The Detention Centre Programme

Under the Detention Centres Ordinance, a person aged between 14 and 20 may be

sentenced to a detention centre for a minimum period of one month to a maximum of six months. The period of detention for a person aged 21–24 is for a minimum period of three months to a maximum of 12 months.

This programme contains a different method of dealing with young male offenders found guilty of a crime punishable with imprisonment but who have not previously been to a prison or a Training Centre. Emphasis is placed on hard work, strenuous exercise and the highest standards of discipline. The intention is to provide the offender with a "short, sharp shock" deterrence in the early stages of his deviation from law and order.

At the same time attention is paid to each individual to ensure that he is not pushed beyond physical limits. The rigorous training is supplemented by remedial education in the evening conducted by qualified teachers following a syllabus geared to developing basic intellectual skills as well as social consciousness.

Detainees also participate in group and individual counselling sessions for developing insight into their personal problems and motivating them to become useful and law-abiding citizens. They have to go through three "grades" in training, and promotion to a higher grade is based on good performance in all areas.

Every detainee appears at least once a month before a Board of Review which is chaired by a Senior Superintendent from the Headquarters of the Correctional Services Department. Other members of the Board include the Institution Superintendent, an Aftercare Officer and the staff directly connected to his training. During the Board meeting the detainee is informed of his shortcomings, strengths and other aspects of training which are considered necessary. He is also given an opportunity to discuss any problems he may have encountered in the Detention Centre. The Board will review his progress and make recommendations for promotion and release when it is considered that a detainee has made positive progress and has reached his peak. Release is followed by 12 months supervision by an Aftercare Officer.

The Training Centre Programme

Under the Training Centres Ordinance, a person sentenced to detention in a training centre can be detained for 6 months to a maximum of 3 years. On admission, an inmate spends the first 2 weeks in an induction unit where he receives instructions concerning the daily routine, his rights and privileges, and rules and regulations, etc., in order that he may adapt more easily to the new environment.

An orderly and regular routine, combined with the personal influence of members of staff and educational and vocational instruction form the basis of the programme. Vocational training is on a half-day basis and is conducted by qualified instructors. The trades available to inmates vary from radio and television servicing, vehicles repair for boys to domestic service for girls.

The other half of the day is spent in educational classes conducted by qualified teachers following a syllabus planned in accordance with the requirements of the Education Department. Education is given as a concomitant of the theoretic and practical aspects of trade training. The system operating in a training centre enables the management to arrange inmates into groups according to educational standards and vocational training skills.

To improve general fitness, physical education sessions are held daily and are conducted by qualified physical education instructors. Psychological services provide therapeutic assessment and counselling for inmates as a means of early identification of adjustment problems. Such counselling will be continued until his release. All inmates are encouraged to take an active part in indoor and outdoor recreational activities. Various hobby classes held in the evening include guitar playing, folk songs,

drawing, painting, etc. As part of character development, boys in the Cape Collinson Correctional Institution, may, on merit, be permitted to join the brass or pipe bands. There is also a pipe band and a precision marching team for girls. These teams perform regularly at both Departmental ceremonies and public functions. Scouting, the Duke of Edinburgh's Award Scheme, guiding, and Outward Bound courses have also been included in the character training since 1986.

An inmate has to progress through three grades and appears monthly before a Board of Review with the same membership as the Detention Centre Board. This Board determines whether an inmate is worthy of promotion to a higher grade. Promotion to a higher grade is dependent on the inmate's own effort, performance at vocational training, academic studies and his general attitude. Recommendation for release is made by the Board only when it is considered that an inmate has reached his peak and that employment or a place in full-time studies has been secured. Release is followed by three years statutory supervision by an Aftercare Officer.

The Drug Addiction Treatment Programme

The Addiction Treatment Centre Ordinance provides that a person sentenced to detention in a drug treatment centre can be detained for treatment for a minimum period of 2 months up to a maximum of 12 months. During the remand period offenders receive symptomatic treatment for drug withdrawal syndrome which consists of tranquilliser, vitamin supplements, antispasmodic and sedatives as and when necessary. Persons sentenced to treatment in a Drug Addiction Treatment Centre who are aged between 14 and 20 on admission are classified as Young Inmates and are detained separately from Adult Inmates.

On satisfactory completion of inductive training which is given to all inmates on admission to help them adjust to the demands of the treatment programme, an inmate is assigned to a particular type of productive work based on his previous work experience, skill and aptitude. Through work the inmates are provided with a sense of self-respect and satisfaction which arises from gainful employment and it also instils in him a healthy work habit which is vital to the inmate after discharge.

Inmates attend remedial education classes conducted by qualified teachers and participate in recreational activities organized in the evening and over the weekend. Psychological treatment to combat dependence on drugs is given in the form of therapeutic counselling, both in groups and individually and is conducted on a regular basis throughout the period of treatment by operational staff, aftercare officers and psychologists. An inmate's physical progress and changes in general attitude are closely observed.

At least once a month every inmate appears before a Board which is chaired by a Senior Superintendent from Headquarters. Other members of the Board include the Superintendent of the Institution, the Medical Officer, a member of the Aftercare Section and staff closely connected with the inmate's treatment. During the Board meeting the inmate is briefed on his progress and is invited to state his own views and feelings about the programme. The Board considers suitability for release but recommendations are only made when it is considered that he has reached his peak and that employment and future abode have been arranged for him. Release is followed by 12 months statutory supervision by an Aftercare Officer.

Prison Programme for Adults

Serious criminal offenders may be sentenced to imprisonment for any length of time in Hong Kong. With regard to the treatment of adult prisoners the prime objective is the secure custody of criminals for the protection of the public. Nevertheless,

efforts have been made to provide a secure, disciplined and humane environment so that offenders serving sentences in a prison can live in association with others in an orderly manner with opportunities to participate in rehabilitative activities. Besides instilling a firm discipline in our system, gainful employment, work training, educational courses and classes, physical education, group discussions and counselling are also offered for prisoners.

The legislation provides that all prisoners, except those classified as medically unfit, are required to engage in useful work while in prison. Correctional Services Industries (CSI) is set up to allow prisoners to be assigned in productive work. Workshops of different sizes in various institutions engaging in various trades ranging from garment, furniture making, road signs, laundry service to the making of concrete kerbstones have been established. This is an important part of the prison programme since it enables prisoners to be purposely occupied during their detention. They could acquire working skills and, more importantly, develop a good work habit which is essential for prisoners to lead a normal life after release.

Education for adult offenders is provided on a voluntary basis in the form of remedial classes, correspondence courses and special cell-study courses. Remedial classes are normally held in the evening while correspondence and special courses are available to cater for prisoners pursuing tertiary education.

Prison Programme for Young Offenders

Although Section 109(A) of the Criminal Procedure Ordinance imposes restrictions on the imprisonment of young offenders, a considerable number continues to be sentenced to prison because of the seriousness of the offence, the offender's criminal sophistication, or other reasons. The Correctional Services Department in Hong Kong has long recognized the need to have a programme containing a complete corrective process for young offenders sentenced to imprisonment and providing an environment conducive to their correction. This involves assigning prisoners aged between 14 and 20 on conviction to institutions specifically designed for Young Prisoners. The programme is based on half-day vocational training and half-day education with strong emphasis on discipline.

The Criminal Procedure Ordinance was amended on 30th April, 1980 to bring the treatment of Young Prisoners in line with other young offenders in the various correctional programmes. Under the amended Ordinance, a supervision order lasts for one year with the provision for recall if a prisoner who, before his 21st birthday, is sentenced to serve a term of imprisonment of three months or more is released from prison before his 25th birthday.

Release Under Supervision

Two rehabilitative schemes were introduced in 1988 to prisoners other than those sentenced to life imprisonment. They are the Release Under Supervision Scheme, and the Pre-Release Employment Scheme.

The Release Under Supervision Scheme allows prisoners sentenced to three years or more, who have served not less than half or 20 months of their sentence, whichever is the longer, to be released under supervision earlier than the date of discharge. They will be subject to aftercare supervision for the remaining balance of the sentence. Support and counselling are provided by this Department's aftercare staff.

The Pre-Release Employment Scheme allows a prisoner sentenced to two years or more to spend the last six months of his imprisonment (taking into account remission under Prison Rules) undertaking a normal job in the community while returning to reside at a half-way house at night. During this period, he will be subject to aftercare supervision.

IV. The Review

Hong Kong has been plagued in recent years with a social problem brought about by the influx of asylum seekers from Vietnam. In an effort to cope with the crisis, the Correctional Services Department sets aside its scarce resources to deal with the issue and has been given the additional task of looking after Vietnamese Migrants. With the agreement on the Return of Vietnamese Illegal Immigrants in Hong Kong signed between the United Kingdom and Vietnamese governments in October 1991, indications of an end to this issue are beginning to show, and the Correctional Services Department is fairly optimistic that it may be relieved of this burden in the not-too-distant future. This will enable the Department to concentrate solely on work in its own field.

A glance at the Department's work in the past few years revealed that little or no initiatives have been put forward either to devise new programmes or refine existing ones. Although the overall effectiveness of these programmes has not been noticeably eroded, a critical examination is considered necessary. Therefore, a working party was recently appointed to conduct a first ever wide-ranging review on all the rehabilitative programmes administered by the Department in correctional disposition. A major emphasis is placed on ensuring a continual development of a coherent and consistent set of rehabilitative modalities that are capable of meeting the sentencing principles of the Judiciary and of keeping pace with the heterogeneous needs of offenders.

The review is still in progress at the time of writing this paper, and its outcome will definitely have far-reaching implications on the direction in which this Department will head for the future. Meanwhile, it may be of interest to highlight some of the inadequacies or concerns addressed by the Working Party:

Compilation of Philosophy Manuals

The Correctional Services has come a long way since it received the first offender into its care, and organized the first correctional programme seeking to rehabilitate those committed to its charge. Throughout this lengthy evolution process, when initiatives were taken on board to deal with prevailing demands at different points in time, the fundamental philosophies that underpin the direction and regime of the correctional programmes may have undergone considerable transformation, without the awareness of those responsible for executing the system at point of delivery. With the passage of time, such an information gap is further aggravated by the movement of staff between different establishments, an arrangement considered as unavoidable in any developed penal system such as ours.

It is not for us to pass judgement on the merits and demerits in this system of staff mobility, save to point out that any excessive movement of personnel would adversely affect the maintenance and the development of regime direction and centre activities, when maintaining continuity is commonly recognized as one of the prerequisites to the effective delivery of the rehabilitation services in the first place.

To expect the same personnel to remain in one institution throughout their correctional career in a bid to maintain continuity is not practicable. The impact such rigidity poses to staff morale, to their exposure and career development concerns can be drastic and far reaching. The Working Party has therefore focused its attention on devising alternative means to facilitate the maintenance of regime direction and to achieve a measure of consistency in the operation of different rehabilitation programmes.

From our analysis on this matter we have noted that all along centre managements are given precise instructions on security matters and on inmates' statutory rights and entitlements. This is obviously essential as security and good manage-

ment are two of the most paramount concerns. A firm grip on security and control is, in effect, a fundamental condition for the continued smooth operation and expansion of the centre activities.

Now that we are reasonably satisfied that a firm control over centre security is attained, the Working Party considers that centre managements should no longer be left to their own devices in organizing and prioritising their regime activities. We see considerable merits in developing comprehensive guidelines to lead the whole staff in every establishment to operate in an efficient and coherent manner every aspect of the centre's programme.

The Working Party recommends programme manuals be compiled to outline in broad terms the basic principles governing the regimes of each type of correctional programme. Each manual should contain a detailed specification on the philosophy of the programme, the unique feature of the regime and the essential operational guidelines that include the priorities of the regime activities. The manuals, when compiled, should become an important document on which correctional staff could rely in understanding their mission and expected role in every penal establishment, the attitude they should adopt in discharging their duties and the nature of relationship they should foster with inmates.

The Working Party considers that these manuals, which should be updated periodically, would not only serve as a ready reference to re-orient personnel newly transferred to the establishment to appreciate fairly rapidly the objectives of the programme, the manuals would also become the essential foundation on which continuity of regime services could be maintained despite any future change in personnel. They also permit a standardization of services in all penal establishments that are running the same correctional programme.

Liaison with the Judiciary and Social Welfare Department

A distinctive feature of the Criminal Justice System within which the correctional programmes operate is the inter-dependency between the work of its service agents.

The courts pass judgement on the offenders. We, or the Social Welfare Department, give effect to these court orders. Both departments have a voice on what constitutes the most appropriate sentencing options for the young offenders, through the compilation of the suitability and case reports. Offenders who have failed the social welfare mechanism may find themselves in the correctional setting. Those having gone through these rehabilitative systems and still relapse to crime may end up again in the courtrooms.

The foregoing discussion serves to highlight that Correctional Services is not fighting a lone battle in our reformation work. And neither should we develop our rehabilitative impetus in isolation. In striving to provide a range of rehabilitation programmes that have addressed the many divergencies in the social circumstances, rate of development and treatment needs of the offenders, we are in essence dependent upon the support and close co-operation from these various agencies, both on the programme planning level, and at the points where services are actually delivered.

It follows that in maintaining the efficacy of the whole Criminal Justice System, a greater prominence should be given to the need to establish a closer and regular liaison with these service agencies on matters that concern the basic premises and the smooth operation of the whole Justice system.

The Working Party considers that our existing links with the Judiciary and the Social Welfare Department are loosely formed and inadequate. We have during the course of the review come across a number of anomalies that should have previously been brought to the attention of the

Judiciary for an early resolution, had there before been a suitable avenue to effect an exchange of views between the concerned parties.

All these have led us to the conclusion that there should be a higher level of regular contact between the Correctional Services, the Judiciary and the Social Welfare Department to ensure the functions of each individual agent are exercised in a complimentary, rather than a conflicting manner, towards a set of common goals. A close liaison would also be instrumental to the continued development of a comprehensive and coherent set of sentencing alternatives that are capable of meeting the different treatment needs of the offenders *and* satisfying the sentencing principles of the courts.

Contact with the Community

It has been commonly accepted that a period in custody does not necessarily guarantee the reformation of an offender. It is also wholly unrealistic to expect an inmate to, upon discharge, resettle instantly into the community from which he may be separated for a period of time. Transition from custody to freedom is seldom easy. In carrying out one of our missions to facilitate the reintegration of offenders, it is imperative that we are made aware of the limitations on what we can realistically attain and concentrate the resources on securing the achievable.

In this context, the Working Party considers that the focus of attention in planning for the rehabilitation programmes should be placed on fostering the environment, and providing, whenever practicable, the *opportunities* for inmates to maintain or to develop skills in preparation for their eventual reintegration. The idea that both the offender and staff should look outward to the community, throughout the period of detention, for opportunities of which detainees could take advantage, is gaining increasing recognition.

There are also arguments for an increased contact with the community from the Department's perspective. The Working Party notes that traditionally the work of the Correctional Services has obtained less of the limelight than that performed by our Police counterparts, in actually capturing the law breakers; or that of the courts, in passing sentences on the convicts. Public concerns lie understandably on the maintenance of law and order. Very few in the community would care to look beyond the courtrooms to see for themselves what actually takes place inside a correctional institution, let alone consider the enormous part they can play in helping offenders to resettle and in turn to reduce recidivism.

The protective and cautious attitude we have often adopted in maintaining a closed penal system in the past is also contributory to the public apathy towards the rehabilitative impetus. The Working Party hopes that in proposing a more open policy which is carefully administered, the ensuing increase in the transparency of the correctional work would help to dispel many of the misconceptions commonly harboured by the public on our work and serves to induce more people to involve themselves in the rehabilitation work for the offenders.

The concept of increased contact with the community should be implemented in two directions: for offenders to go out to the outside world, and for outside voluntary agencies to be involved in organizing in-centre activities.

In practising this concept of fostering community links, we are aware that centre management will need to balance carefully the conflicting priorities between maintaining control and order on the one hand, and speeding up the rehabilitation momentum on the other. The prevention of escape, the smuggling of contraband as well as the good order and management of the centre activities are several considerations that weigh heavily with centre management. We have much sympathy with the difficulties involved in striking the right balance be-

tween the conflicting interests.

As regards bringing in outside voluntary agencies to run certain aspects of the in-centre activities, it pays to define at the outset the expected role of these voluntary agencies in the correctional setting. A point worth stressing is that while the actual operation of the activities would be taken up by volunteers, the ultimate control over the regime and direction of the in-centre programmes remains firmly under the purview of the Correctional Services.

Research on the Psychotropic Drug Abuse in Correctional Institutions

The environment in which we operate the correctional system is not static. Over time, community attitude and expectations change. Characteristics and profiles of offenders change. Factors leading to an offender getting involved in crime change. To remain in the forefront of the correctional work, it is necessary for us to keep under review all aspects of our rehabilitation programmes to ensure they are suitably adjusted and refined to meet the constantly changing environment of a modern society.

A case in point is the emerging problem of psychotropic drug abuse among young people in Hong Kong and its potential impact on our treatment programme.

We begin by examining the problem at the macro level. According to statistics compiled by the Central Registry of Drug Abuse, during the period 1981–1990, while heroin continued to be the most common drug of abuse in Hong Kong, there had been, simultaneously, an increase in the proportion of newly reported psychotropic/multiple drug abuse cases.

The magnitude of the soft drug abuse problem among young persons is becoming more alarming. According to the surveys conducted in 1987 and 1990 on the non-medical use of psychotropic substances among students of secondary schools and technical institutes, the number of Chinese students who have abused psychotropic drugs has nearly doubled to a total of 8,900 in a space of 3 years. Against a sample size of over 400,000 students, this translates to a net increase of close to 4,100 young persons abusing psychotropic drugs from 1987 to 1990.

Of more relevance to our current review is the size of the psychotropic drug abuse problem in the correctional institutions. The Working Party has not been able to provide any ready answer on this. For there is little statistical data for us to base any reasonably sound assessment upon. Field observation seems to suggest that abusing soft drugs is a fairly common phenomenon among young offenders. But the exact magnitude of the problem has yet to be determined.

The lack of sufficient information about the size of the abuse problem among the penal population is not the only deficiency we need to resolve as quickly as possible. To date, our knowledge on the nature and the intensity of the psychotropic drug withdrawal symptoms is limited, let alone the type of treatment modality and the time frame necessary to effect detoxification.

Given that the problem with psychotropic drug abuse and its treatment is very much an unchartered territory for the Correctional Services, the first logical step to rectify this inadequacy is to substantially increase our knowledge on the matter. The Working Party considers that adequate research into the area of psychotropic drug abuse among correctional admissions is the essential pre-condition for a rational development of a suitable treatment modality to deal with offenders who have a habit of soft drug abuse.

The Working Party recommends that a research project be commissioned to look into the problem of psychotropic drug abuse amongst offenders placed in correctional institutions. The research should initially be targeted on Psychiatric Centre inmates and should have the benefit of the advice from the centre forensic psychiatrist. In

due course, the exercise should be extended to cover all other correctional institutions. Findings of the research should form the basis for developing a treatment strategy to deal with soft drug abusers should the size of the problem be significant.

Education and Work/Vocational Training Programme in Correctional Institutions

Education, work and vocational training are all integral parts of the institutional programme oriented to an inmate's eventual reintegration. In so far as the provision of these different training programmes are concerned, the Working Party sees scope for a range of different approaches in the correctional institutions that are relevant to the needs of the offenders and the objectives of the regimes they are following.

Throughout the past decades, these essential training programmes for offenders have developed steadily in different correctional settings. Our achievements so far have been considerable. We have helped to prepare offenders during the custodial period for further education or training in the community following release. We have introduced into the curricula a series of subjects and trades designed to meet modern expectations. Determined efforts have also been made to relate education to the problems of offenders rather than treating it as a straight-forward provision of classroom schooling.

Despite these achievements, a great deal still remains to be done. The past development of the correctional education/work/vocational training programmes was marked by a series of attempts made to adjust old methods to the changed conditions. A common observation is that the planning and development of these training programmes have suffered from a lack of direction and proper co-ordination. Efforts made to strengthen the effectiveness of the services were at best conducted on a piecemeal basis, with a minimum of co-ordination, integration and continuity. That the services were in general well received by the inmates under our charge is certainly not a cause for complacency. They describe a state of affairs we must now fight hard to maintain.

One need we have identified as we enter the 1990's is to redefine the respective roles of education/work/vocational training in different correctional programmes in the form of mission statements with a set of service objectives suitably prioritised to match the requirement of individual regime. A well defined and properly prioritised system of objectives is the essential foundation on which future endeavours and achievements on the education/vocational training fronts could be based. It also provides a set of assessment criteria to evaluate the effectiveness of the services and the deployment of resources required to attain it.

The future orientation of the education and work/vocational training systems in different correctional institutions has been a subject of constant deliberation during the course of our review. The Working Party has now arrived at a number of conclusions which we propose that the planning and development of these services in the future should be based. The Working Party recommends that:

(1) Government funding should be committed to organise in-centre education programmes up to pre-university level, or technician level in the case of vocational training/work programme.
(2) Within the framework of this resource guideline, in maximum security prisons for adults where a large number of long termers are housed in cellular accommodation that is conducive to self study, Government should provide the necessary administrative support to facilitate inmates with the ability and inclination to follow university and postgraduate programmes whilst under custody.
(3) Education in the correctional setting should be recognised as a wider learn-

ing process comprising a lot more than classroom schooling. Correctional education programmes should be seen as a wider learning process geared to preparing for an inmate's eventual return to the community.

(4) Training of life skills e.g. interpersonal communication skills, problem solving and goal setting skills, etc. should be included as a core curriculum of the in-centre education programme, in addition to the existing academic, social and moral and disciplinary education training.

(5) On the vocational training/work front, ideally speaking we should relate the in-centre programmes closely to probable outside employment opportunities. Taking into account the resources limitation, and the inherent physical and objective restrictions on operating work/training programmes in the correctional setting, the aims of providing vocational training and work programmes to inmates should be, on a more practicable level, to cultivate good work habit and discipline, and to engage inmates in productive work.

V. Conclusion

The correctional system in Hong Kong owes its origins to that of England and Wales. However, it has, since the Second World War, developed along a different trend in accordance with the local social, economic, and political changes in the past few decades. Hong Kong's penal philosophy had been largely affected by western concepts blended with the Chinese traditional rationale of "Crime and Punishment." Penal establishments in the early days were run without major problems, since the Confucian philosophy that stresses the authority of the senior over the junior to regulate interpersonal and social relationships and achieve harmony had predisposed the inmates (mostly Chinese) to discipline. The changing social and economic conditions have undermined such Confucian influence, and the series of incidents in the early 70's brought to light the lack of control, and poor order and discipline prevailing in penal institutions at the time. The belated awareness prompted the government to improve the overall efficiency of the correctional services and its facilities. The lesson learned from the unrest confirms that exercising control and imposing discipline are essential to smooth inmate management, and key to effective rehabilitation of offenders. These crucial elements will act as pre-requisites for the formulation and implementation of correctional programmes in future.

Besides the Department's efforts, there is an obvious need to continue to enlist support from all related disciplines and other service agents within the criminal justice system, in order to achieve even better results in the correction of offenders. The Department has, and will continue to strive to maintain the standard of service and a high degree of professionalism. The increasingly sophisticated socio-economic and family background of modern offenders also require impetus to provide initiatives and generate innovative ideas on treatment approach and programmes responsive to the changing world. The concerns raised so far by the Working Party on the overall review have produced some food for thought, although solutions to these issues are never simple nor easy.

Annex 1

Non-reconviction Rates of the Aftercare Programmes for the Year 1992

Aftercare Programme	Prisoner/Inmate	Supervision Expired in 1992	Supervision Successfully Completed	Success
Drug Addiction Treatment Centre	Male	1,426	913	64%
	Female	88	63	72%
Training Centre	Male	371	262	71%
	Female	37	34	92%
Detention Centre	Male (YO)[1]	388	358	92%
	Male (YA)[2]	64	64	100%
Young Prisoner	Male	163	25	77%
	Female	1	1	100%
Release under Supervision	Male	2	2	100%
	Female	–	–	–
Pre-release Employment	Male	19	19	100%
	Female	2	2	100%
Total		2,561	1,843	72%

Remarks:
[1]: YO denotes the Young Offender Section of Detention Center which holds offenders aged 14 to 20.
[2]: YA denotes the Young Adult Section of Detention Centre which holds offenders aged 21 to 25.

Annex 2

Non-reconviction Rates of the Aftercare Programmes (Cumulative as of 31.12.92)

Aftercare Programme	Prisoner/Inmate	Supervision Expired	Supervision Successfully Completed	Success
Drug Addiction Treatment Centre	Male	38,826	27,137	70%
	Female	1,689	1,284	76%
Training Centre	Male	4,119	2,726	66%
	Female	475	441	93%
Detention Centre	Male (YO)[1]	8,565	8,056	94%
	Male (YA)[2]	803	768	96%
Young Prisoner	Male	1,839	1,553	84%
	Female	43	39	91%
Release under Supervision	Male	9	9	100%
	Female	–	–	–
Pre-release Employment	Male	82	82	100%
	Female	4	4	100%
Total		56,454	42,099	75%

Remarks:
[1]: YO denotes the Young Offender Section of Detention Centre which holds offenders aged 14 to 20.
[2]: YA denotes the Young Adult Section of Detention Centre which holds offenders aged 21 to 25.

Sentencing Policy and Early Release Procedures in Canada—Restraint in the Use of Incarceration: An Elusive Goal

*by J. R. Omer Archambault**

Introduction

In Canada, given the abolishment of both capital and corporal punishment some years ago, imprisonment is the most severe penal sanction imposed on criminal offenders.[1] As the Law Reform Commission of Canada so aptly pointed out:

> Apart from death, imprisonment is the most drastic sentence imposed by law. It is the most costly, whether measured from the economic, social or psychological point of view.[2]

Yet, despite a call for restraint in the use of incarceration by numerous writers and groups[3], as well as many federally-appointed committees and commissions[4] given the responsibility of studying various aspects of the Canadian Criminal Justice System, Canada's experience in this regard is hardly one to be envied.

In its final report released in March, 1987, the Canadian Sentencing Commission, of which I had the honor of being chairman, citing figures from the Correctional Service of Canada, 1986, stated that:

> On any given day there are approximately 30,000 people incarcerated in this country. With an imprisonment rate of 108 per 100,000 inhabitants, Canada has one of the highest rates among Western nations.[5]

The trend continues: from 1986–87 to 1990–91, the rate of admissions to custody in Canada per 10,000 adults charged with violent crimes increased by 27%, for drug offences by 33% and for property offences by 11%.[6] A comparison of Canadian incarceration trends with eight other countries (United States, Switzerland, Northern Ireland, Australia, Scotland, England, Denmark and Sweden) shows that, based on the number of adults incarcerated per 100,000 population, Canada ranked third in 1989 after the United States and Switzerland. A 26% increase in the number of sentenced prisoners in Canada between 1980 and 1990, coupled with a more moderate increase in the national population (11%) accounts for a net 14% growth in the Canadian incarceration rate.[7]

In recent years the increasingly high costs associated with the construction and operation of custodial institutions and the administration of custodial programs have given us additional cause to question the intensity and judiciousness of our use of incarceration. In 1991–92, federal, provincial and territorial operating expenditures on adult corrections totalled 1.876 billion dollars. On average 79% of these expenditures were attributed to the provision of custodial services, as compared to 9% to the cost of non-custodial services (probation, parole and mandatory supervision). The per diem cost of housing an offender was $136.06 in the federal system, and $115.16 in the provinces.[8]

While there are obviously serious socio-economic problems which impact on Canada's crime rate and, ultimately, on the use of incarceration as a penal sanction, it is not my intention to discuss them in this

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paper. Rather, I want to briefly examine our sentencing and early release policies and procedures, with an eye to whether they lend themselves to parsimony or result in an over-reliance on imprisonment.

The Lack of a National Sentencing Policy

Undoubtedly the major problem with Canada's sentencing policy is that it is conspicuous by its absence. As paradoxical as this may sound, it is nonetheless the unfortunate reality. The Canadian Sentencing Commission identified "the almost complete absence of policy from Parliament on the principles that should govern the determination of sentences" as one of the most serious problems with sentencing in Canada.[9]

Canada's major criminal statute, the Criminal Code of Canada, is silent on the purpose and principles which should govern the determination of sentences. The only guidance given by Parliament on sentencing at all is in the form of the maximum penalties provided for various offences. A large number of these maximum penalties have been in existence for well over a century and were based not so much on the seriousness of the offence as on the, then existing, penalties of banishment and transportation whose duration provided the initial determination of the length of custodial sentences. As a result, the level of maximum penalties of imprisonment were set drastically higher than they might otherwise have been.[10]

Consequently, many of our maximum penalties are unduly high, in comparison to the seriousness of the offence, (e.g. life imprisonment for break and entry of a dwelling house) and totally out of proportion with sentences currently meted out by the courts. The gap between the maximum penalty provided by the legislation and the normal range of sentences imposed for a given offence is so great that, in the result, the maximum penalty provides very little, if any, guidance to a sentencing judge as to what a realistic and appropriate sentence should be. Given this almost total lack of direction from Parliament, the courts have had to fill the void. However, as we shall see, this has also been less than satisfactory.

Appeal Courts Are Not Structured to Provide Adequate Guidance

Canada is a federal state comprised of ten provinces and two territories. Under our constitution, the Canadian Parliament has exclusive jurisdiction over Criminal Law[11] and the provinces are responsible for the Administration of Justice within their respective territory.[12] Accordingly, the Parliament of Canada enacts the criminal law, which is then administered by each of the provinces through its own system of provincial courts.

With respect to sentencing, the Court of Appeal of a province or territory is effectively the court of last resort for sentence appeals. Although the Supreme Court of Canada has the jurisdiction to hear appeals on the fitness of sentences, it has declined to do so. It is the policy of the Supreme Court to hear only those appeals which involve a question of law (*Regina v. Gardiner* [1982] 2 S.C.R., 368). Accordingly, the Court of Appeal of a province or territory is the court of final appeal as to the fitness of a sentence and the one which ultimately sets sentencing policy in the province or territory. There are ten such appeal courts in Canada[13], each determining sentencing policy for its respective province or territory.

As one can well expect, such a structure does not lend itself to the development of a coherent and consistent national sentencing policy for the country, and indeed, is a major impediment to the achievement of uniformity of approach. That is not to say, however, that sentencing policy in Canada is in a chaotic state. Surprisingly, there is

nevertheless a measure of uniformity of approach, inadequate as it may be, resulting from the decisions of the various courts of appeal.

Landmark cases on sentencing emanating from the various appeal courts have, to a greater or lesser extent, developed and adopted similar principles and objectives of sentencing. The most frequently invoked purpose of sentencing by these appellate courts is the protection of the public.[14] Other objectives frequently adopted are deterrence, both general (deterring potential offenders, other than the accused, from committing the offence) and specific (deterring the accused from re-offending), punishment, and the reformation and rehabilitation of the offender.

In recent years the concept of denunciation, advocated by the Law Reform Commission of Canada,[15] has taken on more and more prominence as a factor in the determination of sentences. As well, recent case law more frequently refers to the need to maintain the confidence of the public in the administration of justice as a sentencing criterion, usually invoked as justification for increasing the severity of a sentence.[16]

Some courts state that the protection of the public is the overall aim of sentencing and that factors like deterrence, incapacitation and the reformation and rehabilitation of the offender are the means of achieving this end (*Regina v. Wilmott*, [1967] 1 C.C.C. 171, Ont. C.A.).[17] Eighty-seven percent of judges surveyed by the Canadian Sentencing Commission answered that protection of the public was the overall purpose of sentencing.[18]

Despite the existence of a measure of consensus among the various appeal courts in adopting the aforementioned objectives of sentencing, those objectives are much too broad and vague to provide effective guidance to trial judges in specific cases. Furthermore, little guidance has been given by the appellate courts on the question as to which of the factors is to be emphasized in a given case. While the Saskatchewan Court of Appeal explicitly recognized the problem in *Regina v. Morrisette*[19], little direction has been given to guide the trial courts.

In studies conducted for the Canadian Sentencing Commission (Young 1984, 1985) "a review of over 1000 sentencing decisions of courts across the country revealed that although general principles of sentencing are discussed in some judgments, there exists no consensus as to either the priority of principles or their meaning."[20]

It is indeed utopian to expect courts of appeal to develop consistent and general policy on sentencing. As the Canadian Sentencing Commission pointed out, appeal courts are not structured or equipped to do so:

> Over the years, Parliament has provided little guidance to judges with respect to the determination of sentences. The sentencing judge must look to the Courts of Appeal for guidance on sentencing. Courts of Appeal are not, however, adequately structured to make policy on sentencing. They are not organized nationally; hence, there is no obvious way of creating a national policy. They do not have the means and resources required to gather all of the necessary information to create policy on appropriate levels of sanctions. They are structured to respond to individual cases that are brought before them rather than to create a comprehensive integrated policy for all criminal offences. Most importantly, Courts of Appeal do not represent the people of Canada as Parliament does; judges are understandably reluctant to transform their courts into legislative bodies making public policy with respect to sentencing decisions. They appear to prefer to do what they do best; to guide the interpretation of the will of Parliament in the determination of the

appropriate sanction in an individual case.[21]

Although over the years, apart from the enunciation of general principles, there has been a dearth of guidance from the appeal courts for sentencing judges, more recently they are endeavouring to fill the void by providing more direction in the form of what may be referred to as "guideline or tariff judgments." Unfortunately, here again, the direction tends to be more sporadic than comprehensive. Courts of Appeal are reactive agencies—they not only deal with particular cases but as well only with those that are brought before them on appeal. Out of the large number of sentencing cases dealt with by the trial courts, very few are in fact appealed.

It is readily evident that it is virtually impossible to develop comprehensive policy within such a framework. Indeed, as the Canadian Sentencing Commission pointed out:

> ... appeal courts have shown a reluctance to embrace the notion of uniformity for fear that broad principles will fail to take into account the unique characteristics of each offender (as illustrated by a 1983 decision of the Nova Scotia Court of Appeal in *R v. Campbell* [1983] 10 W.C.B. 490, (... it is necessary to make the punishment fit the criminal rather than the crime).[22]

Given the vagueness of sentencing policy and the lack of adequate direction governing the practical application of sentencing principles, sentencing in Canada remains a highly flexible and highly discretionary process. Without any prioritization of principles, sentencing judges are free to invoke and emphasize the principles which best suit their particular attitude and predilection. As a result, different judges in similar cases may well come to very different determinations. While many would hail the resulting "individualized sentencing" as very positive, the fact remains that it does generate a lot of unwarranted disparity in sentencing—another major problem with sentencing in Canada identified by the Canadian Sentencing Commission.[23]

As a consequence of this high degree of discretion and flexibility in the determination of sentences, it is extremely difficult, if not virtually impossible, to have any measure of predictability, let alone control, with respect to the type of sentences which the courts will impose in particular cases. How then can a goal of restraint in the use of incarceration be effectively pursued, even if earnestly desired?

Despite these shortcomings, our sentencing structure has the flexibility and, accordingly, the potential, given additional direction in that regard, to more actively pursue a goal of parsimony in the use of incarceration. Explicit direction from Parliament and the Courts of Appeal promoting the use of sanctions other than incarceration in specified cases or for specified offences would, of course, be beneficial. In addition, if more and effective sentencing alternatives were developed and implemented, sentencing judges would not have to resort to incarceration as frequently.

The Tendency to Focus on General Deterrence

Another problem which militates against restraint in the use of incarceration is the fact that most guideline judgments issued by the appeal courts tend to focus on incarceration. These judgments usually give direction as to when incarceration should be imposed, and perhaps for how long, but seldom indicate in what circumstances, or for which offences, community-based sanctions are appropriate or should be favored. The Canadian Sentencing Commission made the following observations as a result of its research on guideline judgments:

Some courts have complained that the principle of general deterrence to justify a sentence of imprisonment represents the "illogicality of punishing one person for what others might do" (see *R v. Burnchall* (1980), 65 C.C.C. 505). Many trial court judges complain that higher courts only consider interests of general deterrence in reviewing fitness. Tariff sentencing is evidence that general deterrence is gaining the increasing support of Appeal Courts. As will be discussed below, tariffs are, in essence, a form of minimum sentence that in most cases require the sentencer to impose a term of imprisonment. Although the tariff approach adds some certainty to the process, it is based on a presumption of incarceration that runs contrary to the principle of restraint in the use of custodial sanctions.[24]

In my view, guideline judgments issued by the courts after the release of the Canadian Sentencing Commission's report have generally continued in the same vein. The following are typical examples: *Regina v. Sandercock* (1986) 22 C.C.C. (3d) 79, Alta. C.A.; Regina v. Parchoma (1991) Sask. D. 7100-02, Sask. C.A.; *Regina v. Morgan* (1991) Sask. D. 7415-01, Sask. C.A.; *Regina v. Brown, Regina v. Highway* and *Regina v. Umpherville* (1992) 73 C.C.C. (3d) 242, Alta. C.A.; *Regina v. Le* (1993) 76 C.C.C. (3d) 274, Alta. C.A.; *Regina v. G.M.* (1993) 77 C.C.C. 310, Ont. C.A. In all of these cases incarceration and increased terms of incarceration were justified on the basis of general deterrence and denunciation.

As long as the major guidance on the determination of sentences given to trial judges by the appeal courts continues in that vein, the day to day application of our sentencing policy will assuredly militate against the exercise of restraint. While some courts are starting to steer away from considering only general deterrence, or giving it less emphasis, in reviewing the fitness of sentences they are still too few and far apart (see, for example, *Regina v. Preston* (1990) 79 C.R. (3d) 61, B.C.C.A.). The situation will continue to be exacerbated by the fact that "the Criminal Code displays an apparent bias toward the use of incarceration, since for most offences the penalty indicated is expressed in terms of a maximum term of imprisonment."[25]

Yet I believe it is a fair observation, based not on empirical research, but rather from 24 years of experience on the bench and working on law reform, that incarceration is not used frivolously or lightly in Canada. It is resorted to primarily with respect to violent offenders, serious drug violations, major frauds and recidivist property offenders.

It is in the area of property related crime where resort to incarceration could be lessened, given the existence of effective community-based sanctions and the implementation of restitution programs, such as remunerated work programs for impecunious offenders. Furthermore, one can seriously query why imprisonment should inevitably be the preferred or stipulated penalty in all cases involving family violence and the sexual abuse of children within the family context.

A Need for Inexpensive and Less Onerous Sentencing Options

Incarceration is an onerous and expensive sanction which accomplishes very little apart from separating offenders from society for a period of time. As graphically pointed out by the Canadian Sentencing Commission, prisons are more "schools of crime" than institutions conducive to reformation.[26] Admittedly, with some violent offenders the only way to protect society is to incapacitate them by lock-up. Yet the dismal failure of imprisonment as a measure to achieve specific and general deterrence, or the rehabilitation of offenders, impels us to reconsider our frequent use of this sanc-

tion as the preferred method to achieve the protection of the public against crime. More and more the trial courts are realizing this sad fact and providing leadership in the use of community sanctions which hold out more hope both for the long term rehabilitation of offenders and public protection through the more active involvement and participation of the community in the rehabilitation and treatment of the offender.

This is especially crucial with regards to native Indian and Inuit offenders who are overly represented in the Canadian Criminal Justice System.[27] Cases such as *Regina v. P. (J.A.)* (1991) 6 C.R. (4th) 126, Yukon Territorial Court, and *Regina v. Philip Moses* (1992) 11 C.R. (4th) 356, Yukon Territorial Court, clearly demonstrate not only the will but the very concrete and significant steps taken by trial judges in their search for more effective, humane and less costly sentencing measures in dealing with aboriginal offenders.

As pointed out by Lilles, C.J.T.C. in *Regina v. P. (J.A.)* (supra) the British Columbia Court of Appeal in two fairly recent cases dealing with sexual assault recognized the inherent conflict between incarceration and the rehabilitation and restoration of the family unit, and sanctioned the use of a large fine and probation as an appropriate sentence. See *Regina v. P. (R.J.)* (1987) Y.R. 221, and *Regina v. G (D)* April 3, 1991 (unreported).

These cases illustrate that it is indeed feasible within the framework of our current sentencing policy, to make greater use of community-based sanctions in cases which have traditionally resulted in the incarceration of the offender. The process could be favorably influenced if more and more of the Provincial Courts of Appeal were prepared, in the words of Wood J.A. in *Regina v. Preston* (1990) 79 C.R. (3d) 61 at p. 74, to encourage trial judges "in appropriate cases to take an enlightened and progressive approach to sentencing."

Above all, however, Canada requires the adoption by Parliament of a national sentencing policy. A statement of purpose and principles, expressly espousing restraint in the use of incarceration, would undoubtedly be the most effective tool in promoting the creation and use of community sanctions.

The federal government has recognized the need for a legislated policy governing sentencing in Canada. On June 23, 1992, the former Minister of Justice, The Honourable Kim Campbell, tabled Bill C-90 (An Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof) for first reading in Parliament. Upon tabling the Bill, the Minister issued a communique stating:

> For the first time in history, Canadians are going to have a say, through Parliament, on the purpose of criminal sentencing and its objectives. ...
>
> A statement of purpose and principles will be added to the Criminal Code. This statement will provide clear direction from Parliament on the purposes and principles of sentencing.

It should be noted that the statement of principles of sentencing contained in Bill C-90 endorses restraint in the use of incarceration and promotes the use of alternative sanctions.[28]

Unfortunately, this Bill will probably die on the order paper. This is an election year in Canada, and it is most likely that Parliament will be dissolved and an election called before the Bill is passed.

In this era of difficult economic times and deficit financing, our political leaders must, of necessity, carefully evaluate the use of public funds in corrections. Community sanctions are less costly and, in my view, in many cases, would be more effective in achieving the rehabilitation of offenders and serving the public interest. The increased involvement of the community should prove to be highly advantageous,

and greatly enhance the chances for the rehabilitation and reformation of some offenders. Given the relatively modest costs of community-based sanctions compared with incarceration, governments should really be spending more resources on programs to reduce the use of incarceration in sentencing as was recommended by the Nielsen Task Force Report. As the Task Force noted, "our over-reliance on incarceration is a luxury which is quickly becoming difficult to afford."[29]

Early Release Policy and Procedure

If our sentencing policy such as it currently exists doesn't particularly lend itself to the exercise of restraint in the use of incarceration, can it be said that our early release policy and procedures fare any better? A brief look at the history of early release in Canada and the current legislation governing early release should provide some insight in the consideration of this question.

Early Release: A Brief History

Canada recently adopted new legislation modifying early release policy and procedures. As research by the Canadian Sentencing Commission disclosed, early release programs have been in existence in Canada for over 125 years. In its report the Commission made the following brief observations regarding the history of early release:

> Some form of early release has been in existence in Canada since Confederation. In 1868 inmates were granted early release through earning remission credits for co-operative behaviour and for industrious work habits in prison (Penitentiary Act). In 1899, another form of early release was created to allow the Crown to exercise mercy in certain cases, usually on humanitarian grounds (Ticket-of-Leave Act).
>
> It was not until 1956 that the Fauteux Commission (created to review the granting of tickets of leave) came to the conclusion that this system, based on clemency, had very little to do with reform or rehabilitation. It recommended that instead, a new system of early release on parole should be offered to all inmates as " ... a logical step in the reformation and rehabilitation of a person." Following these recommendations, in 1959 the Government enacted the Parole Act to replace the Ticket-of-Leave Act, and created the National Parole Board.[30]

The decision to grant early release on parole is currently made by the National Parole Board for federal and provincial offenders in all provinces except three, namely British Columbia, Ontario and Quebec which have their own provincial parole board.

There are two types of parole: full parole, which, in effect, does not require the inmate to return to an institution, and day parole, which requires the inmate to return to an institution each night or after a specified time.[31]

Under the legislation in effect prior to November 1, 1992, most offenders were eligible for full parole after serving one-third of their sentence or seven years, whichever was the lesser. Where life imprisonment was imposed other than as a minimum punishment, an inmate was eligible for full release after serving seven years, minus any time spent in custody after arrest and prior to sentencing. There were special eligibility periods prescribed for indeterminate sentences (dangerous offenders), mandatory sentences of life imprisonment (first and second degree murder and high treason)[32] and for violent conduct offences.[33]

Parole Significantly Reduces Time Spent in Custody

As the Canadian Sentencing Commission observed, the effect of parole on time spent in custody by prisoners is very significant:

> Terms of imprisonment in this country are substantially affected by parole release. While the relative merits of parole remain controversial, some characteristics and consequences of the system are clear enough. First, approximately one-third of eligible prisoners are granted release on full parole at some point in their sentences. The majority of all prisoners who are released on full parole were granted full parole upon their first application. Paroled prisoners serve an average of 40% of their sentence inside prison before obtaining release. Over three-quarters of those released on full parole serve less than half of their sentences in prison. (These statistics are all drawn from the 1981 Solicitor General's Study of Conditional Release).[34]

More recent statistics continue to show the highly significant effect of parole on time spent in custody. In 1991–92 the parole boards in Canada made 20,790 prerelease decisions of which approximately 42% (8,796) were to grant full parole. The grant rate for federally sentenced offenders was 31%, and 48% for provincial offenders.[35] During 1991–92 there was an average of 7,298 parolees on full parole in the community. This represents approximately 35% of offenders serving custodial sentences. On an average day during the previous year (1990–91) there were 9,687 offenders in the community under parole supervision (including both full parole and day parole), an increase of 7% over 1989–90, when the average count was 9,070 offenders under parole supervision.[36]

The Impact of Earned Remission on Custody

The other form of release which significantly impacted on the length of time a prisoner will spend in custody was remission-based release, which has now been abolished by the new Corrections and Conditional Release Act. Under the previous legislation "every inmate of a penitentiary may be credited with 15 days of earned remission of his sentence for every month he has applied himself industriously to the program of the institution in which he is confined. Such remission may be forfeited in whole or in part as a result of a conviction in the disciplinary court of the institution." (National Parole Board, 1983).

There are two elements involved in earning remission: participating in institutional programs (up to ten days a month) and demonstrating good conduct (up to five days a month). Remission cannot be earned by inmates serving life sentences.[37]

Until 1970 all inmates released as a result of remission were released unconditionally to serve the remainder of their sentence in the community. This meant, in effect, that almost all inmates, not granted earlier parole, were released after serving two-thirds of their sentence, and could not be returned to custody for any reason other than the commission of a new criminal offence.

In 1970 the Parole Act was amended to give the National Parole Board the authority to place conditions on remission-based release for federal inmates with the result that all inmates so released would be subject to "mandatory supervision." The intent was that those inmates would receive assistance and control during the completion of their sentence in the community. This meant that freedom could be suspended or revoked for violation of the conditions of release stipulated by the Board. Mandatory supervision did not apply to inmates serving sentences of less than two years in pro-

vincial institutions.

The impact of parole and remission based release on reducing prison population speak for themselves. In comparison with the length of the custodial sentences imposed by the courts, a large number of inmates serve significantly less time in custody than they would otherwise have.

Early Release May Be Thwarted by Longer Sentences

The impact of these programs on the reduction of prison population may be lessened, however, by the imposition of longer sentences by judges who want to ensure that certain offenders serve what they feel is a minimum amount of time in custody; normally for reasons of deterrence and denunciation. While there is not, to my knowledge, any precise empirical research demonstrating the extent of this occurrence, according to the Canadian Sentencing Commission it is in fact happening. The Commission made the following observations in this regard:

> The already murky waters of sentencing are clouded still further by judges considering, at time of sentencing, release on parole and remission. (Remission will be dealt with in greater detail in the next section). This consideration may take many forms. For example, it is possible that at least some judges are aware of the unstated yet clearly manifested policy to release higher proportions of serious offenders (for reasons of sentence mitigation and equalization) on full parole. If they are, judges may be increasing the lengths of sentences for certain offenders in anticipation of early release on full parole. Whether they follow this particular strategy or not, what evidence is there that judges are affected by the possibility of parole and remission? In the Commission's survey of sentencing judges (Research #6), only 35% of respondents stated that they never took parole into account at sentencing. Hogarth (1971) reported that two-thirds of judges in his sample admitted they sometimes adjusted their sentences in light of the possibility of parole being granted. To quote the Solicitor General's Study of Conditional Release: "In more candid moments, some judges will admit in effect to tripling the sentence in order to provide for a fixed period of 'denunciatory' imprisonment (prior to full parole eligibility), for a remission period, and for a ('parole' or 'rehabilitation') period" (p. 111).[38]

The question whether a judge can or should deliberately increase a sentence so as to lengthen the period of time an offender will spend in prison by taking into account conditional release eligibility remains the subject of ongoing debate in Canada. The majority view appears to be that statutorily authorized conditional release is not an appropriate consideration for judges in the determination of sentences. Given the complexity of the law on early release as well as the virtual impossibility of predicting how it will be applied in a specific case, such a practice is precarious at best. Lack of accurate information may result in unduly increasing an otherwise proper sentence.[39]

The net effect of such "over-compensation" remains nebulous at best. It should be noted, however, that where judges impose longer terms of incarceration to counteract early release programs, such practices not only affect the length of time spent in custody by inmates, but defeat the goal of restraint in the determination of sentences.

The Corrections and Conditional Release Act 1992

In 1992 the Parliament of Canada passed new legislation governing the detention

and conditional release of offenders. The new law, entitled the Corrections and Conditional Release Act,[40] which repealed the Parole Act[41] and the Penitentiary Act[42], came into effect on November 1, 1992.

In his press release announcing the new legislation the Honourable Doug Lewis, Solicitor General of Canada, had this to say:

> The new legislation represents a major and comprehensive overhaul of federal corrections and reflects the government's determination to restore public confidence in the federal corrections and conditional release system.
>
> The new Act responds to concerns expressed by Canadians about public safety and their confidence in the federal corrections system. It reflects the need for more stringent measures in dealing with violent and serious drug offenders; *the need to reduce over-reliance on imprisonment for less serious, first-time penitentiary offenders;* the need to bring federal correctional legislation more in line with the Canadian Charter of Rights and Freedoms; and, the need for more predictability in parole decision-making. (Emphasis is mine)

The new legislation is significant in terms of the use of incarceration in Canada in two ways. First, it is intended to place greater emphasis on the protection of the public from violent and serious drug offenders, which should result in such offenders spending more time in custody. Second, it appears to be the first time that Parliament has legislated a policy seeking to reduce the over-reliance on imprisonment as a penal sanction for less serious first time penitentiary offenders. Although I find the statement in this regard rather timid, it is nonetheless a legislative first in the recognition of the need for restraint.

The following are the highlights of the new law, as it affects the proportion of custodial sentences actually spent in custody and on early release programs:

The Purpose of Correctional System

Section 3 of the Act sets out the purpose of the federal correctional system:

> 3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by:
> (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
> (b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programs in penitentiaries and in the community.

Principles to Guide Correctional Service Personnel

Section 4 sets out the principles which are to guide Correctional Service Personnel in the administration of sentences. Of particular importance are subsection (a) which makes the protection of the public the paramount consideration in the corrections process,[43] subsection (d) which implicitly, at least, adopts the policy of restraint in Corrections,[44] and subsection (i) which provides that inmates are expected to obey the rules and conditions of temporary absence and release programs and to participate in rehabilitative programs.[45]

It would appear from the combined effect of the stated purpose and principles that Parliament believes that "the long-term protection of the community is best assured through the safe return of offenders to the community as law-abiding citizens."[46]

Of significant importance as well is the explicit recognition in the declaration of principles that correctional and early release decisions must be based on all available information, including, inter alia, the stated reasons and recommendations of the

sentencing judge and information obtained from the victim(s) of the crime.[47] Presumably where the sentencing judge has emphasized public protection, deterrence and denunciation in the determination of the sentence, it will or could adversely affect an offender seeking early release, or at least the timing of such release.

Judicial Determination of Parole Eligibility

Judges will be able to lengthen the time that violent and serious drug offenders spend in prison by delaying eligibility for full parole until one-half of the length of the custodial sentence has been served. This judicial determination will be made by the court at the time of sentencing.[48]

Detention until Expiry of Sentence

Under the previous law, violent offenders who were eligible for release under mandatory supervision but were considered a high risk to commit new violent crimes, if released, could be kept in prison until the end of their sentence. This was called "detention" and required a decision of the National Parole Board. This measure has been retained in the new law; however, the list of offences for which detention may be used has been expanded to include incest, sexual offences against children, and serious drug offences (e.g. trafficking, import/export, cultivating and possession of property obtained from drug monies). Any offender in this category who, after release, violates a condition of release will be re-incarcerated without any further chance for early release.

Earned Remission System Abolished

Prior to the implementation of the new legislation an offender could earn an early release (earned remission) as a result of good behaviour while in the penitentiary. In most cases this resulted in release under mandatory supervision during the last third of the sentence.

The new law abolishes earned remission and provides that the "release date will automatically be set at the two-thirds point of the sentence. This system will be easier to administer, be less costly and will not likely affect how much time offenders spend in prison, since, in the majority of cases, offenders tended to earn all, or nearly all, their remission time."[49]

Accelerated Release for Low-Risk, Non-Violent Offenders

The new legislation provides for the quicker release of those who commit non-schedule offences. Information released by the Solicitor General of Canada following the proclamation of the new act indicates that:

> Imprisonment is necessary to control dangerous and high-risk offenders, but for many low-risk, non-violent offenders, serving their first penitentiary term, it is often counter-productive. For these types of offenders, therefore, the parole process will be streamlined. If these offenders are considered unlikely to commit a violent crime, they will be released by the Parole Board at 1/3 of their sentence and placed under the supervision of a parole officer until their sentence is complete. This provision of the new Act is called "accelerated review."[50]

Also eligible for accelerated review will be serious drug offenders whose parole eligibility has not been increased by the court to one-half of their sentence.

New Criteria for Temporary Absence

Although temporary absences have long been used to assist the offender's gradual and controlled reintegration into the community, the Act provides new criteria governing them and tightens the system for high risk offenders. Thus under the new Act, "temporary absences can be granted for medical, community service, compassionate, administrative, family con-

tact, personal development and parental responsibility reasons. All offenders are eligible for escorted temporary absences anytime in their sentences. However, they are not eligible for unescorted absences until they have served half of that period of time before their parole eligibility or at any time for emergency medical treatment. Offenders classified as a maximum security will not be eligible for unescorted temporary absences."[51]

As well the temporary absence system will be tightened up for violent and serious drug offenders.

New Release Programs

Two new types of release programs will be created to respond to specific needs of offenders. They are described as follows:

> A work release program will allow offenders to participate in a structured program of release of a specified duration to work outside the penitentiary or to engage in some form of community service project. This work would be performed under the supervision of a staff member or other person or organization authorized by the Correctional Service of Canada. Offenders who are eligible for unescorted temporary absences, who are classified as minimum or medium security and are not considered a risk to the community, will be eligible for the work release program.
>
> New types of unescorted temporary absence will also be created. They will allow offenders to participate in voluntary community service or personal development programs outside the penitentiary. They will be used only for purposes that are linked to correctional treatment for the offender as opposed to preparation for release. Offenders classified as maximum security will not be eligible for this type of temporary absence.[52]

Changes to Day Parole Eligibility

The day parole program that permits an offender to be absent from a penitentiary or provincial institution for specified periods of time, often to reside in a halfway house, has been in effect for some time. Prior to the implementation of the new legislation, offenders were eligible for day parole after serving one-sixth of their sentence or six months, whichever was greater.

The new Act changes the eligibility period as follows:

> No offenders will be granted day parole earlier than six months before they are eligible for full parole. Basically, this will result in no change for offenders serving up to three years. However, offenders serving longer than three years will be required to serve more of their sentences in the penitentiary before becoming eligible for day parole. For offenders serving mandatory life sentences, eligibility for day parole will remain at three years prior to full parole eligibility.[53]

While it remains to be seen what impact the provisions of the new Corrections and Conditional Release Act will have on the question of restraint in the use of incarceration, it strikes me that what we have here is a double-edged sword. On the one hand serious drug and violent offenders are likely to serve a greater proportion of their sentence in custody, while on the other hand a greater number of first time non-violent offenders should benefit from an earlier release as a result of the more automatic release procedure.

In a recent conversation with Dr. Frank Porporino, Director of the Research and Statistics Branch of Correctional Service Canada, I was advised that as of February 28, 1993, the proportion of inmates currently incarcerated in federal penitentiaries for violent offences (Schedule I offences) was 47% compared to 53% for other

offenders (non schedule I). While the split is close to half and half, I would expect that the sentences of Schedule I offenders are probably somewhat longer than that of most other offenders, except perhaps for serious drug offenders. As well the addition of Schedule II offenders will tend to equalize the size of the two groups.[54]

I was further advised by Dr. Porporino that an impact study conducted by the Research and Statistics Branch in anticipation of the adoption of the Corrections and Conditional Release Act revealed that the estimated impact of the new law on offender populations over the first six years after proclamation would be a modest increase of approximately 150–160 inmates.[55]

Conclusion

It would appear that Canada continues to make fairly extensive use of incarceration as a penal sanction. The lack of a national policy governing the determination of sentences makes it very difficult to effectively pursue a goal of restraint in the use of imprisonment. Although traditionally the early release of offenders on parole or on earned remission has substantially reduced the time spent in custody by offenders sentenced to incarceration, recent changes in the law governing early release are not expected to significantly affect the situation.

With the increase in the level of violent offences in recent years, politicians are being pressured by the public to increase the severity of sentences and tighten release procedures with respect to violent offenders. In such a climate politicians will be most reluctant to adopt any new measures which would appear to favor restraint. The best that can be expected is that more severe measures respecting the incarceration of violent offenders will be offset by a greater emphasis on community-based alternatives to deal with non-violent offenders.

Nonetheless the chances of achieving greater restraint in the use of incarceration could be significantly enhanced by the implementation of the following measures:

1. The incorporation in the Criminal Code of a statement of the purpose and principles of sentencing, including, inter alia, an explicit recognition that incarceration is a sentence of last resort to be used only where other sanctions would be inadequate to achieve public protection. A policy set by Parliament would apply throughout the country and provide guidance to the appeal courts in dealing with the fitness of sentences in particular cases.
2. Trial and appeal courts must show greater initiative and be more progressive in their approach to sentencing. They must resist putting undue emphasis on the elusive goal of general deterrence and give greater consideration to innovative community-based dispositions.
3. Given the exceedingly high costs of incarceration, both the federal and provincial governments must devote more resources and energy to the creation of community-based programs which are between 10 and 15 times less costly to operate[56] and yet have the potential to be equally or more effective in preventing recidivism.
4. In recognition of the plight of victims of crimes, greater consideration should be given to the implemention of restitution and compensation programs whereby impecunious offenders would be able to earn monies to reimburse victims for damages.[57]
5. In cases of family violence and the sexual abuse of children, effective community-based programs must be devised to treat offenders and cater to the needs and plight of victims, with a view to the rehabilitation and restoration of the family unit. Incarceration is all too often counter-productive and devastating in this regard.
6. In appropriate cases, resort should be

had to dispositions which promote and increase the involvement of the community in providing support for and supervision of the offender and in contributing actively to his or her rehabilitation.

It is the writer's conviction that implementation of the aforementioned measures would go a long way in achieving a significant degree of restraint in the use of incarceration without jeopardizing public safety. Indeed, positive community-based programs having the potential to enhance the chances for the rehabilitation and reformation of offenders might well contribute more effectively to the realization of long-term public protection than the temporary incapacitation of offenders by incarceration. Given the dismal track record of incarceration in reforming offenders, what have we got to lose?

Notes

1. Capital punishment was permanently abolished in Canada in 1976 after a five-year trial period initially instituted in 1967 and extended in 1973. The last executions in Canada took place on December 11, 1962. (Carrigan—Crime and Punishment in Canada—A History, pp. 379–80). The Criminal Code of Canada was amended in 1972, abolishing whipping as a sentencing measure.
2. Law Reform Commission of Canada, 1976: Part II p. 10.
3. See Report of the Canadian Sentencing Commission, Sentencing Reform: A Canadian Approach (Ottawa: Minister of Supply and Services Canada 1987) at pp. 77–78.
4. Ibid pp. 40–46.
5. Ibid p. 233.
6. Canadian Centre for Justice Statistics (1992a) Juristat Service Bulletin, 12, *9*. Ottawa: Minister of Supply and Services Canada.
7. Canadian Centre for Justice Statistics (1992b) Juristat Service Bulletin, 12, *3*. Ottawa: Minister of Supply and Services Canada.
8. Canadian Centre for Justice Statistics (1992c) Juristat Service Bulletin, 12, *22*. Ottawa: Minister of Supply and Services Canada.
9. Sentencing Reform: A Canadian Approach, p. XXII.
10. Ibid at pp. 22–24. From Friedland (1985) Sentencing Structure in Canada: Historical Perspectives. Ottawa: The Canadian Sentencing Commission.
11. The Constitution Act, 1867, subsection 91 (27) R.S.C. 1985, Appendix II.
12. Ibid, subsection 92 (14).
13. The British Columbia Court of Appeal acts as the Court of Appeal for the Yukon Territory, and the Alberta Court of Appeal acts as the Court of Appeal for the Northwest Territories.
14. See research on appellate sentencing decisions by A. Young 1984,1985. Ottawa: The Canadian Sentencing Commission.
15. See, for example, Law Reform Commission of Canada (1977), Guidelines, Dispositions and Sentences in the Criminal Process; and Law Reform Commission of Canada (1974), The Principles of Sentencing and Dispositions.
16. See for example the following sentencing decisions of the Saskatchewan Court of Appeal: R v. McGinn (1989) 75 Sask. R., 161; *R v. Parchoma* (1991) Sask. D. 7100-02; *R vs. Morgan* (1991) Sask. D. 7094-01; *R v. Debrowney* (1992) Sask. D., 7415-01.
17. Per McLennan, J.A. at pp. 177–179:

    "The fundamental purpose of any sentence of whatever kind is the protection of society ..."

    "For the purpose of protecting society, prevention, deterrence, and reformation should all be considered by a court in imprisonment."

    See also the Canadian Sentencing Handbook—Canadian Association of Provincial Court Judges—1982, p.31.

    In *R vs. Grady* (1971) 5 N.S.R. (2d) 264, McKinnon C.J.N.S stated at p. 266:

    "It has been the practice of this court to give primary consideration to protection of the public, and then to consider whether this primary objective could best be attained by (a) deterrence or (b) reformation and rehabilitation."

18. Sentencing Reform: A Canadian Approach, p. 145.
19. (1970) 12 C.R.N.S. 392, per Culliton C.J.S. at p. 393:

    "The real problem arises in deciding the factor to be emphasized in a particular case. Of necessity, the circumstances surrounding the commission of an offence differ in each case so that even for the same offence sentences may justifiably show a wide variation."
20. Sentencing Reform: A Canadian Approach, p. 79.
21. Ibid at p. XXIV.
22. Ibid at p. 79.
23. Ibid at p. XXIII and Chapter 3, section 4, pp. 71–77.
24. Ibid at p. 80.
25. Ibid at p. XXIII.
26. Ibid, Chapter 2, sec. 2, pp. 40–46.
27. According to the 1986 Census 7.8% of the Saskatchewan population reported at least one aboriginal origin (Indian, Metis, or Inuit). As of December 31, 1990, 75,441 persons were registered as Indians under the Indian Act in Saskatchewan, representing 7% of the provincial population, yet aboriginal persons represented 68% of all sentenced admissions to provincial correctional centres in 1990–91. By gender, 65% of males admitted were aboriginal, as were 85% of females. In addition, 58% of the supervised probation caseload and 63% of fine option program participants were aboriginal persons. (Report of the Saskatchewan Metis Justice Review Committee, January, 1992)
28. Section 718.2 of Bill C-90 contains the following principles which explicitly or implicitly endorsed restraint in the use of incarceration, namely:

    718.2 A court that imposes a sentence shall also take into consideration the following principles:

    (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

    (d) an offender should not be deprived of liberty, if less restrictive alternatives may be appropriate in the circumstances; and

    (e) all available alternatives to imprisonment that are reasonable in the circumstances should be considered, particularly in relation to aboriginal offenders.
29. Nielsen Task Force on the Justice System 1986 p. 288.
30. Sentencing Reform: A Canadian Approach p. 238.
31. See the Corrections and Conditional Release Act subsection 99 (1) definition of "day parole" and "full parole".
32. In the case of first degree murder and high treason an offender must serve a mandatory period of custody of 25 years prior to eligibility for parole release. With regard to second degree murder the mandatory period is ten years, which can be increased by the court to a maximum of 25 years.
33. Pursuant to the previous legislation a "violent conduct offence" is one carrying a maximum penalty of ten years or more for which a sentence of five years or more was actually imposed and which involved conduct that seriously endangered the life or safety of any person or resulted in serious bodily harm or severe psychological damage to any person (Parole Regulations, ss. 8 (1)). Inmates serving a sentence for a violent conduct offence were not eligible for full parole until they had served one-half of their sentence or seven years, whichever was the lesser.
34. Sentencing Reform: A Canadian Approach pp. 239–40.
35. Provincial offenders refers to offenders sentenced to imprisonment for less than two years. These sentences are served in provincial correctional institutions.
36. Canadian Centre for Justice Statistics (1992d & 1993) Juristat Service Bulletins 12, 8. and 13, 1. Ottawa: Minister of Supply and Services Canada.
37. Sentencing Reform: A Canadian Approach, p. 246.
38. Ibid pp. 241–2.
39. See Campbell and Cole: Conditional Release Considerations in Sentencing (1985) 42 C.R. (3d) 191; Cole and Manson: Release from Imprisonment—The Law of Sentencing, Parole and Judicial Review, 1990 Sentencing and Imprisonment, p.25.
40. 1992 S.C. Cap. 20.
41. 1985 R.S.C. Cap. P-2.
42. 1985 R.S.C. Cap. P-5
43. 4. The principles that shall guide the Serv-

ice in achieving the purpose referred to in section 3 are:

(a) that the protection of society be the paramount consideration in the corrections process.

44. (d) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders.

45. (i) that offenders are expected to obey penitentiary rules and conditions governing temporary absence, work release, parole and statutory release, and to actively participate in programs designed to promote their rehabilitation and reintegration.

46. Corrections and Conditional Release Act—Backgrounder Paper No. 1, 1992, Solicitor General of Canada.

47. (b) that the sentence be carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, other information from the trial or sentencing process, the release policies of, and any comments from, the National Parole Board, and information obtained from victims and offenders.

48. Section 741.2 Criminal Code of Canada.

49. Corrections and Conditional Release Act, Backgrounder Paper No. 9, 1992, Solicitor General of Canada.

50. Corrections and Conditional Release Act, Backgrounder paper No. 1, 1992, Solicitor General of Canada.

51. Ibid at pp. 5–6.

52. Ibid at pp.6–7.

53. Ibid at p.7.

54. The Corrections and Conditional Release Act, 1992, contains two schedules listing offences for which the eligibility period for parole can be lengthened by the court or an inmate kept in custody until warrant expiry. Schedule I lists offences of violence (e.g. sexual offences, serious assaults, manslaughter, robbery, arson, weapons related offences). Schedule II lists the serious drug offences.

55. Estimates of the Impact of Bill C-36, Correctional Service Canada 1992.

56. Nielsen Task Force Report on the Justice System (1986). The Justice System—a Study Team Report to the Task Force on Program Review. Ottawa: Minister of Supply and Services.

57. It is interesting to note that in *Regina v. Hoyt* (1993) 17 C.R. (4th) 338, the British Columbia Court of Appeal recognized the relevance of compensation orders in effecting deterrence. Wood, J.A. speaking for the majority, stated at pp. 346–7 that: "a compensation order is properly regarded as a form of punishment ... In addition to having a measured denunciatory effect, an order for compensation also provides a means by which the offender can be required to take responsibility for the true consequences of his or her crime ..."

Effective Treatment of Drug Abusers

*by Peter Rogers**

Introduction

Drug abuse and illicit trafficking has affected almost every country in the world and the number of drug abusers has increased dramatically in most countries. The fact is where drugs are produced, transited and trafficked there will be drug abuse. Clearly, drug abuse and illicit trafficking in drugs are problems no longer confined to small segments of a given population. The drug problem has enticed, captivated, and in the absence of effective control and prevention policies will ultimately destroy people from all walks of life. The growing drug menace has invaded homes, the work place and educational institutions, affecting individuals of all ages and classes.

Drug abuse in Malaysia is not a recent phenomenon. It has a history that is closely associated with the early economic development of the country. In the early 19th century, tin mines, rubber and pepper estates were being developed and the labour required was to a large extent provided by migrants from neighbouring countries. The habit of opium smoking prevailed due to the following reasons:

a) easy availability of opium.
b) opium was believed to possess qualities for curing aches and pains and to have medicinal effect on tuberculosis of the lungs, diarrhoea, malaria and other diseases.
c) loneliness, since most of them have left their families behind.
d) employment allows them to have sufficient funds to sustain their habit.
e) lack of amenities with which to occupy themselves.

By the late 1960s, however, in common with most other countries in the region, the traditional pattern of drug abuse was overlaid by a new one: Younger Drug Abusers from all racial groups abusing a wider range of dangerous drugs, including synthetic (psychotropic) drugs diverted from the pharmaceutical trade and the use of ever more dangerous means of drug taking. It is evident that adolescents are contributing substantially to the marked increase in the number of drug abuse population. A large number of them have turned to heroin and morphine while ganja is also a popular drug of abuse. The abuse of psychotropic substances such as Mandrax (MX) pills, amphetamines and barbiturates is also evident.

Definition

In Malaysia the word "dadah" has been adopted to mean abused drugs which by definition are dangerous and harmful to the user.

Current Drug Situation

Illicit drugs—especially heroin and ganja, are relatively easily available and this has been the major contributing factor towards the high incidence of drug addiction among Malaysian youths. It is an extremely difficult if not impossible exercise to make an accurate assessment of the adverse effects of drug abuse.

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However, a fair representation of the magnitude of the problem can be made on the basis of the number of drug addicts detected or estimated, the type of drug being abused and the frequency, purity and quantity consumed.

A special exercise carried out to assess the number of active drug addicts within the country showed that there are presently about 160,573 (1991) active addicts.

Of the addict population detected from 1976–1991, 63.9% were in the 20–29 age group and 12.4% were below the age of 19. 97.7% of the addict population are males. Statistics also show that 72.5% of those detected were/had been employed, 27.5% unemployed and 2.2% school pupils. It is fairly obvious then that the persons at risk are preponderantly the youths.

Since 1970, heroin has been the main drug of abuse. It is well known that heroin has a higher dependence liability compared to other drugs of abuse. As high as 79.0% of all persons detected as drug addicts during the period admitted to having consumed heroin, 13.0% ganja, 8.0% morphine and 5.9% opium.

Factors for Illicit Drug Trafficking

Malaysia is not an opium producing country. However in the international scenario of illicit drug trafficking, Malaysia has long been used by drug trafficking syndicates as a transit country because of:

a) its location on the international drug route from the opium producing areas of the "Golden Triangle" to Australia, Europe and the United States.
b) her land border with Thailand which has served as a major conduit of opium and its derivatives emanating from the "Golden Triangle" area which currently produces some 2,000–2,400 metric tons of raw opium yearly.
c) common borders with all other ASEAN member states, some of which are also large producers of drugs.
d) a long and exposed coastline.
e) good communication system.

Apparently, illicit drug trafficking through Malaysia has created and fulfilled the local demand for drugs. The trafficking routes and modus operandi adopted by the traffickers have not changed significantly over the years. In view of the easy access across the Thai/Malaysia border, both by land and sea, smugglers exploit this advantage and opportunity to bring illicit drugs into Malaysia by concealing them in specially built compartments in vehicles and boats. Others concealed them in hallowed-out fruits and torchlight batteries and even in body cavities. Indeed the methods employed by the smugglers are limited only by their own imagination.

National Anti-Drug Policy and Strategy Background

1983 represented a momentous year in the national effort to curb and control the drug menace. A radical step was taken by the Government by declaring the drug problem a threat to national security. The declaration was made on the basis that:

a) Drug addiction would invariably reach epidemic proportion if strict measures were not undertaken to curb it.
b) The main victims of drug addiction were the younger generation which represented the backbone and future hope of the nation.
c) Pervasive drug addiction or trafficking would threaten the socio-economic, spiritual and cultural fabric of the nation and eventually erode national integrity and security.

The various implementing agencies are as follows:

Agency	*Area of Responsibility*
Attorney-General's Chambers	Legislation
Royal Malaysian Police, Royal Customs and Excise Department Border Anti-Smuggling Unit	Enforcement
Ministry of Health (Pharmacy Division)	Control of Poisons and Psychotropic Substances
Ministry of Home Affairs (Treatment and Rehabilitation Division)	Treatment and Rehabilitaiton of Drug Addicts
Malaysian Prisons Department	Treatment and Rehabilitaiton of Penal Drug Addicts
Ministry of Health (Hospital Division)	Detection and Detoxification Facilities
Ministry of Welfare Services	Counselling and Training Facilities
Ministry of Information	Publicity and General Prevention
Ministry of Youth and Sports	General Prevention & Social Support
Ministry of Education	Preventive Education
Institutions of Higher Learning	Epidemiological and Sociological Research

Consistent with this declaration, in June 1983 the Government placed the overall responsibility on all matters pertaining to the control and prevention of drug abuse and trafficking ir the country with the National Security Council. This shift thus provided a security emphasis in both the perception and consequent approaches in combatting the drug scourge.

Subsequently, the Rt. Hon Prime Minister in his capacity as the operational Director of the National Security Council signed the National Security Council directive which provided for the establishment of the Anti-Narcotics Committee, tasked with the overall responsibility for all aspects of the anti-narcotics efforts. It also provided for the establishment of the Anti-Narcotics Task Force.

The Anti-Narcotics Task Force of the National Security Council represents the operating arm of the Anti-Narcotics Committee and is responsible for initiating, co-ordinating and monitoring the anti-narcotics programmes within the country.

In line with this security approach, it was found necessary that efforts at combatting the drug menace be made in a planned and integrated manner to ensure the achievement of specific objectives within a stipulated time frame. In this regard a Five Year National Anti-Narcotics Action Plan (1985–1989) which spelled out the objectives, programmes, implementing procedures, assessments and financial requirements was prepared. This Action Plan was based on a policy, strategy and priority that would substantially reduce the problems associated with drug addiction and trafficking, over a period of five years.

This Five Year National Anti-Narcotics Action Plan is a product of an integrated planning process among the various agencies tasked with the different aspects of anti-narcotics measures such as formulation of legislation and enforcement, treatment and rehabilitation, preventive education, manpower training, research and international collaboration. The major consideration in the planning process was the need to have an anti-narcotics policy and strategy which would provide a basis for the Five Year National Anti-Narcotics Action Plan.

Rationale for the Formulation of the National Anti-Narcotics Policy and Strategy

In the early stages Malaysia's Anti-Narcotics measures were guided by the following considerations: a) Supply reduction; and

b) Demand reduction.

Consistent with this, the following strategies have been formulated:

a) Legislation and Enforcement;
b) Treatment and Rehabilitation;
c) Preventive Education and Information;
d) Research;
e) Training;
f) International Collaboration.

These strategies would indicate that priority had been accorded to legislation and enforcement. This approach was deemed suitable in the initial phase of tackling the drug problem.

Current National Policy and Strategy

In view of the current situation where drugs continue to be smuggled into the country, are easily available and drug addiction is on the increase, the national anti-narcotics strategy has been reformulated through a change in the conceptual approach and re-prioritising existing strategies as follows:

a) Prevention;
b) Rehabilitation;
c) Manpower development, research and evaluation;
d) International co-operation; and
e) Co-ordination.

Prevention and rehabilitation represent the key strategies with manpower development and research, international collaboration and co-ordination as complimentary strategies.

First Strategy: Prevention

Prevention in this context is a comprehensive series of strategies which contains the following features: a) Primary Prevention; and b) Primary Enforcement.

a) Primary Prevention

i) The creation of a feeling of abhorrence and repulsion towards drugs

This requires a systematic education beginning from early childhood up to maturity. The role and responsibility of the community, particularly the parents, is crucial in educating, molding and developing a positive attitude and values among their children so as to act as a deterrent against drugs. While the development of such attitudes and values are also provided through the formal educational system, nevertheless, the role of the parents in shaping the character of the future generation is no less significant.

ii) Changing the general perception of the community concerning drugs

The community as a whole pays little heed to the drug problem, especially if no family members are or have been involved with drugs. Worse, they are known to despise and discriminate against addicts and their families. Only when their own family members are involved in drugs will there be a belated change in their attitude.

This negative attitude needs to be eliminated and the community encouraged to being gradually involved in preventive programmes.

iii) Providing alternatives as a deterrent against involvement in drugs

It is important that youths be provided with useful activities to occupy their free time. In this context, various voluntary bodies within the community can organise activities pertaining to sports, culture, education, religion and others. Involving youths in such healthy pursuits will deter them from falling victims to the influence of drugs.

b) Primary Enforcement

This strategy stresses efforts that will enhance primary enforcement measures with a view to curtailing the smuggling and

supply of drugs through the legal entry points and smuggling routes across the border. At the same time, it also emphasizes continued aggressive enforcement measures within the country to reduce trafficking and sale of drugs from within.

The rationale for the above strategy is not only to severely constrain the smuggling of drugs into the country but also to render its procurement, sale and consumption highly risky. Thus, gradually the number of people involved in abusing drugs will decrease.

Second Strategy: Reformation

This strategy is aimed at severing the dependency on drugs and preventing recidivism. The rehabilitation of drug dependents is reformative in context where the drug dependent is reformed from a state of addiction to a drug-free status. The treatment and rehabilitation that is practised in Malaysia is cold turkey where no substitute drugs are given to recovering addicts. This approach differs from a number of other countries where substitute drugs are given as part of treatment.

The implementation of this strategy requires that addicts be classified into two categories—those in the experimental state and those who are hard-core addicts. This will allow for more effective application of the treatment and rehabilitation programmes.

This strategy calls for the adoption of two approaches: a) Severance of drug dependency; b) Prevention of Recidivism.

a) Severance of Drug Dependency

This approach involves the following activities:

i) Early detection and control of drug abuse

The early detection and control of drug abuse will help prevent the situation from deteriorating to a more serious level. Recent drug abusers are still in the experimental state and require no prolonged incarceration or intensive rehabilitation. Their need is more in terms of psychosocial therapy through counselling, parental and communal acceptance, job placement and a positive environment that encourages a drug-free lifestyle. This situation can be brought about by a vigilant supervision with the involvement of, among others, rehabilitation officers, teachers, parents and local community leaders.

ii) Institutional rehabilitation

Most of the drug abusers detected in recent years constitute hard-core addicts that have been on drugs for several years. Their presence will contribute not only to a continued high level demand for drugs, especially heroin, but also to increased contamination among non-users. Many addicts eventually become pushers in order to sustain their addiction. This phenomenon will contribute to greater involvement of youths in drug abuse. Only through preventive enforcement can this contamination be contained.

Institutional rehabilitation requires the isolation of as many drug dependents as possible from the community and, to subject them to comprehensive treatment and rehabilitation programmes. The Drug Dependents (Treatment and Rehabilitation) Act 1983 provides for the compulsory rehabilitation of as many drug dependents as possible in the treatment and rehabilitation centres. This programme requires the provision of sufficient facilities to rehabilitate the addicts thereby enabling them to re-integrate into mainstream society and be useful and productive citizens. Towards this end, the facilities for treatment and rehabilitation need to be increased to cater for as many addicts as possible.

The treatment and rehabilitation programme is reformative in scope, aimed at eliminating drug dependency among the addicts. In this context, emphasis is given to building up a character imbued with positive values in terms of morality and reli-

gion, discipline, civic consciousness and vocational skill. The drug dependents will be required to participate in social and economic activities such as "gotong-royong" (Collaborative endeavours) public service activities, socialising, agriculture, animal husbandry and others. To obtain this objective, it is pertinent that every level of society participate by accepting the recovering addicts within their folds.

b) Recidivism

This programme places importance on sustaining the attitude and behaviour of the recovering addicts, so that they remain drug-free. If they were to relapse this would render futile past efforts in treating and rehabilitating them. To avoid this an intensive and sustained after-care programme needs to be developed with the involvement of all levels of society. Voluntary bodies such as PEMADAM, the National Association Against Drug Abuse, Rukun Tetangga, the Community Self-Reliance Schemes, RELA, the Peoples' Volunteers Corps and others must support this programme and also assist in the re-integration of recovering addicts. The involvement of these groups is crucial because after-care programmes by their very nature call for community participation. Only then will after-care programmes be effective.

Efforts in this area are directed not only towards reducing recidivism, but are also meant to enhance public understanding and awareness. Hopefully, this may reduce public apathy and even hostility towards recovering addicts thereby facilitating the latter's re-integration into society. Past experiences have shown that public rejection of recovering addicts is one of the principal factors for relapse.

Third Strategy: Manpower Development and Evaluation

This strategy complements the earlier strategies. The effectiveness of the national strategies and programmes is closely associated with the availability of adequate and skilled manpower.

In past years, efforts in creating a pool of skilled manpower to control and prevent the drug problem was made in an ad hoc manner. Training involved mostly the importation of basic knowledge to the trainees.

Training efforts under this strategy focus on the provision of practical knowledge which are relevant to existing work environment and related to programmes under implementation. Serious attention is given to attempts at preparing a pool of skilled manpower trained in basic skills, so that with further training they can be utilised as trainers when necessary.

Emphasis is given to training which is multi-disciplined and multi-moduled so as to ensure the cost effectiveness of manpower development. This will allow the trainees adequate knowledge not only in their respective areas of specialization but also expose them to other fields of knowledge.

Evaluation

Research efforts are concentrated in three main areas, namely:

a) Evaluation of the effectiveness and productivity of various programmes

The aim of these studies is to provide guidelines for upgrading the quality of programme delivery which in turn will ensure the effectiveness of the programme.

b) Epidemiological studies

The drug problem is not static but is subject to continuous change. This being the case, epidemiological studies need to be continued. These studies will help to identify the problem areas which will enable the formulation of appropriate strategies and action programme.

c) Technology transfer and evaluation

Research in this area concentrates on efforts at developing the latest technology

or current technology in order to channel it to the implementing agencies. The technology of modality which is practised overseas in the areas of prevention, treatment and rehabilitation need to be adapted to the local situation.

Fourth Strategy: International Collaboration

Illicit drug production and trafficking has an international dimension. Thus national strategies will not be rendered successful without the support and co-operation at the international level. Malaysia has played an active role in moving the international community towards giving priority to efforts in preventing/controlling drug addiction and illicit trafficking.

The major objectives under this strategy are to:

a) promote close co-operation in drug control and prevention efforts among countries at the regional and international levels; and
b) enhance Malaysia's efforts in enforcement and drug prevention at the international level.

To realise the above objectives, the following approaches have been formulated:

1) promote the exchange of information on all aspects of the drug problem among and through regional and international organisations;
2) promote technology transfer on methodologies in illicit drug prevention and control;
3) seek technical assistance in the control and prevention of drug abuse from international organisations and developed countries;
4) participate in conferences, seminars, workshops and courses at regional and international levels;
5) promote a more positive and programmed approach in the control and reduction of illicit drug cultivation and manufacture;
6) promote the recognition of the security implications of the drug problem; and
7) promote the promulgation of stringent laws on illicit drug trafficking activities.

Fifth Strategy: Co-Ordination

The National Anti-Narcotics Policy and Strategy requires an integrated implementation programme involving various agencies and organisations. In view of this, co-ordination efforts need to be strengthened at all levels. This is most pertinent to ensure that all programmes and activities will be planned and implemented systematically to achieve the stipulated objectives at the various levels—national, state and district.

Role of Anti-Narcotics Agencies

The Roles of the various agencies involved in the control and prevention of drug abuse. It includes Preventive Education and Information, Treatment and Rehabilitation and Law Enforcement.

Drug Abuse Preventive Education

The Ministry of Education has been tasked with identifying, planning and implementing all programmes and activities related to preventive education in the schools and teacher training institutions. The objectives of preventive education are:

1) to encourage the younger generation to resist the allure of drugs.
2) to provide beneficial alternatives which could deter youths from being involved in drugs.
3) to create an abhorrence of and repulsion towards drugs.

Drug Preventive Education Strategy

The drug abuse preventive education strategy at the school level is realised through:

1) school-based programmes;
2) community-oriented school based programmes.

Curriculum

The long-term strategy in the dimension of preventive education in schools involves the integration of drug abuse preventive education elements into the New School Curriculum. In the existing school curriculum elements of drug abuse preventive education are inserted in various subjects such as Islamic studies, civic and moral education, health science, language studies, science and living skills.

Co-Curriculum

Co-curricular activities complement and supplement the curriculum. Such activities can be conducted within and outside the classrooms, such as through the uniformed organizations, associations/clubs and sports (both athletics and games). Co-curricular activities are important in nurturing and instilling "esprit de corps" among the students. It is also intended to teach the students to be responsible, disciplined, independent and skilled in certain disciplines of their choice. To ensure that students participate in co-curricular activities:

1) Each student is required to participate in at least 2 out of 3 activities, sports/games, associations/clubs and uniformed organisations.
2) Schools are required to organise the following drug-abuse prevention activities:
   — self-achievement camps;
   — colloquia for self-resilience development;
   — anti-narcotics badge scheme;
   — student leadership courses;
   — competitions and contests;
   — motivating students to joining youth organisations;
   — formation of anti-narcotics clubs.

Teacher Training

Training of teachers in Guidance and Counselling (including drug abuse counselling) and drug abuse preventive education. About 2,000 teachers have been trained in colleges and in universities.

Guidance and Counselling Service

Improving guidance and counselling services, especially individual and group counselling for problem students and assistance from school welfare officers.

Community-Oriented School-Based Programmes

This strategy is designed to involve the school communities in preventive efforts within the schools. The intended target groups are parents of students, teachers, headmasters and all the school staff. The planned and anti-drug abuse activities include:

a) increasing the involvement of Parents Teachers Associations in drug-abuse preventive education in schools.
b) increasing the involvement of Old Boys' Associations.
c) creating the concept of the school as a community institution, thereby drawing greater community involvement.

Special Projects

Special drug abuse prevention projects are organised for students by the Guidance and Counselling Unit in co-operation with state education departments. These projects include:

1) Self achievement camps

These are meant for high risk/problem students. Emphasis is given towards nurturing religious and moral values, self-discipline, awareness of one's potential, communications and problem solving.

2) Self awareness courses

Tthese are designed to instill an abhor-

rence towards drugs and equip students with an appreciation of the consequences of drug addiction to the individual, family, community, national economy and religion.

3) Anti narcotics badge scheme

This scheme is aimed at training uniformed school organisations such as Boy Scouts, Girl Guides, St. John's Ambulance and Islamic Guide as key communicators and provide positive peer influence in schools.

Publicity

Ministry of Information

The Ministry of Information together with its relevant agencies are responsible for disseminating information to the public concerning drug abuse prevention. Specifically, its objectives are:

1) to change public opinion and attitude by constantly harping on the drug problem so that the public becomes more sensitive to the problem.
2) to create a general abhorrence and repulsion towards drugs.
3) to involve various levels of society in efforts to prevent and control the drug problem.

General Information Strategy

To realise the above objectives, a strategy is required that will arouse the communities' awareness and motivate the latter to participate in drug prevention and control activities. These can be achieved through:

1) using the media to disseminate information on the danger and threat of drugs through both the "scare tactic" and "soft sell" approaches.
2) using audio-visual aids such as video tapes, films, printed materials as technique for interpersonal communication to dissemminate information on the danger and threat of drugs to:
   — parents;
   — community leaders/influential members;
   — heads of department/chief executives from the private sector;
   — government/private sector staff;
   — former addicts;
   — private/corporate sector;
   — non-governmental organisations;
   — political parties.

Programmes Identified

To date the Ministry has identified four different programmes in implementing the strategy on prevention:

1) programme for dissemination of anti-narcotics information through TV.
2) programme for dissemination of anti-narcotics information through radio.
3) programme for dissemination of anti-narcotics information through Film Negara Productions.
4) programme for dissemination of anti-narcotics information through interpersonal communications.

National Unity Department

The National Unity Department also plays an important role in assisting other anti-narcotics agencies in efforts to control and prevent drug abuse. Its involvement is effected through existing Rukun Tetangga or Community Self-Reliance Schemes which are established in every state.

Community Self-Reliance Schemes

The Community Self-Reliance Schemes focusses on the following programmes:

1) First Programme: Information prevention: This programme consists of two activities: distribution of anti-narcotics leaflets and posters within the Community-Self Reliance Schemes.
2) Second Programme: To assist the police in taking action against those involved in trafficking, pushing and abusing drugs.

This programme requires the involvement of the committee and residents of the Community Self-Reliance Schemes in monitoring and reporting to the police any incidents involving drugs.

3) Third Programme: Neighbourhood Counselling to complement the efforts of the Drug Rehabilitation Officers in rehabilitating recovering addicts. This is part of the aftercare programme provided for recovering addicts who reside within the Community Self-Reliance Scheme. Selected residents are given courses in counselling and can thus play the role of volunteer Neighbourhood Counsellors.

Ministry of Youth and Sports

The Ministry of Youth and Sports has a vital role in the drug abuse prevention efforts, given that a preponderant number of drug abusers are youths within the age group of 15–30 years. The Ministry thus stresses prevention activities among youths, particularly those who are in associations and have recently left schools. Youths with too much free time may be attracted to anti-social activities with the consequent wastage of human resources.

This situation may become more complex should there be groups willing to exploit these youths for certain objectives. It is a testimony to the Ministry's sensitivity to this possibility that it has taken the initiative to guide and direct the youths towards positive activities and to channel their energy towards national and community development.

Drug Abuse Prevention Programmes of the Ministry of Youth and Sports

Among the activities undertaken by the Ministry of Youth and Sports in drug abuse prevention are:

1) enlightening the Ministry's officers to the dangers and threat arising out of the drug problem, through in-service courses.
2) providing the officers with informational pamphlets on drugs.
3) directing all officers to speak on drugs as a topic in their talks/lectures whether formal or otherwise.
4) to include such talks/lectures in activities organised by the Ministry, such as work camps, forum, workshops, seminars.
5) to co-operate with NGO's such as the National Association Against Drug Abuse, National Youth Council and other youth associations.

The above-mentioned activities have been reinforced by organising special programmes for youths aged between 15–30 years, particularly students who are slow learners and who reside in squatter areas, new villages, rubber estates, flats and such other areas where the living environment is less then satisfactory.

The programmes organised by the Ministry cover the following:

1) Increasing youth club membership;
2) Providing vocational training;
3) Information;
4) Economic/Business activities;
5) Drug Abuse awareness courses;
6) Sports/Recreational activities;
7) Spiritual education;
8) Establishing information centres for youths;
9) Organising recreational activities such as holiday camps and expeditions for youths.

Treatment and Rehabilitation of Drug Addicts

The Treatment and Rehabilitation Division of the Ministry of Home Affairs

In 1983 drug abuse was declared as one of the threats to national security. Consistent with this, an earnest effort was begun to co-ordinate the activities of the various anti-narcotics agencies. With the adoption of the security approach, treatment and rehabilitation of drug dependents was

placed under the responsibility of the Ministry of Home Affairs. A new Act, the Drug Dependents (Treatment and Rehabilitation) Act 1983, was passed. It took effect on 15th April 1983 and in the following month, the Treatment and Rehabilitation Division was created under the Ministry of Home Affairs.

1) Supervisory programme

Supervision represents one modality of rehabilitation which is carried out within the community. Addicts that have undergone detoxification are placed under the supervision of a rehabilitation officer. Such cases are usually characterised by a willingness to assist on the part of the family members, neighbours, employers and colleagues.

Addicts under supervision are also normally highly motivated. The process of rehabilitation under this programme is as follows:

— registration and documentation;
— orientation;
— determination of objectives;
— rehabilitation planning;
— urine screening;
— counselling;
— job emplacement;
— involvement of family members;
— involvement of community.

Rehabilitation through supervision requires a period of between two to three years. Since the addict is allowed to mingle freely within the community, it is commonly quite difficult for the case officer to control and closely monitor his clients to ensure effective treatment. Hence, community support is important. This may take the form of the provision of various support facilities such as day-care centres.

2) Institutional rehabilitation programmes

Institutional Rehabilitation is carried out in One-Stop-Centres and the treatment period is a maximum of two years. One-Stop-Centres represents a novel approach which was first introduced with the establishment of the Tampin Centre in 1983. The centre caters for all the services needed for the rehabilitation of the addict. These services are those provided by the various agencies such as the Ministries of Social Welfare, Health, Defence, Youth and Sports, Agriculture, National Unity Department and the Division of Islamic Affairs. The centre provides the following facilities:

— detection;
— issuance of detention order;
— para-military training;
— various vocational/skills training;
— counselling;
— religious/moral and civic education;
— agriculture and animal husbandry.

This concept gives greater emphasis to discipline and work ethics. It also introduces elements of para-military training through marches and drills, tightly-scheduled work details, tight discipline and stiff penalties for any transgressions.

Institutional Rehabilitation includes the following Phases:

Phase 1: Appreciation (3–5 months)
— individual responsibility 25% (free movement),
— compulsory participation in all activities,
— emphasis on physical and psychological rehabilitation,
— explanation of the concept of "tough and rugged,"
— explanation of the centres' rules and procedures,
— explanation on positive and negative values,
— morning and evening drills,
— obeying all instructions,
— psychological assessment.

Phase 2: Implementation Process (4–7 months)

— individual responsibility 50%,
— implement phase 1 programmes,
— emphasis on emotional development,
— develop self worth,
— morning drill,
— counselling, religious and civic education,
— vocational training.

Phase 3: Self-Consciousness (4–7 months)
— individual responsibility 75%,
— involved in vocational projects,
— free movement within centre,
— involved in community projects,
— self-worth/appraisal training,
— morning and evening drills,
— counselling,
— civic education and vocational training,
— psychological assessment,
— resident-development assessment.

Phase 4: Integration Process (4–5 months)
— individual responsibility 100%,
— active involvement in community projects,
— free movement within centre,
— weekly drill,
— preparation for re-entry.

After-Care

The process of rehabilitation is considerably long and does not necessarily end upon release from a rehabilitation centre. To help recovering addicts adjust to a new life, after-care programmes are pertinent. The recovering addicts need guidance from the rehabilitation officer and the community in assisting them to find jobs or undertake beneficial economic or social projects. This can be effected through the formation of local drug rehabilitation committees.

After-care represents the most crucial period in the whole process of treatment and rehabilitation of an addict. All recovering addicts are required to undergo a two-year period of after-care upon release from the rehabilitation centre.

In an attempt to enhance rehabilitation the Ministry of Home Affairs plans to establish after-care facilities in every district throughout the country. Recovering addicts that either face problems in returning home or are unemployed are encouraged to stay in after-care centres for up to six months. This will provide them sufficient time to prepare for reintegration into the community.

Prisons Department

Since 1981, the Prisons Department of the Ministry of Home Affairs has undertaken a comprehensive programme of treatment and rehabilitation of drug-related prisoners. A special drug rehabilitation unit was established in 1985 to oversee the physical and psychological rehabilitation of drug-related prisoners through intensive counselling in the country's prisons.

This programme becomes pertinent with the increase in the number of drug-related prisoners. As of 30th June, 1992 there were 9,839 inmates or 44.78% of the total penal population of 21,971 who were involved in drug addiction, while 3,155 prisoners or 14.36% were convicted for crimes related to drug trafficking/pushers, theft, extortion, etc.

Objective for rehabilitating drug-related prisoners

The objectives of the institutional treatment programme are as follows:

a) Physical: To rehabilitate the offender to attain physical health through physical exercises, drills and sport activities;
b) Psychological:
— helping them to develop self discipline;
— enhancing mutual respect and trust among them;
— helping them to develop positive thinking through group situation;
— helping them to overcome frustration and despair;
— instilling spiritual values in their life;
— instill patriotism;
— helping them to solve their problems

positively.

Target group
— drug abuse offenders,
— offenders having long drug abuse history,
— ex-prisoners who relapse to drug habits and require counselling services.

Period of rehabilitation

The period of rehabilitation is dependent upon the length of time a prisoner is serving. At any rate, three categories of rehabilitation programmes are being practised in the prisons:

Category 1: Rehabilitation/Facilities Programme (3 months)
— acceptance,
— detoxification (cold turkey),
— information on laws, rules/procedures of prison, discipline,
— drills, physical rehabilitation, recreation,
— religious education,
— medical treatment,
— basic counselling.

Category 2: Rehabilitation/Facilities Programme (3 months)
— drills, physical rehabilitation, recreation,
— counselling,
— workshop/industrial employment.

Category 3: Rehabilitation/Facilities Programme (till end of sentence)
— similar facilities as in categories 1 and 2,
— individual and Group Counselling,
— recreational facilities.

Category one

This is the adjustment stage where newly admitted drug offenders are given time to adjust themselves in the prison environment. They have to get used to the different groups of people from the outside community. They have been taught prison rules and regulations before they are put on the programme. At this stage, the counsellors will categorise and modify their behaviour such as anti-authority, anti-social and self-defeating and help them to build their attitude in self confidence and self worth especially through group counselling.

Category two

In this category, the inmates will experience a more challenging situation. Emphasis is given more to those in vocational training and involves them in counselling sessions. Negative behaviour is totally rejected, but on the other hand, encouragement is given to instill self responsibilities towards themselves and to others. This stage is more towards self-stability of the inmates. In actuality, the main objective here is to ensure continuity in positive development of their self-awareness, behavioural changes and self-esteem. Only with these and life skills acquired, drug offenders will be able to adjust themselves positively into the mainstream of society upon release from prison.

Category three

In this category, the inmates are already used to the prison environmental changes. Here they are encouraged to do whatever that is planned as openly as possible. Behavioural changes will include emotional changes in values and positive thinking. The importance of future careers for them after their release from prisons are self sufficiency as well as confidence in facing challenges in their later lives.

Future psychotherapy approach of treatment and rehabilitation in correctional institutions

Treatment in Correctional setting in Malaysia provides an important opportunity to engage offenders in a therapeutic environment with others who are experiencing similar difficulties. Drug-involved offenders are unlikely to seek treatment on a voluntary basis and have a poor record of participating in voluntary treatment.

It is felt that *Therapeutic Community* (TC) approach is considerably suitable for

this purpose. It will provide the opportunity to confront offenders with the clear and unavoidable consequences of past or future drug use, to reduce the denial and to help offenders develop life skills and coping skills in a structured and supportive environment.

In realising this issue and in order to provide a multi-disciplinary and quality treatment approach, Therapeutic Community (TC) pilot project has been implemented at Central Prison in Kajang on 1st September 1992 with 35 offenders participating in this programme. The same approach will be introduced later to other penal institutions in Malaysia if the results are encouraging.

Presently, eight prison officers have been trained locally in TC approach and one has completed a year intership training with DAYTOP International Inc., New York.

Medical Services Division, Ministry of Health

The Medical Service Division of the Ministry of Health is responsible for: a) Detection of drug addicts; and b) Detoxification.

Detection facilities are provided through 45 drug detection centres, located in all general hospitals and some district hospitals. Detection of drug usage is done through: a) Laboratory detection; and b) Clinical assessment.

Laboratory detection

Two groups of tests are generally used for the detection of drugs within the urine samples of the drug abusers. These are:

Immunoassays—the commonly used tests are;
— radioimmunoassays (RIA),
— enzyme multiplied immunoassay technique (EMIT).

Immunoassays are used for screening purposes only;
— Chromatography—the 3 types commonly used are;
— thin layer chromatography (TLC),
— gas chromatography (GC),
— high performance liquid chromatography (HPLC).

Clinical assessment

This is a process by which an individual suspected of being a drug abuser is clinically observed by a government medical officer to identify symptoms of addiction or withdrawal. The manifestation of such signs or symptoms is an indication of addiction.

Laboratory detection complements clinical assessment in the process to determine addiction.

Detoxification treatment

Detoxification Treatment is carried out in all general hospitals. Detoxification is a form of treatment designed to remove all vestiges of the drug from the body. It also requires the incarceration of the individual to prevent him from getting drugs. This treatment is carried out under the supervision of a medical officer who may provide medication to reduce the agony of withdrawal. The type of detoxification practised in the One-Stop-Centres is called "cold-turkey."

Law Enforcement

Four law enforcement agencies have been given the responsibility for drug law enforcement. The agencies are:

1) Royal Malaysian Police;
2) Royal Malaysian Customs and Excise Department;
3) Pharmacy Division, Ministry of Health;
4) Anti-Smuggling Unit.

Royal Malaysian Police

Drug law enforcement is the responsibility of every officer of the Royal Malaysian Police, irrespective of rank or the division he is attached to. In 1972, with the growth in the threat of drug abuse the government created an agency, the Central Narcotics

Bureau (CNB) which was placed under the Ministry of Law to enforce the laws related to combatting the drug problem. Personnel were chosen from the Police Department, Customs Department and Immigration Department.

In 1975, a division known as Anti-Drugs Unit was created under the Criminal Investigation Department, Royal Malaysian Police. The primary objective of this unit was to combat the drug problem through the existing drug laws. Even so, the other divisions in the Police Department continued to exercise the same responsibility in overseeing the drug problem. Eventually, the CNB was abolished in July 1979. However, the Customs Department and Pharmacy Division, Ministry of Health continued with their respective responsibilities in curbing the drug problem.

In early 1980, the Anti-Drugs Unit of the Royal Malaysian Police was restructured and expanded and came to be known as the Anti-Narcotics Branch of the Criminal Investigation Department. Consequently, all drug law enforcement was integrated and placed under the responsibility of the Anti-Narcotics Branch, which until now was the responsibility of all the divisions of the Police Department.

Role of the Anti-Narcotics Branch

The primary objective of the Anti-Narcotics Branch is to give special emphasis and attention to the drug problem by planning and integrating law enforcement programmes and activities that can be implemented in an orderly and effective manner. The terms of reference of the Anti-Narcotics Branch is as follows:

a) to gather intelligence related to drug trafficking;
b) to investigate, apprehend and prosecute drug traffickers and syndicate members;
c) to stop the smuggling of drugs including chemicals used to process drugs;
d) exchange of intelligence with local and foreign agencies;
e) to provide local and overseas training;
f) law enforcement connected with preventive detention;
g) to arrest addicts for purpose of treatment and rehabilitation;
h) to coordinate and supervise movements and activities of former addicts/drug offenders; and
i) to maintain records, details and statistics regarding addiction, smuggling/trafficking and drug pushing.

Narcotics Division, Customs and Excise Department

The Customs and Excise Department is one of the law enforcement agencies involved in the government's efforts to combat drug smuggling and trafficking. The Customs Department represents the main line of defence in combatting drug smuggling across the Malaysian/Thai border and at entry points. This is to prevent trafficking and drug pushing within the country.

On 1st January 1980, the Narcotics Branch was established under the Preventive Branch, Customs Department. This branch has three important units, i.e. Investigation/Surveillance Unit, Narco Dog Unit and the Secretariat.

Terms of reference

The terms of reference of the Narcotics Branch are as follows:

a) to prevent the smuggling of drugs into the country, including chemicals used for processing drugs. This is effected through controlling, monitoring and inspecting cargo and vehicles at airports, ports, post offices and entry points into Malaysia;
b) investigate, apprehend and prosecute drug traffickers, drug smugglers and syndicate members;
c) enhance close monitoring surveillance and job performance at all levels;
d) enhance international co-operation that involves exchange of information, knowl-

edge and training, internal co-operation is also enhanced;
e) the use of drug detection dogs at specific places; and
f) intelligence and research including record-keeping of persons arrested, involved and suspected.

Close co-operation is established for overseas intelligence with international law enforcement agencies and customs administration. This is done bilaterally with the aim of reducing drugs smuggling. Constant patrols on land and sea are carried out to further reduce smuggling activities.

Pharmacy Division, Ministry of Health

The Pharmacy Division, Ministry of Health is the agency responsible for enforcing laws related to the use of narcotic and psychotropic substances for scientific and medical purposes. The Enforcement Unit, Pharmacy Division was created in 1975. The Pharmacy Division is responsible for pharmacy programme. Among its objectives are:

a) To ensure the quality, efficacy and the safe use of medicines and other pharmaceutical products; the use of traditional medicines and cosmetics; and
b) To ensure that the importation, exportation management, movement and sale of medicines and other pharmaceutical products are carried out according to the law.

A total of five laws are currently being enforced by the Pharmacy Division. They are related to the control of dangerous drugs and psychotropic substances. They are:

1) Registration of Pharmacists Act 1951, reviewed 1989;
2) Poisons Act 1952, reviewed 1989 including Poisons Regulation (Psychotropic Substances) 1989;
3) Sales of Drugs Act 1952, reviewed 1989 (including Drugs and Cosmetics Control Regulation 1984);
4) Medicine Act (Sales and Advertisement) 1956 reviewed 1983.

Control and Supervision is carried out by:

a) Control of pharmacy practice, import, export, sales and scheduled medical products and poisons. Control is done by registration of pharmacists and licencing of premises, issuence of import and export permits, preparation and enforcement of standards for pharmaceutical substance, control of advertisements of medicines and other substances of therapeutic values and also normal investigations on records in premises plus raids on illegetimate premises and sources.
b) Monitoring the movements and legal use of narcotic and psychotropic substances. Private firms who have businesses related to dangerous drugs are required to forward statistics on the use and sales of such drugs.
c) Monitoring of pharmaceutical substances especially those used in herbal preparations to ensure that they do not contain poisons and metals that will endanger health.
d) Advertisements through the mass media and other media are screened to ensure they abide by the provisions of Medical Act (Advertisement and Sales) 1956.
e) Quality control to ensure the quality, potential and the safe use of pharmaceutical products and traditional medicines. Under the Drugs and Cosmetics Control (Regulations) 1984, medicines and cosmetics need to be registered with the Drug Control Authority before they can be marketed.

Anti-Smuggling Unit

The Anti-Smuggling Unit was established in 1977 and in principle is a composite of the following anti-smuggling agencies:

— Royal Malaysian Police;
— Customs and Excise Department;
— Rice and Padi Board;
— Immigration Department.

The Anti-Smuggling Unit is based in areas along the Malaysian-Thai border identified as targets of smuggling activities.

Terms of reference

The primary function of the Anti-Smuggling Unit is to prevent the smuggling of dutiable goods and to prevent the illegal entry of people. The unit is also tasked to prohibit the entry of:

1) Firearms, explosives, sharp weapons and forbidden documents;
2) All dangerous drugs;
3) All taxable and prohibited goods.

Conclusion

It would require a massive exercise to undertake a comprehensive evaluation of the demand and supply reduction strategies that have been adopted by the Malaysian Government. Nevertheless, there are several indicators which can attest to the effectiveness or otherwise of Government efforts in attempting to control the drug problem.

Preliminary surveys undertaken in selected schools indicate that many more students are currently aware of the dangers of drug abuse. The same can also be said of the community as a whole. Indeed it is rare to come across someone who is completely ignorant about drugs. Be that as it may, knowledge itself is insufficient deterrence. Early detection of experimental users thus assumes importance and urine testing of suspects provides an effective tool towards this end.

The number of drug addicts that have been identified for the last three years has been rather consistent, as opposed to previous years when it was fairly irregular but remained high. This would indicate that control of the drug problem is fairly effective. This is further reinforced by the current ratio between the newly identified addicts and recidivists, which is 40:60. A higher percentage of recidivism against new addicts would attest to better management of preventive measures.

Malaysia provides one of the most comprehensive treatment and rehabilitation programmes for confirmed drug addicts. Nevertheless, given the long period of confinement, addicts are reluctant to volunteer for treatment.

Treatment programmes are presently undergoing modification to provide for varied treatment modules for different classes of addicts, as opposed to the present blanket treatment for all types of addicts. The period of confinement will be greatly shortened, thereby rendering it more acceptable particularly to those who volunteer for treatment. These modifications would most likely enhance the success rate of the treatment programmes.

Successful rehabilitation programmes require a strong and sustainable support system, especially from within and among the community. This would require a changing attitude of the community towards former drug addicts, from suspicion and rejection to trust and acceptability.

Supply reduction strategies have been enhanced with the legislation of new measures and the continued quantitative and qualitative improvement of the enforcement agencies. Nevertheless, given that the drugs are sourced externally, there is a severe constraint in effective countermeasures against illicit drug trafficking. Regional, multi-lateral and bilateral approaches are being modified to make them more amenable and acceptable to producer countries to undertake serious efforts in curbing production.

Demand reduction requires a far longer period than supply reduction and by the same token would require years of patient

effort. But it would in the long run be the more effective. Indeed, the key to controlling the drug problem lies in the effective implementation of demand reduction strategies.

Effective implementation of anti-drug policies would in turn require the combined efforts by all the relevant agencies within the government, the public and private sectors, the community and the home. These efforts need to be translated into practical programmes and activities. To be successful they must be planned, implemented, monitored and evaluated in an integrated and systematic manner.

The illicit use of drugs, especially heroin, cannabis and opium may never completely disappear. For so long as there are the hopeless, the anxious and the depressed among us, for so long will there be the attraction for temporary cures. Therefore, it is imperative to involve everyone in the country, individuals from all walks of life, institutions and organisations with awareness, knowledge on the drug abuse problem and the requisite skills and motivation which will enable them to take their message across the country in the fight for a drug-free community.

Current Trends in Correctional Research

*by Satyanshu Kumar Mukherjee**

Introduction

In most democratic societies overcrowding of the criminal justice system has reached alarming proportions. This situation prevails in every stage of the system. The number of crimes coming to the attention of police shows no signs of decline placing excessive demands on law enforcement agencies. The police arrest and charge more suspected offenders which result in clogging of the court system. Since they deal with more and more cases, the court dispositions seriously affect the correctional system, both custodial and non-custodial. However, the situation of overcrowding leads to problems of different kinds at different stages of the criminal justice system.

The ability of the law enforcement agencies to deal with the ever increasing crime rate can be enhanced relatively easily, as compared to that of the court system or the correctional system. There is evidence to show that the size of the police force in almost all Western democracies has increased substantially over the last two to three decades. Of course, this has occurred in response to the increase in the level of violent and property crimes, at an enormous cost. The police are the most prominent public face of the criminal justice system and employing more police to protect the community always receives public approval. Although processing of increasing numbers of crimes and criminals require additional facilities like office space, these are acquired relatively easily. The overcrowding of the court and correctional stages are more complex and time consuming than employing more police officers. Buildings require not only money but time to build and particularly building of prisons require a sort of community consent.

From available evidence it is quite apparent that measures to deal with increasing crime have not produced desired results. This lack of success does not necessarily reflect deficiencies on the part of the police, the courts and the correctional measures. The criminal justice system in most countries are organised in response to crime. A school of thought has emerged particularly in Europe which postulates that the criminal justice system, as is currently known, is not and never has been a complete system, as such it could never respond adequately to increasing crime. Usually, the police, the courts, and prisons and community based corrections are considered parts and together these make a complete criminal justice system. However, somehow the members of the community were not considered as part of the system which responds to crime. Although the members of the community played an important role in assisting the authorities before the advent of the modern police in the first half of the last century, the value of the partnership between citizens and various segments of the criminal justice system are gradually being recognised as vitally important in responding to crime.

With the increase in crime and criminal justice agencies, there has been an increase in research in the field of criminal justice. However, the relevance of research needs to be looked at from two perspective. On the one hand, the success or failure of the po-

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lice, the courts and the corrections must be measured from a systemic point of view, i.e., the stages are interrelated and will always be influenced by the working of individual stages. On the other hand, the success or failure of specific measures and programs dealing with localised problems needs to be examined.

Criminal justice research has become highly sophisticated over the years. Particularly with assistance of computers, research has made significant advances. From the strategic deployment of police personnel, to sentencing decisions to correctional allocation, research has become invaluable in criminal justice. It would, however, be presumptuous to discuss all criminal justice research in a paper like this. In keeping with the main theme of this training course, this paper will make an effort to describe current trends in research in the field of corrections—custodial and non-custodial. In this effort, rather than engaging in a theoretical discussion of various methods of research used in corrections the emphasis will be on research on specific aspects of corrections and the results of such research. But before describing research trends, it is useful to highlight some of the major problems facing corrections today so that the value of research can be properly assessed.

Problems Facing Corrections

In many countries the citizens are reminded with images of crime and violence on a regular basis. Serial murders, child abductions and killings, armed hold-ups, vicious rapes, violence in the family come into the living rooms through TV and other means. Series like America's most wanted, Australia's most wanted, etc. attract large audiences. Prisons are filled with offenders, partly due to punitive sentencing policies introduced in many countries. As the 21st century approaches, the challenges facing nations, and corrections in particular, are staggering.

Overcrowded prisons are the most pressing problem facing corrections today. The rates of imprisonment, shown in Figure 1, have reached unprecedented levels in many countries.

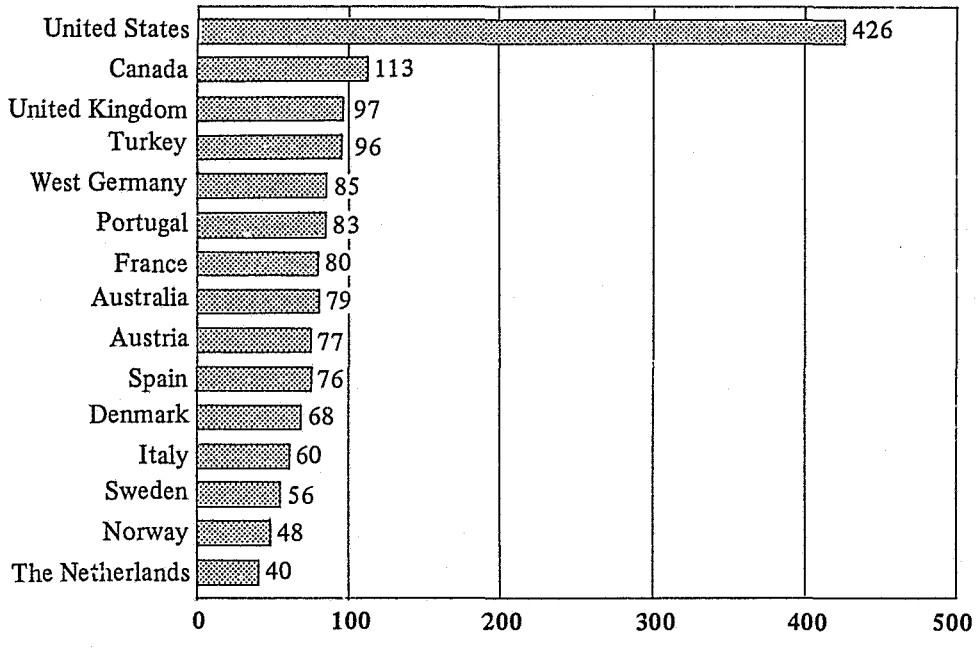
In the United States, it is estimated that at the end of 1991 the State prisons were "operating at 116% of their highest capacities and 131% of their lowest capacities."[1] There were over 850,000 sentenced prisoners in the Federal and State prisons in the United States in 1992. This represents one prisoner for every 300 persons. Although the rate of imprisonment in other countries in Figure 1 is not as high as in the United States the number of prisoners is a problem in many countries.

Many people fail to understand the enormity and complexity of the prison dilemma. Finding funds to build more prisons is only part of the cost, securing funds to cover day-to-day operating expenses is a major headache for prison administrators. And as Reeves points out, "Frantically trying to keep pace with escalating offender population by building more institutions will leave the corrections community, at best, forever running to catch up."[2]

While prison population continues to rise, the number of offenders under various forms of community based corrections also soar. Three to four times as many prisoners are under community based corrections at any given time. Probation is by far the most favoured option used by sentencing magistrates and judges. Yet funding of probation services has not kept pace with the increasing number of probationers. This has necessarily, resulted in unmanageable case loads.

A number of measures have been introduced in recent years as alternative imprisonment and alternatives to imprisonment. These as well are gradually getting overcrowded. Alternative imprisonment programs such as supervised detention or periodic detention are community based

Fig 1: Imprisonment Rates—per 100,000 Total Population



programs yet the legal control and supervision of offenders remain with the institutional correction authorities.

During the 1970s and the 1980s community service orders emerged as an alternative to imprisonment. However, data from various countries show that the number of offenders placed under community service orders is skyrocketing, at the same time when those sent to correctional institutions and those placed on probation continue to rise sharply. There is a concern that the court system may be using community service orders more and more for offenders who would otherwise have received probation. In fact the community service order is not being used as an alternative to imprisonment but as an alternative sentencing option.

Finally, the use of home detention and electronic surveillance is also becoming a regular alternative in several jurisdictions.

Besides development of programs to deal with an increasing number of convicted offenders, in several countries significant changes have been and are being introduced in the area of sentencing. Detailed sentencing guidelines, use of a "cocktail" approach to sentencing, and sentencing information systems are being introduced to alleviate disparities, delays, and overcrowding.

Overcrowding of the criminal justice system, and particularly overcrowding in corrections, is a most pressing problem in many countries. It is natural that some investment be made into researching the viability of particular measures and programs. In this respect it is important to note that research to examine the effectiveness of custodial corrections is not an issue at all. Although it is now a well recognised fact that prisons do not reform or rehabilitate offenders, there is no mood to abolish prisons. A major emphasis in correctional research, therefore, has been in measuring the effectiveness of non-custodial measures. In the remaining part of this paper an attempt will be made to identify and describe

current research in corrections.

Trends in Correctional Research

It would be almost impossible to prepare a list of research studies in the field of corrections, nor would it serve any useful purpose. It would be far more helpful if research studies are grouped into a manageable number of categories and one or two studies from each category are described in detail. The following are the major types of research studies in corrections:

1. Research of statistical nature;
   — census,
   — surveys,
2. Research of evaluative nature;
   — program effectiveness,
3. Descriptive research;
4. Cost of corrections.

1. Research of Statistical Nature

Almost all prison departments publish annual reports containing a large amount of information on offenders committed to custodial and non-custodial treatments. Such reports provide in aggregate terms a substantial amount of details. These reports tend to describe the work load of the department rather than the detailed characteristics of offenders. Such information and statistics do not help administrators and managers in designing regimes or programs for offenders. For the purposes of policy and management periodic census and surveys offer valuable data.

(a) Census of Correctional Population

A number of Western countries conduct periodic censuses of prison population or offenders placed under community based treatment programs. A few examples are given below:

(i) National prison census[3]

Australia

Since 1982 the Australian Institute of Criminology, in association with state and territory departments of corrections has been conducting annual census of prisoners. So far ten such censuses have been conducted. In a country where corrections is a state/territory subject, national data is hard to obtain. The prison census uses uniform definitions and uses one form to collect data from each prison in the country. Therefore, inter-state comparison of prisoner details are possible.

The prison census collects three basic types of data:

— information on the social and demographic characteristics of prisoners;
— information on the legal status of prisoners, e.g. the nature of offence or charge;
— details of sentence being served.

The items of data on which information is collected are determined mainly by the potential value of the information to the departments of corrections. Also, careful attention is given to the difficulties of obtaining the data and their reliability. And finally, the results of the census are tabulated in a manner that maximises compatibility with other sources of data, e.g. five-yearly censuses of population and housing, reports of departments concerned with crime and justice, etc.

The prison census relates to all persons on remand or serving sentences at a prison at midnight on 30 June each year. Most of the information is obtained from existing records, which in several jurisdictions is computerised. The missing information, if any, is obtained by individual interviews with prisoners. Information on each prisoner includes:

— age of prisoner;
— aboriginality;
— marital status;
— employment status at time of arrest;
— highest level of education;

— date of most recent reception;
— most serious offence/charge;
— level of court;
— drug/alcohol involvement;
— aggregate sentence;
— type of sentence;
— method of calculation of earliest date of release and actual expected sentence, etc.

The ten prison censuses conducted so far offer a number of trends which are of significant value in developing models and in estimating prison needs for short-term periods. Table 1 presents summary data for the ten censuses for Australia. Some highlights of the data are:

— the number of young prisoners shows a downward trend, conversely, prison populations are getting older;
— the percentage of females in prisons has increased;
— a majority of prisoners were unemployed at the time of arrest;
— a majority of prisoners have known prior prison record as sentenced prisoners;
— the proportion of those convicted of violent offences remained fairly, constant over the ten year period—above 40 per cent;
— property offenders consistently made up a third of the prisoners;
— remandees constituted over 10 per cent of the prison population;
— in recent years it appears that proportions of those sentenced for shorter terms is on the increase.

Table 1: Changes in Characteristics of Prison Population—Australia 1982–1991

Year	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
% under 25	39.8	39.4	37.8	38.8	36.5	35.7	34.8	33.0	33.2	32.7
% Female	3.4	3.9	3.9	4.6	4.8	4.7	5.3	5.2	5.4	4.8
% Aboriginal[1]	13.1	13.4	13.6	13.4	14.5	14.7/14.8	14.2/15.0	14.3	14.7	14.9
% Overseas Born	18.6	19.1	19.3	19.3	19.6	18.9	17.4	20.7	20.4	19.9
% Unemployed[2]	45.6	50.9	55.2	57.0	61.2	59.8	48.4	60.8	59.7	64.6
% Known Prior Imprisonment	58.3	61.1	60.3	62.8	60.3	60.6	64.2	56.3	57.5	56.9
% Homicide	10.8	10.2	11.0	10.7	10.5	10.9	10.5	10.4	10.1	10.1
% Other Violence	30.5	30.6	30.6	30.3	29.7	30.1	30.6	31.6	31.6	32.4
% Property Offences	34.6	34.6	34.2	33.6	32.3	33.7	32.4	32.3	32.3	32.1
% Good Order	4.6	5.4	4.6	5.6	6.7	6.0	6.5	7.3	7.4	7.3
% Drug Offences	8.0	7.9	8.7	10.3	11.3	10.4	10.9	10.0	9.5	9.0
% Driving Offences	9.6	9.8	9 4	9.0	8.5	7.7	6.9	5.6	6.9	6.8
% Remandees	10.6	11.4	12.0	13.7	13.1	13.2	13.9	13.0	13.4	13.2
% Fine Defaulters	2.0	2.6	3.1	2.6	2.1	2.2	2.2	1.4	1.2	1.7
% Sentenced <1 year	26.7	26.9	27.8	23.1	23.9	26.5	24.1	24.9	28.4	30.7
% Sentenced >5 years	37.4	37.4	38.1	40.6	40.3	38.3	40.9	39.7	34.4	30.9
% Sentenced Life G.P.	7.2	7.0	7.3	6.8	6.7	6.7	7.1	7.0	6.4	5.6

Notes:
[1]: Percentages exclude prisoners whose status is unknown.
Where two figures are given, in the Australian table for years 1987 and 1988, the first figure excludes Queensland data, and is therefore comparable to years 1982–86. The second figure includes Queensland data and is therefore comparable to years 1989 and onwards.
[2]: Percentages exclude New South Wales prisoners, for whom data on unemployment status prior to imprisonment have not been supplied.

The United States of America

Prison censuses are common in the United States as well. A preliminary count of prisoners for the National Prisoners Statistics shows that on 31 December 1991 there were 823,414 prisoners under the jurisdiction of Federal and State correctional authorities. Since 1980, i.e. during eleven years to 1991, the prison population in the United States increased by about 150 per cent. (See Table 2)

Unlike in Australia, prisoners sentenced to terms of imprisonment of over one year constituted 96 per cent of prison population.

Overall, at the end of 1991 state prisons were estimated to be operating at 116% of their highest capacities and 131% of their lowest capacities.[4]

One of the key characteristics of the US prison population has been the increase in prisoners admitted for drug offences. "In 1989 and estimated 29.5% of persons admitted to state prison were drug offenders, up from 7.7% in 1981."[5]

Prison censuses in the United States include information similar to those in the Australian censuses. There are other countries where such censuses have been conducted. However, there may be some differences in terms of the size of sample. There is evidence of use of census data by policy makers. In the United States and Australia such data are used in planning prison construction.

As stated above, the census data may be useful for modelling purposes. However, it must be recognised that sharp increases in prison population may result from an increase in the short-term prisoners. Another point which must be made is that only a small proportion of charges result in a custodial sentence. Over half the charges are disposed of with fines, and the next most common disposition is community based treatment. Any minor shift in these two types of sentences, therefore, could have significant impact on the prison population.

Table 2: Change in the State and Federal Prison Population—US, 1980–1991

Year	Number of Inmates	Annual Percent Change	Total Percent Chang since 1980
1980	329,821		
1981	369,930	12.2	12.2
1982	413,806	11.9	25.5
1983	436,855	5.6	32.5
1984	462,002	5.8	40.1
1985	502,752	8.8	52.4
1986	545,378	8.5	65.4
1987	585,292	7.3	77.5
1988	631,990	8.0	91.6
1989	712,967	12.8	116.2
1990	773,124	8.4	134.4
1991	823,414	8.5	149.7

Note: All counts are for December 31 of each year and may reflect revisions of previously reported numbers.

(ii) Census of community-based corrections

In 1985 the Australian Institute of Criminology began a biennial census of community-based corrections. The format of this census is very similar to that of the prison census. For illustration purposes, Table 3 shows the number of persons under community-based programs as of 30 June 1989.

(b) Surveys

While information on prisoners and those under community based correctional programs continue to improve, there remain serious gaps in the knowledge about life in prisons or under supervision, seen through the eyes of the offenders. There exist written accounts of prison life by individual offenders and by sociologists and criminologists, but very little is based on actual interviews with offenders. For a large majority of offenders almost nothing is known about their childhood, their schooling, their family circumstances, their daily living and employment position, etc. Much less is

Table 3: Number of Persons Serving Orders by Type of Order (Australia 1989)

Order Type	NSW	VIC	QLD	WA	SA	TAS	NT	ACT	Australia
Orders Not Including Imprisonment									
Pre-sentence Supervision	205	–	–	–	38	–	1	17	261
Fine Option Order	2,877	229	1,018	31	335	–	394	–	4,884
Probation/Supervised Recognisance	9,420	1,092	5,009	2,314	1,398	902	388	207	20,730
Community Service/ Work Order	2,269	2,236	1,590	884	1,114	572	128	160	8,953
Attendance Centre Order	363	392	–	–	–	–	–	–	755
Other Orders	–	144	7	–	138	181	15	–	485
Post-Prison Order									
After-care Probation	866	7	708	–	–	191	184	12	1,968
Pre-release Order	2	113	–	–	–	–	–	–	115
Parole/Licence	1,920	1,037	888	779	727	77	149	53	5,630
Other Orders	–	23	41	26	24	–	128	–	242
Persons Serving Orders Not Inc. Imp.	13,496	3,994	6,774	2,662	2,832	1,371	917	334	32,380
Persons Serving Post-Prison Orders	2,786	1,177	1,632	805	751	262	460	65	7,938
Total Persons	16,047	5,181	8,282	3,447	3,525	1,667	1,375	397	39,921

Note: This Table should be read in conjunction with Explanatory Notes 3 and 12.

known about their perception of prison regimes, life in prison, prison conditions, relationships in prison, the quality of supervision, assistance to reestablish themselves, etc.

Large-scale surveys to elicit the type of information described above are almost non-existent. Why such information is useful?

— prison administrators need to know about people under their charge, prison regimes and activities needs to address the prisoners relationships in order to enhance their chances of remaining out of trouble.
— perceptions of offenders about various aspects of the regime can assist in remedying deficiencies and improve prison conditions.
— details about the life of offenders, their attitudes toward crime and punishment may enable an understanding of the causes of crime.

In 1991 a major national survey of prisoners was conducted in England and Wales. This survey interviewed about 4,000 prisoners—10 per cent of all male and 20 per cent of all female prisoners. Interviews were conducted in all prisons. However, being the first of this magnitude, the survey could not address all the topics. Particularly, the survey did not ask questions on mental health, drugs and AIDS.

The National Prison Survey[6] of England and Wales confirmed some details about offenders under correctional supervision and shed further light on others. It would be impossible to summarise every detail of the survey. However, very useful data were obtained with regard to education, training and work in prisons; attitude toward the prison regime; relationship with staff;

fear of other prisoners; visits and letters from family and friends; attitude to crime and imprisonment; reasons for offending; their likelihood of returning to prisons, etc.

The prison authorities of England and Wales are reported to have taken the findings of this survey on board and made use of these findings in developing regimes that take into account prisoners needs, attitudes and perceptions.

These type of prison surveys are not yet commonplace. However, a number of surveys on a regular cycle have been carried out in the United Sates.[7] The sample for these surveys have been relatively small. A survey has also been conducted in Scotland.[8]

2. Research of Evaluative Nature

Although research on prisons and prisoners receive a lot of attention, the success or failure of prison does not appear to be an issue. Thus whether custodial correction is effective in reforming or rehabilitating offenders does not constitute a research question. On the contrary, it is almost a universal view that prisons do not reform offenders. Yet prisons continue to occupy a central place in the criminal justice system in all countries.

The problems facing corrections are not confined only to custodial corrections, as non-custodial programs are also getting crowded. Limitations of resources are affecting these programs considerably. The escalating crime rates in many Western countries are demanding authorities to come up with solutions. During the past decade and-a-half a number of new or variations of existing community based programs have emerged. Probation has been in use for over a century; in the early 1980s a program called Intensive Probation Supervision emerged. Community Service Orders became an alternative to imprisonment in a number of countries. Home Detention and electronic monitoring came to be used as a program instead of imprisonment. Community Residential Centres, Supervised Detention Program, and day reporting centre programs are gradually becoming alternative incarceration programs. In this section an attempt will be made to demonstrate research and its use outside a prison system.

(i) Intensive Probation Supervision

In 1982 the state of Georgia in the United States implemented the Intensive Probation Supervision (IPS) program. The program attracted attention from numerous jurisdictions because it appeared to satisfy two difficult goals—(i) limiting the growth in prison population and associated costs by dealing with selected offenders in the community and (ii) satisfying the demand that criminals be punished. Still the question that needed to be answered was whether prison-bound offenders could be placed under IPS without threatening public safety. The National Institute of Justice funded a research to assess the IPS.

By 1985 the IPS program in Georgia had supervised 2,322 probationers. The IPS used very stringent standards. These included:

— Five face-to-face contacts per week;
— 132 hours of mandatory community service;
— mandatory curfew;
— mandatory employment;
— weekly check of local arrest records;
— automatic notification of arrest elsewhere via the State Crime Information Network listing;
— routine and unannounced alcohol and drug testing.[9]

Control and surveillance are the two key elements of IPS. Most of the offenders chosen for IPS were originally sentenced to prison for non-violent offences. But a large number of these were convicted of drug and alcohol related offences.

The results of the evaluation of IPS suggests that the program has played a role

in reducing the number of offenders sent to prison and it costs significantly less than the cost of maintaining a prisoner. More specifically the evaluation revealed that:

— intensive probation supervision diverted a substantial number of offenders from prison;
— the offenders actually sentenced to IPS resembled those incarcerated more than those who received probation;
— IPS sufficiently controls offenders so that risk to the community is markedly limited;
— IPS saves a considerable amount for each case diverted from prison. IPS offenders also provide thousands of hours of public service;
— of the 2,322 offenders sentenced to IPS through 1985, 89% were male and 70% were 30 years old or younger; 43% were convicted of property offences and 41% of drug-and-alcohol related offences;
— drug offenders had the highest success rate;
— Georgia judges are now among the strongest supporters of the program partly because the program has a high degree of accountability.[10]

According to some reviewers Georgia's IPS program accepts relatively low risk offenders. This is particularly so because it does not accept violent offenders. However Georgia authorities argue that while offenders sentenced to the program are generally without serious criminal history, "the nature of the instant offence may be so serious the offender would be considered for incarceration by existing standards."[11]

The Intensive Probation Supervision program has been implemented in a number of jurisdictions in the United States. However, evaluations conducted elsewhere obtained findings different from the Georgia experiment.[12]

In 1991 under a grant from the Bureau of Justice Assistance (USA), the American Probation and Parole Association examined the development, use and evaluation of the intensive supervision programs. The examiners, Fulton and Stone[13] reviewed more than 70 program operations manuals. They observed that intensive supervision programs appear to have three main purposes: "diversion from prison, provision of an intermediate sanction, and probation or parole enhancement."[14] They also are "designed to achieve the objectives of punishment, public safety, rehabilitation and cost reduction."[15] However, the reviewers observed that the majority of these programs "have not been developed solely out of concern for these objectives, but in response to prison crowding and shrinking corrections budget."[16]

In any correctional program its success or failure is often measured by recidivism rates. Whether recidivism should be the dominating criterion of effectiveness of a program remains a debatable issue. Research results in general tend to indicate that these programs are not achieving their stated goals. Fulton and Stone, on the basis of their review suggest that IPSs should be continued but that their emphasis should be shifted from exclusive incapacitative and punitive measures to a more integrated approach of intervention and risk-control strategies. This proposed shift in emphasis is vital to IPSs future success. The current incapacitative conditions of ISPs provide short-range, in-pro-gram crime control, while rehabilitation has been associated with long-term behavioural change.[17]

A number of researchers, in particular Andrews,[18] Petersilia and Turner,[19] and Jolin and Stipak,[20] suggest that combining programs stressing rehabilitation may lead to long-term positive behavioural change.

(ii) Community Service Orders

Community Service Orders (CSO) emerged as an alternative to imprisonment in the early 1970s. Currently this form of

community based program is available in many countries including Australia, New Zealand, the United Kingdom, the Netherlands, Scandinavia, the United States. Unlike the Intensive Probation Supervision program described above, CSOs reflect a shift in emphasis on prevention, and a move away from detention. The main requirements of CSOs relate to the performance of supervised work for the community for a specified number of hours. The operation of the Scheme in a number of countries indicate that 40 to 200 hours of work during a period of 12 months is the norm.

A community service order is an option which can serve a number of functions. It is a penalty in the sense that the offender has to perform work not of his/her choosing. It has an element of restitution—by working for the community the offender makes amends to the society. Particularly for offenders with no work experience the supervised work may inculcate a sense of discipline and may bring about positive attitudinal changes. Descriptive reports from a number of sources reveal the program's high success rate.[21]

The survey of the use of CSOs in a number of countries shows some general characteristics, such as:

- the use of community service as a *sentencing* option is on the increase;
- although used for juveniles as well, the option is more often used for adults;
- young adults are more likely to be sentenced to community service than adults of other age groups;
- as with other types of penalties, an overwhelming majority of those placed under community service orders are men;
- the penalty of community service is used primarily for those convicted or property offences;
- generally community service orders are made in cases where the offenders could have been sent to prison for up to one year.

Although in use for about two decades, there have been a few research studies on the subject, and fewer still to assess the impact of the use of CSOs on recidivism. Pease,[22] in a major review of research on and implementation of community service as an *alternative to imprisonment* arrives at very uncomplimentary conclusions. At the outset Pease argues that community service orders have shared the fate of other sentences introduced explicitly as alternatives to custody. They have been used in many, perhaps most cases, to replace other non-custodial sentences. This is so even where a statute makes the intended use in principle obligatory.[23]

Pease's observations receive credence from the example from England and Wales:

> In England and Wales, the Powers of Criminal Courts Act of 1973 specified only that the offence for which an order (of between 40 and 240 hours) should be imposed, must be imprisonable. However politicians in the debate leading to the Act delivered themselves of remarks such as, "I was attracted from the start by the idea that people who had committed a minor offence would be better occupied doing a service to their fellow citizens than sitting alongside others in a crowded goal."[24]

After reviewing research in Australia, Canada, Scotland, and the United States, Pease observes:

> There is thus remarkable consensus, wherever the proposition has been put to the test, that community service orders do not replace custody in a clear majority of cases in which they are imposed, even where it is clearly stated that the order was introduced for such a purpose.[25]

In the late 1980s studies in Denmark and England and Wales looked at recidivism rate and breaches respectively. Al-

though her recommendation for a rigorous evaluation in Denmark was not accepted, Bondeson conducted an assessment relating to the completion of the required number of hours of community service. She notes that 80 per cent of those sentenced to community service concluded without a breach.[26]

In England and Wales evidence reveals that 18 per cent of the community service orders in 1987 were terminated for breach, and in 74 per cent of the cases the specified number of hours were successfully completed.[27] The decline in the number of community service orders since 1985 in part led to the introduction of National Standards for Community Service Orders in April 1989. An evaluation, with the help of a questionnaire sent to 55 probation services, of the first two years of operation of the National Standards does not offer much hope. Lloyd arrives at the following conclusions:

> The probation statistics and the National Standards monitoring show that there has been an increase in the rate of conviction of breach of CSOs in 1988 and 1989, and that this increase has continued through 1990 to the first quarter of 1991. The implementation of the Standards is likely to be, at least in part, responsible for this increase.[28]

(iii) Home Detention and Electronic Monitoring

This is one of the latest measures introduced in the United States, Australia, and Canada in the 1980s. It is too early to determine the significance of this measure and its impact on prison crowding. At present there is not much information in terms of research on the effectiveness of electronic monitoring. However, there exists a substantial amount of publicity and marketing type of literature demonstrating the effectiveness of particular mechanical devices. in the United States, Australia and Canada the use of electronic monitoring was introduced without much criticism and with limited trial.

The introduction of electronic monitoring attracted comments concerning constitutionality of the measure, particularly right to privacy, the possibilities of net-widening, and a whole lot of issues relating to type of offender, type of equipment, the period of monitoring, monitoring cost, technological problems with equipment, etc. Like many measures and programs before it, initial reports on the effectiveness of electronic monitoring showed encouraging results. However, these reports suffered from methodological deficiencies. Irrespective of these findings the use of this measure in the United States has continued to rise. In the United Kingdom, before introducing the measure, the Home Office ran a set of trials and the Research and Planning Unit conducted a research.

The stated objectives of the trial were:

(1) to evaluate the extent to which the availability of electronic monitoring can enable defendants to be remanded on bail rather than in custody;
(2) to evaluate current electronic monitoring technology;
(3) to evaluate the cost-effectiveness, and appropriateness of privatising electronic monitoring; and
(4) to inform consideration of the scope for widening the application of electronic monitoring to sentenced offenders who would otherwise receive custodial sentences.[29]

The trial in the United Kingdom was run for a period of six months in three petty sessional divisions. In all 50 defendants were monitored. The findings of the trial show that electronic monitoring was used as an alternative to remand in custody. However the authors of the study caution against generalising because of the small sample size and the experimental nature of the trial.

The trial did not reach a definitive conclusion that monitoring as a condition of bail was effective. A majority of defendants were charged with further offences during the trial and there were incidents of equipment failures as well. Also there were time violations. Furthermore, electronic monitoring enabled quick detection of violations.

The trial found that a key to the success of this measure would be consistency of recommendations by the police, the crown prosecutor service, defence solicitors, magistrates, and judges.

The trial could not arrive at a conclusion with regard to the cost-effectiveness of the measure.

3. Descriptive Research

This is by far the most common type of research that dominates the literature. One would be hard pressed to select a research which typifies descriptive research. Nevertheless, such research takes different forms—from a policy paper to description of a system, subsystem or program. Such research is also conducted by legislative bodies, government research units, universities and academics, and others.

4. Cost of Corrections

Although there is more and more research now than before on the cost of corrections, the accuracy of cost estimates remain an issue. For example, prison overcrowding and high costs of building new prisons have led authorities in a number of countries to consider privatising prisons. There are claims and counter claims on the cost of managing prisons by private enterprise. On first glance, it would appear relatively easy to estimate the costs of government run and privately run prisons. In reality, it appears not to be the case.

As of November 1990, 24 governmental agencies in the United States contracted or planned to contract with private sector for prison management. Some of these agencies expressed that privatisation enabled addition of prison space quicker and provided service at equal or lower cost than government agencies. The United States Government Accounting Office was asked to examine, among other things, whether privatisation of prisons could help reduce prison overcrowding and costs. Over a period of three months in 1990 the Government Accounting Office reviewed documents, interviewed officials managing private prisons and government agencies and held discussions with a number of bodies. In its report to the United States House of Representatives, the Government Accounting Office states:

> Unfortunately, available research on the cost benefits of privatisation has been inconclusive. Depending upon the factors that were considered, private prisons were found to be from 10 per cent more expensive to 8 per cent less expensive than public prisons. Moreover, this research generally suffered from methodological limitations.[30]

Similar inconclusive results were obtained by research funded by the National Institute of Justice. This research compared the cost of managing a penal farm by county operation with contractor operation. The research states:

> Two methodological problems in particular make it hard to compare the costs of public and private prisons. One ... is the problem of hidden costs, which vary in size and source depending on the type of prison administration. The other is the "apples and oranges" problem. The facilities and programs being compared are not sufficiently alike in other respects to make a straight dollar comparison fair.[31]

Conclusion

The research trends described in this

paper do not represent a complete picture, nor was it intended. Obviously, there are many more research studies completed or in progress which deal with the broad topic of corrections. For example a considerable amount of research is currently being carried out in aspects such as management of corrections, performance indicators, outcome measures, innovations, education and training, etc. Similarly, work is carried out in the area of dispute resolution and mediation as well as impact of changes in sentencing law and corrections.

The description of types of research in the previous section clearly shows that most research does not offer firm conclusions and clear recommendations. This is more to do with the entire field of social sciences than with social science research. Research in corrections and other aspects of criminal justice can never produce results that are entirely unambiguous. Policy makers, legislators and administrators must recognise such limitations. There is no doubt that the quality of correctional research is vastly superior today as compared to the 1960s and 1970s. This is in spite of the fact that proportionate to the resources spent in the administration of justice only a very small amount is spent on research in criminal justice. Perhaps cost of corrections will continue to escalate and new programs will emerge. There is a need for increase in the allocation for research.

The nature of corrections is changing rapidly. Some of the developments are becoming researchers nightmares. Three examples are presented as illustrated. These are the ones described earlier as cocktail recipes.

(1) A few years back the state of Delaware in the United States introduced a structure of sentencing including a continuum comprised of five levels of progressively restrictive sanctions as well as cost saving devices. The proponent of the scheme argues that "as a dynamic and fluid system, it allows offenders either to earn their way out of prison by good behaviour and conformity with the rules, or to work their way further into the system by repeated non-conformity or additional offences."[32] The five levels were:

— Level V is full incarceration with complete institutional control.
— Level IV is quasi-incarceration where a person is supervised for 9–23 hours per day in programs such as halfway houses, electronically monitored house arrest, and residential drug treatment.
— Level III is intensive supervision involving 1–8 hours a day of direct supervision, in which criminals are subject to curfew checks, employment checks, and close monitoring for attendance in treatment programs.
— Level II is "normal" field supervision with 0–1 hour of contact per day.
— Level I is the lowest level of supervision.[33]

Under this scheme an offender can receive a combination of two or more levels of punishment. Castle offers an example of how the structure works:

> Joe has been convicted of unlawful sexual intercourse, has a prior history of violence and burglary, and is obviously a threat to public safety. Under our system he was sentenced to 6 years of full incarceration, followed by 1 year at level III and 2 years at Level II. Not only is Joe kept of the community for a long period of time, he is gradually integrated back into society under careful supervision.[34]

(2) Under the Penalties and Sentences Act 1985, the state of Victoria, Australia introduced Community Based Orders. The orders incorporate elements of retribution, restitution, and deterrence through a range of special conditions. The conditions may require an offender to attend educational

programs, perform unpaid community work, undergo assessment and treatment for drug and alcohol problems, etc. A fine defaulter can have his fines converted into required number of hours of community work. The Sentencing Act 1991 also provides for intensive correction in the community for offenders sentenced to imprisonment of up to 12 months. Special conditions may be added to these orders.

(3) Almost all the states in the United States have statutory mandates to collect fees from convicted offenders. These correctional fees generate enough revenue to meet part of the cost of probation supervision or work release program.

Whether these measures are effective or not, only time will tell. From a research point of view, it will be problematic not only to count offenders under specific programs but to measure impacts of specific programs. Hopefully, research will be able to assist policy makers in evaluating effectiveness of such programs.

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Standard Minimum Rules for Prisoners and the Extent of Their Implementation—With Special Reference to Sri Lanka

*by Hetti G. Dharmadasa**

During the last four decades the United Nations Organization has introduced several Standard Minimum Rules, Norms and Guidelines in the area of Criminal Justice. These include Standard Minimum Rules for the Treatment of Prisoners, Alternatives to Imprisonment, Transfer of Foreign Prisoners, Code of Conduct for Law Enforcement Officials and Safeguards Guaranteeing Protection of Those Facing the Death Penalty. Of these instruments one of the first to be promulgated by the United Nations and most accepted and practiced in different degrees in most parts of the world is the Standard Minimum Rules for the Treatment of Prisoners.

Historical Background

In the "Introduction" to the "Standard Minimum Rules for the Treatment of Prisoners," it is stated that the original idea of universal standards related to the treatment of prisoners was conceived as far back as in 1934, by the International Penal and Penitentiary Commission. The Commission had prepared a set of rules in 1934 which was endorsed by the League of Nations, the predecessor to the United Nations Organization. A revised edition of these rules was presented at the first United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Geneva in 1955. The Congress by unanimous agreement adopted the rules on the 30th of August that year. Almost two years later, on 31st of July, 1957 the Economic and Social Council of the United Nations adopted these rules as "Standard Minimum Rules" for the Treatment of Prisoners by resolution 663 C 1 (XXIV). In adopting these Rules, the Economic and Social Council recommended that Governments give favourable consideration to adopting and applying them in the administration of their Penal Institutions.

The Aims and Objectives of Standard Minimum Rules

The Standard Minimum Rules for the Treatment of Prisoners could be described very briefly as the "Minimum Conditions which are acceptable as suitable by the United Nations." It is stated at the very outset that the Standard Minimum Rules are not intended to describe in detail a model system for penal institutions. The objective is to set out on the basis of general acceptance and the contemporary thought on imprisonment the principles and practices considered to be good for the treatment of prisoners and the management of institutions.

Due to the great differences in the political and legal systems, social, cultural and economic practices amongst different nations of the world, it is not expected that all rules will be applicable in all the countries of the world at all times in the same manner. The objective is to have a set of rules as a target for minimum achievement. In other words, the Standard Minimum Rules represent the minimum conditions that are acceptable to the civilised world.

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To Whom Are the Standard Minimum Rules Applicable

Rule 4 of the Standard Minimum Rules states that part I of the rules which covers the general management of institutions is applicable to all categories of prisoners, criminal, civil, untried or convicted. Part II of the rules are applicable to the special categories described therein.

Prior to 1977 there was no specific mention about the application of the Standard Minimum Rules to persons arrested or imprisoned without charge. On a recommendation by the Fifth United Nations Congress on the Prevention of Crime and Treatment of Offenders in 1975 the Economic and Social Council referred the Committee on Crime Prevention and Control to study and report the range of application of the Standard Minimum Rules. On the recommendation made by the Committee, the Economic and Social Council approved the addition of Rule 95 which provides that persons arrested or imprisoned without charge are to be accorded the same protection as other categories of prisoners.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, better known as the "Beijing Rules" under Rule 27 refers to the application of Standard Minimum Rules for the treatment of prisoners to juvenile offenders in institutions.

Rule 27:1. "The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication."

In the "Commentary" it further states:

"Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with outside world, food, medical care, religious services, separation of ages, staff, work, etc.) as are provisions concerning punishments and discipline and restraint of dangerous offenders. It would not be appropriate to modify these Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the administration of Juvenile Justice."

Rule 6 of the Standard Minimum Rules for the Treatment of Prisoners states that the rules shall be applied impartially and there shall be no discrimination on the grounds of race, colour, sex, language, religion, national or social origin, property, birth or other status.

Examination of the Standard Minimum Rules

In this presentation, I shall endeavour to examine some selected Standard Minimum Rules for the Treatment of Prisoners which are considered important and the extent of their implementation in Sri Lanka. These are Standard Minimum Rules regarding (1) Accommodation, personal hygiene, clothing, food and bedding; (2) Punishment, information to and complaints by prisoners and contact with the outside.

(1) a. Accommodation

Rules 9 to 14 of the Standard Minimum Rules deal with the accommodation of prisoners.

Rule 9 has laid down the conditions for the cell and dormitory occupation. 9 (1) states that where accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. It further states that if for special reasons it becomes necessary to make an exception to this rule it is not desirable to have two prisoners in a cell.

9 (2) describing the standards for dormitory accommodation, states, "where dormi-

tories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall also be supervision by night in keeping with the nature of the institutions."

The condition in Rule 9 (1) that it is not desirable to have two prisoners in a cell may have been laid down for conditions of security and for moral reasons. Moral I say because the rules have been prepared at a time when gay rights have not been established or accepted. However, today this rule is not observed in many Western countries though it is still practiced in countries like India and Sri Lanka. Certain new codes of Standard Minimum Rules such as in the European community and the proposed Commonwealth Minimum Standard Rules have not included this either one, or more than two in a cell condition. For example, the proposed Commonwealth Minimum Standard Rules merely states that "Prisoners shall normally be lodged in individual cells."

In Sri Lanka, these Standard Minimum Rules are incorporated into the prison regulations. Prison Rule 180 states that:

"Where from want of a sufficient number of separate cells in any prison it is necessary to place prisoners in association, such room shall be lighted at night, and at least one officer shall be on duty over the ward from the time the prisoners are locked up till they leave the ward. Less than three prisoners shall never be locked up in a ward in which more than one prisoner is confined."

The minimum physical requirements for the prisoner accommodation are enumerated in United Nations Standard Minimum Rules 10, 11, 12, 13 and 14. Rule 10 in particular gives briefly the basic requirements. It states that:

"All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation."

In this Rule particular attention has been made on the floor area, cubic space, lighting, heating and ventilation. No specific floor area or cubic space per prisoner has been specified. This is perhaps to allow room for changes according to climatic conditions.

Legislation in many countries however have made provisions specifying minimum floor area and cubic space. The prisons law in Sri Lanka states that "no cell shall be certified which contains less than 54 superficial feet of floor space (4.86 Sq.m) and 540 Cubic feet of space (14.7 Cu.m), and is not properly ventilated." However the law does not mention about floor area, and cubic space per prisoner in the dormitories or wards.

The relevant laws in some other countries have given details and descriptive measurements regarding floor area and cubic space. They also give different measurements for prisons in the plains and the hills. For example, the Indian Prison Law (Part II—Rule 8) indicates the required measurements regarding ground area, cubic space, area for lateral ventilation for three types of accommodation., i.e. (1) Wards and workshops, (2) cells and (3) hospitals. The law also provides specifications for the construction of lateral ventilation openings, berths for sleeping, etc.

Rule 11 of the United Nations Standard Minimum Rules deals with ventilation and light. 11 (a) states that windows shall be large enough to enable the prisoners to read or work by natural light and also to allow the flow of fresh air. 11 (b) states that sufficient artificial light shall be provided to enable the prisoners to read or work without injury to eyesight. This would mean that whether it is in cell, ward or workshop

there must be sufficient air circulation, fall of natural light and also artificial lighting. These conditions have been regarded as the minimum requirements essential for basic human living.

Rule 12 deals with sanitary installations and 13 with bathing facilities. It states that "adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower...."

The relevant regulation in the Sri Lankan Prison Law reads as:

"All prisoners shall be furnished with proper means of washing or otherwise cleansing themselves and of having their clothes washed; and provision shall be made for their bathing within the prison, if possible or otherwise at the nearest convenient place...."

In actual practice provision is made either for shower or bathing from troughs. Bathing troughs are long cement tanks where prisoners line up on either side and bathe with buckets.

Rule 14 of the Standard Minimum Rules is regarding the proper maintenance and cleanliness of premises. In the Sri Lankan Prison regulations, it is incumbant on all prison officers to maintain cleanliness in prisons.

Prison Rule 141 states:

"It shall be the duty of all prison officers to see that the highest possible degree of cleanliness is enforced in every part of the prison, as well as with respect to the person of prisoners, their clothing, bedding and everything else."

(1) b. Personal Hygiene

The Standard Minimum Rules relating to the personal hygiene are Rules 15 and 16, which are quoted below.

15. Prisoners will be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for proper care of the hair and beard, and men shall be able to shave regularly.

As mentioned earlier, conditions for providing washing and bathing facilities are included in the Sri Lankan Legislation. It is also part of the duty of the Prison Medical Officer to ascertain whether the water is pure and wholesome and whether there is an abundant supply for drinking, cooking and washing (Rule 50). Facilities for the care of hair and beard are provided in all prisons. Barbers selected and trained from among the convicted prisoners are employed in every prison. However, there is no compulsion for cutting of hair other than on medical grounds. The relevant regulation states that:

"The hair of remanded persons, civil prisoners, and convicted prisoners of both sexes shall not be cut against their will, provided that the hair of such prisoners may be cut on the grounds of medical necessity and on the written recommendation of the Prison Medical Officer."

(1) c. Clothing and Bedding

United Nations Standard Minimum Rules 17, 18 and 19 deal with clothing and bedding for Prisoners. Rule 17 (1) stipulates that every prisoner who is not allowed to wear his own clothing shall be provided with clothing suitable for the climate and adequate to keep him in good health. An important stipulation under this rule is that the clothing provided should in no manner be degrading or humiliating. 17 (2) deals with the cleanliness of clothing.

In Sri Lanka, every convicted prisoner is

compelled to wear prison clothing which is provided to him. The regulations specify the different type of articles of clothing to be issued to prisoners. The duration or how often these articles have to be issued are also mentioned in the regulations.

Until the 1970's two types of clothes were issued to prisoners based on the social status of the prisoners. One type known as the Scale "A" was the ordinary type and the other known as Scale "B" was an exceptional or a special type. Scale "A" which consisted of a pair of loose shorts and a jumper was issued to the ordinary prisoners while Scale "B" consisting of a pair of longs, a shirt and wooden sandals was issued to prisoners who were of a higher social standing before their conviction.

This system was done away with later as it was felt that there should not be preferential or discriminatory treatment among prisoners. Sri Lanka being a warm tropical country the present standard dress of a male prisoner is a pair of shorts and T-shirt type shirt known as the jumper. Depending on the nature of the institution, three different colours are used, white, khaki and blue. The clothing is not degrading or humiliating.

Standard Minimum Rule 17 (3) states that "whenever a prisoner is removed outside the institution for an authorised purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing."

Convicted prisoners in Sri Lanka are often taken out for various authorised purposes such as attending courts for cases or as witnesses, attending the funerals of family members, attending civil hospital for treatment and sitting for public examinations. In all these instances prisoners are permitted to wear their private clothing. Those who do not have their own private clothing are issued civil type clothing by the prison. Prisoners are also permitted to get from home, or receive from a friend, private clothes to be kept in storage to be used for the above purposes. Presently there are a large number of prisoners who are daily going out of the prison on work release. These prisoners too must wear their private clothes as they will be working alongside civilian workers. If they do not have sufficient civilian clothing they are permitted to purchase civilian clothes out of their earnings.

Section 18 of the Sri Lankan Prison Ordinance stipulates that "if prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use."

In Sri Lanka, Prison Law also makes provision permitting unconvicted prisoners to purchase or receive from private source, food, clothing and bedding or other necessities—subject to conditions laid down by the authorities (Section 59).

Prison Rule 191 stipulates that:

"Where any unconvicted prisoner is unable to provide himself with sufficient clothing or bedding, the Superintendent shall supply him with such clothing or bedding."

In some developed countries in the West there is a trend developing to allow convicted prisoners to wear their own clothes. The principle behind this practice is that prison clothing does not make allowances for the individuality of each prisoner nor is it conducive to allowing prisoners to exercise greater choice and responsibility. They also believe that prisoners can feel more responsible for their own lives if they have more choice about what to wear and if they know they can be held accountable for keeping their clothes in reasonable condition.

Standard Minimum Rule 19 gives the minimum standards to be maintained for bedding. It states:

"Every prisoner shall, in accordance with the local or national standards, be provided with a separate bed and with separate and sufficient bedding which shall be clean when

issued, kept in good order and changed often enough to ensure its cleanliness."

There is no practice of providing western type beds to prisoners in Sri Lanka. All prisoners sleep on mats on the floor of cells or dormitories. Along with the issue of clothing all convicted prisoners are issued mats, blankets or bed sheets, pillows and slips. Unconvicted prisoners are allowed to receive approved items of bedding from relatives or friends, or purchase them with their own money. All unconvicted prisoners who are unable to provide themselves with bedding are provided with bedding at state expense.

It must be mentioned here that sleeping on mats on the ground is a culturally acceptable situation in Sri Lanka. About 80% of the village folk sleep on the ground on a mat and pillow—though the western type of bed is commonly used in the urban homes. However, Sri Lanka accepts the position that provision of a bed for the prisoner is desirable.

Standard Minimum Rule 20 sets the minimum standards for food and drinking water.

20 (1) "Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served."

20 (2) "Drinking water shall be available to every prisoner whenever he needs it."

Sri Lankan prison regulations and Departmental Standing Orders have dealt with the subject of prison food in detail.

Prison Rule 222 (1) states that "every prisoner shall be supplied with a sufficient quantity of plain and wholesome food."

The idea behind this rule is that while in prison, a prisoner must be given food of sufficient quality and quantity to maintain good health and also to avoid reductions in diet as a punishment.

Two main types of dietary scales are available to prisoners. Scale "A" is rice with fish or beef and vegetable curries; the normal diet which is more like the diet of the ordinary people in the country. Scale "B" consists of bread, meat, vegetables, etc. which is more akin to a "western type of food." A prisoner is placed on the dietary scale "B" when the Medical Officer is of opinion that the scale is desirable in the interest of the health of that prisoner, having regard to the circumstances in which the prisoner lived, and the diet to which he was accustomed, before his admission to prison.

There is also provision made in the law for the variations of articles of food, on medical grounds.

It is an obligation on the part of the prison administration according to the regulations to display a copy of the dietary scales in a conspicuous part of the prison.

In terms of Prison Rule 224, all food has to be measured daily before the Jailor or the Deputy Jailor and occasionally in the presence of the Superintendent of the prison and of the Medical Officer, to see that no fraud is practised and that the prisoners get the full quantities to which they are entitled.

Sri Lankan Prison law has made provision for any prisoner to make a complaint regarding the diet provided to him. He also can make a request to the authorities to weigh or measure his diet to ascertain whether he is supplied with the authorised quantity.

To ensure quality and quantity of food, prison regulations have made it obligatory for the Superintendent and the Medical Officer to regularly inspect prison food. Prison Rule 25 states:

"He (Superintendent) shall frequently inspect the provisions furnished for the prisoner and satisfy himself by personal observations regarding the quality of the different articles of food supplied for their use. He shall sometimes visit the prisoners at meal times and inquire into any com-

plaint that may be made to him regarding the quantity of rations."

Prison Rule 55 states that:

"The Medical Officer shall daily examine the food provided for the prisoners, in order to see that it is of proper quality and shall enter in the journal any defect in quantity or quality which he may note. Every part-time medical officer attached to a prison shall inspect the raw rations every morning and the prisoners' cooked food as often as possible and not less than three times a week."

(2) a. Discipline and Punishment

Almost all comunities have rules or laws for the maintenance of good order in society. Violators of the rules or the breakers of the law are punished. In the prison, for obvious reasons, rules for the maintenance of discipline and order are more necessary than in other normal societies. Therefore in almost all countries the prison laws provide for a code of offences against the violation of prison discipline, an adjudication procedure and penalties for those found guilty of committing the offences.

Rules 27 to 32 of the United Nations Standard Minimum Rules deal with Discipline and Punishment. Rule 27 states that:

"Discipline and order shall be maintained with firmness, but with no more restrictions than are necessary for safe custody and well ordered community life."

Rule 29 of the Standard Minimum Rules stipulates:

(a) Conduct constituting a disciplinary offence.
(b) The types and duration of punishment which may be inflicted.
(c) The authority competent to impose such punishment shall always be determined by law or by regulation.

Rule 30 requires certain conditions to be followed in punishing prisoners. They are:

(a) No prisoner shall be punished except in accordance with the terms of the prison law or regulation.
(b) That no prisoner be tried twice for the same offence.
(c) That no prisoner shall be punished unless he has been informed of the offence alleged against him.
(d) That every prisoner be given a proper opportunity of presenting his defence.
(e) The competent authority shall conduct a thorough examination of the case.
(f) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

The statutory provisions of the disciplinary system are found in Sections 78 to 86 of the Prisons Ordinance of Sri Lanka. They list the offences against prison discipline and the different punishments that could be meted out to an offender. Under normal circumstances the Superintendent of the prison or in his absence, a member of the Local Visiting Committee can hear the cases against the prisoners. However, if any prisoner is charged with mutiny or incitement to mutiny, with escape, attempt to escape or abetment of escape from lawful custody, with causing hurt or grievous hurt to a prison officer, or such attempt, the offender must be tried by a tribunal consisting of the District Judge of the district in which the prison is situated and two Visitors who shall be members of the Local Visiting Committee. If any prisoner is charged with any offence against prison discipline which in the opinion of the Superintendent is not adequately punishable by him under powers vested in him, such cases too have to be referred to the Prison Tribunal by the Superintendent.

In keeping with Standard Minimum Rule 30 (2) the Sri Lankan Prison Regulations clearly stipulates in Prison Rule 247, that:

"A Prisoner shall, before a report against him is dealt with, be informed of the offence with which he is charged and shall be given an opportunity of hearing evidence against him and of being heard and calling witnesses in his defence...."

In Sri Lanka the accused prisoner is not only given the opportunity of hearing evidence against him, he is also given the opportunity of cross-examining the prosecution witnesses. However, this facility is made use of by only the "veteran" prisoners. Most others are too ignorant to follow the evidence or to cross-examine the witnesses. Even if witnesses are called in defence most prisoners are not able to read their evidence. For these they depend entirely on the Superintendent or the Judge and members of the tribunal.

When cases are heard by the Superintendent the punishments available to him include measures that have immediate effect on the condition of imprisonment such as forfeiture of privileges, reduction to a lower class and cellular confinement with dietary restrictions and forfeiture of remission. Forfeiture of remission involves a postponement of the date of release.

The powers of punishment by the tribunal includes any of the punishments the Superintendent is empowered to give and imprisonment for a term not exceeding five years in the case of the offence of escaping or attempting to escape from lawful custody or its abetment and not exceeding six months in other cases.

In view of the developments taking place in more advanced parts of the world, it has become necessary for us to review the provision made in prison laws and regulations of our countries. The issues to be examined include (a) whether the existing process is fair and impartial; (b) whether the prisoners have a right to be legally represented; and (c) whether there should be some provisions made for an appeal process.

My experience in Sri Lanka is that most prisoners are not satisfied with the existing system of adjudication against prison discipline. In a majority of cases that come before the Superintendent the prisoners plead guilty either because they are coerced to do so by prison officers or because they know that the authorities do not like to go into a "trial," the lengthy procedure of examining witnesses and arriving at a decision. They also know that most prison officers consider pleading "not guilty" as challenging the authority.

As in many other countries, Sri Lankan prison regulations do not provide for the accused prisoners to be represented by a lawyer or even a fellow prisoner.

In countries such as the United Kingdom there is provision for an accused prisoner to obtain legal and other advice before a hearing though no legal representation is allowed at the hearing proper. In the United States an accused prisoner has the right to choose any member of the prison staff to represent him at the disciplinary hearing. This is considered part of the normal duty of a prison officer. Prison officers are given regular training for it and the system seems to be working very satisfactorily.

In Sri Lanka, there is no form of legal process of appeal against punishments meted out by the Superintendent or a tribunal. It is categorically stated in the law that there shall be no appeal against a sentence passed for violation of prison discipline. However, in the case of a punishment meted out by the Superintendent, the Commissioner of Prisons has the power to call for and revise any proceedings against the violation of prison discipline.

In the developed countries there are pressure groups pressing for the right of the prisoners to appeal against the decisions of Prison Tribunals. The "Prior" Committee on the Disciplinary System (1985) which examined the arrangements for dealing with disciplinary offences by prisoners in the United Kingdom made the following recommendation regarding the right to appeal.

"We recommend that, as in the Criminal Appeal arrangements, the Prison Disciplinary Tribunal should be able to certify that a question in a case it has determined is suitable for consideration on appeal, and to grant leave accordingly. Subject to that, we recommend that a prisoner found guilty by the Prison Disciplinary Tribunal should have the right, within 28 days of the decision appealed against, to seek leave to appeal to the Appeal Tribunal. An applicant would be able to apply for leave on points of law, on question of fact or mixed law and fact, or against the punishment."

Taking these facts and the United Nations Standard Minimum Rules into consideration, it is necessary for us to consider the introduction of the necessary changes into our statutes.

Standard Minimum Rule 31 states that "corporal punishment, punishment by placing in a dark cell and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences."

In Sri Lanka corporal punishment (lashes with a whip or strokes with a rattan) was available to the tribunals until recent times, as a punishment for mutiny or incitement to mutiny and causing hurt or grievous hurt to a prison officer. However, with the suspension of corporal punishment in the country it is no longer ordered by tribunals although the particular section of the prison law has still not been amended. Most countries have done away with the infliction of lashes and other forms of corporal punishments. It is considered as an uncivilised form of punishment. Therefore all prison administrators should consider its abolition as a form of punishment.

Conditions to be adhered to when there is close confinement or reduction of diet are stipulated in Standard Minimum Rule 32 (1). It states that such punishments shall never be inflicted without the prisoner being examined by the Medical Officer and certified in writing that he is fit to sustain it.

The same condition must be observed in inflicting any other punishment that may be prejudicial to the physical or mental health of a prisoner.

Standard Minimum Rule 32 (3) requires that the Medical Officer shall visit daily prisoners undergoing such punishments and advise the director if he considers the termination or alteration of the punishment necessary on the grounds of physical or mental health.

The Prison Law in Sri Lanka has provision for the close confinement under reduced diet as a punishment against violation of prison discipline. Such period however is limited to three days only. Prison regulations strictly stipulates that "close confinement, confinement in a punishment cell or variation of diet, shall in no case be imposed, unless the Medical Officer has certified that the prisoner is in a fit state of health to undergo such punishment."

Though this condition is strictly adhered to in Sri Lanka, in certain developed countries medical officers have raised certain ethical questions. Some have claimed that it is difficult for medical officers to mark the prisoner only as "fit for punishment." They say that the doctor-prisoner patient relationship could be impaired by the perception that the doctor may be in some way authorising punishment.

The "Prior" Committee Report (1985 U.K.) which examined this aspect had recommended that the medical certification be obtained before the commencement of the adjudication in all cases as a matter of routine to overcome this problem.

An important aspect in the administration of prisons is the fairness of the procedures. Fairness is a fundamental element of the disciplinary system. Therefore it is essential that the prison disciplinary systems, whilst adhering to the Standard Minimum Rules of the United Nations must also maintain fairness of the procedure. The

system must be seen to be fair to the prisoners who go through it and also to those who hear about it from them.

(2) b. Instruments of Restraint

Standard Minimum Rule 33 requires that instruments of restraint such as handcuffs, chains, irons and straitjackets, shall never be applied as a punishment. The Sri Lanka prison legislation strictly adhering to this requirement prohibits the use of restraints as punishment. Section 88 of the Prison Act states that "no prisoners shall be put under mechanical restraint as a punishment." However certain countries probably with justifications for doing so continue to use mechanical restraints as punishment. They not only use handcuffs but also fetters (chains for the feet).

(2) c. Information to and Complaints by Prisoners

Prison is a special community within the community. It has different rules and regulations and a well regulated regime. It is difficult for newly admitted prisoners to understand and follow the rules and regulations and procedures. Therefore it is necessary for him to be told about his new life in the prison. It is with this in view Standard Minimum Rule 35 has been established. It states that:

35 (1) "Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution."

35 (2) requires that if a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

There are enabling regulations made in the Sri Lankan Prison regulations to accommodate this Standard Minimum Rule. In Rule 9 it is stated that:

"The Commissioner shall provide for the general information of prisoners, a brief summary of abstract in printed form, of prison offences, punishments and rules relating to classification, privileges and remission of sentence of prisoners. Copies of such abstracts in English, Sinhalese and Tamil signed by the Commissioner shall be hung up, in conspicuous places in each corridor, association ward, workshop or other convenient part of the prison to which prisoners have ready access...."

Though these information sheets are kept in certain places in the Sri Lankan Prisons it is definitely not in so many places as mentioned in the Standard Minimum Rules. In any case our experience is that very few prisoners care to read them. One reason being that in Sri Lankan Prisons nearly 50 percent of the inmates are illiterate or do not have the level of literacy required to read and understand such information sheets. On the other hand, generally prisoners prefer to learn from each other. The drafters of the regulations may have envisaged a situation of this nature that they by prison rule 93 make it obligatory for the Chief Officer to read or cause to be read to all prisoners on admission in their own language the abstract of the rules relating to prisoners.

However at present the practice is to make use of the services of the Prison Welfare Officers to conduct inauguration classes for newly admitted prisoners. The classes are conducted three or four times a week depending on the number of new admissions. At these classes not only the rules and regulations of the prison are explained but the available facilities, eligibility for home leave and parole, the services of the Prisoners Welfare Association, etc. are also

explained. To us this system seems to be working very satisfactorily. However printing of a booklet containing the above information is also being considered.

It is also reported that in some countries where the literacy rate is low cartoon pictures are used as a medium to inform prisoners about prison regulations, etc.

It is essential that all communities and institutions have a system through which individuals grievances or complaints and requests can be considered and relief granted. A well managed grievance procedure system can take away much of the mistrust and tension which are the main obstacles to a peaceful prison. United Nations Standard Minimum Rule 36 sets out the minimum standards to be adopted in such a grievance procedure.

36 (1) "Every prisoner shall have the opportunity each weekday of making requests or complaints to the director of the institution or the officer authorised to represent him."

(2) It shall be possible to make requests or complaints to the Inspector of Prisons during his inspection. The prisoner shall have the opportunity to talk to the Inspector or to any other inspecting officer without the director or other staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

In the Sri Lankan Prison law there are several provisions made to facilitate the above Standard Minimum Rules. Prison Rule 3, under the duties of the Commissioner (Inspector), states that:

"He shall see any prisoner who has applied to interview him and give special attention to every prisoner who for any reason is confined in a cell, and he shall inquire into all complaints and applications the prisoners may make to him and make such order thereon as he shall think proper...."

In the Rules with reference to the Duties of the Superintendent (Director) Prison Rule 16 states "...and he shall take care that any prisoners who have any complaints or applications to make are allowed to make them.... The Superintendent shall hear and decide all such complaints."

In terms of the same Prison Rule it is the responsibility of the Superintendent (Director) to hear and decide on the complaint within one week if the prisoner had made a written request to see him. It is also his duty if a prisoner had demanded to see a visitor, to communicate with the visitor and fix date and time to see the prisoner. He shall also cause to be produced before the Commissioner (Inspector of Prisons) on his visits all prisoners who have asked to see him.

Prison Rules also make it the responsibility of the next level of prison officer, the Jailor/Chief Officer to make the necessary arrangements to receive requests and complaints and grant them redress. Prison Rule 83 states that:

"He shall take care that every prisoner having a complaint to make or a request to prefer to him shall have an opportunity of doing so at some appointed hour of the day. He shall see that prisoners' letters are despatched within 48 hours of the application to write and that petitions to governor (President) are dispatched within one week of the application to petition. He shall patiently listen to his complaint and shall either take such steps as may appear to him necessary to redress any grievance, or shall report the same to the Superintendent."

Prison Rule 84 makes it obligatory on the part of the Chief Officer to inform the Superintendent in writing the name of any prisoner who has asked to see the Superintendent, a Visitor or the Commissioner.

According to Prison Rule 132 it is the duty of all prison officers, without exception to inform the Jailor/Chief Officer at his next visit of any prisoner who desires to see him.

Therefore it would be seen that Sri Lankan Prison Law has made rules making it obligatory for the Inspector of Prisons and officers at other levels to give sufficient attention to request and complaints of prisoners.

Prison Law in Sri Lanka has also made provisions for prisoners to make complaints to persons or bodies other than prison officials. In terms of Section 36 (3) of the Prisons Ordinance at least one member of the Local Visiting Committee must visit the prison once at least in every week and be available at any reasonable time to hear any complaints that prisoners may desire to make. In terms of these Rules the Prison Administration must maintain a complaint book in which any member of the Local Visiting Committee may record the complaints made to him by prisoners and the proceedings taken upon such complaints.

Every visitor including any member of the Board of Prison Visitors are obliged to hear all complaints which may be made to him by any prisoner in respect of any deficiency in the quantity or quality of the food or in respect of ill-treatment according to Prison Rule 41. It further states that:

Where any complaint is substantiated to the satisfaction of the visitor and,

(a) if in his opinion the complaint is not of serious character, he shall make a report thereon to the Commissioner, and
(b) if he considers that the complaint cliscloses the Commission of an offence sufficiently serious to require the intervention of a Court of Justice he shall immediately report the matter to the Attorney-General and send a copy of the report to the Commissioner.

Thus you would see that in Sri Lanka there is ample provision made in the prison regulations for prisoners to make requests or complaints. However, having rules and regulations and guidelines in the book in one thing and having them operating to satisfaction is another. It is said that even in some of the developed countries with reputations for advanced correctional systems the grievance procedure is far from the ideal. The "Prior Committee" (1985) which examined the Prison Disciplinary System in the United Kingdom had this to say about the grievance procedure in the United Kingdom:

"Certainly our inquiry has revealed widespread dissatisfaction with our existing grievance procedures. The many methods available to the prisoner wanting to make a complaint do not add up to an adequate system. For the average prisoner, the system seems complex, confusing and frustrating. The language used in the information for prisoners on making complaints is hard to understand. Petitions to the Home Secretary are not regarded with much confidence. Maguire and Vaggs research study into watchdog role of "Board of Visitors" revealed that the system operates far from satisfactorily. We hope that the recommendations made in that report will be implemented specially."

We must examine our own systems and see how much of the above are true about our systems. With my long years of prison experience I can say that the average ordinary prisoner is scared of making open complaints against prison administration; whether it is about ill-treatment or about food or against an officer. He fears the reprisals not only from the staff but also from the faithful prisoners of the administra-

tion. He fears he'll become an outcast in the prison and will be considered a trouble-maker by the prison staff, specially the lower grades. It is only the "veteran hard-core prisoner" who is prepared to face the challenge, who would dare to make a complaint.

However secretly a complaint is made by a prisoner, at one stage or the other when the inquiries commence, it will be known as to who made the complaint. Therefore in practice, the formal grievance procedure does not stand up to its expectation.

Apart from the formal grievance procedure I have observed in Sri Lanka an informal grievance procedure. That is a procedure outside the written regulations.

Prisoners sometimes write anonymous petitions to the Commissioner, Minister in charge of the subject of prisons or even the President of the country. These petitions are smuggled out of the prisons and posted to the authorities. Sometimes a released prisoner will write a petition on behalf of his colleagues. The relations of the prisoners too make complaints after obtaining the necessary information at the visits. They even make representations to their Member of Parliament who will take it up with the proper authorities. In Sri Lanka we also see prisoners making complaints to the Judges or Magistrates through their lawyers. This often happens when they are produced in courts for pending cases.

This informal procedure has very often helped prisoners to find solutions to their problems.

In the recent past there has been a new development in the grievance procedure in the Sri Lankan Prisons. After the outbreak of terrorist activities in the South of Sri Lanka in the years 1988 and 1989, large numbers suspected for terrorist activities were taken into custody and kept in various detention camps under the Police and Army. There were agitations by human rights activists regarding the treatment meted out to these detainees. The detainees claimed themselves to be political prisoners whilst the government refused to accept them as such. Due to the agitation by the human rights activists and the pressure from international organizations, the Sri Lankan Government permitted the International Committee of the Red Cross to examine the detention camps. On the recommendations of the I.C.R.C. most of the detainees were handed over to the custody of prisons. Thereafter the I.C.R.C. with the permission of the Government started visiting all the prisons in the country and making reports to relevant authorities. They not only visited the terrorist detainees but saw the ordinary criminal offenders as well. Now, for the last four years I.C.R.C. has been visiting our prisons. During these visits, I.C.R.C. entertains complaints from prisoners and takes up the matters with the relevant authorities when it becomes necessary. Their report, the "working papers," have been very useful not only to the prison administration but also to the prison inmates. This kind of external monitoring has definitely helped to improve our standards.

(2) d. Contact with the Outside World

The mere fact that a person has been sent to prison does not mean that he should be completely cut off from the rest of the society. For the purpose of his rehabilitation and re-entry into the society as a law abiding citizen, it is essential that the prisoner keeps adequate contact with the outside world. Imprisonment deprives the person, sentenced or remanded, his normal contact with the society. He is separated from his family and friends. He looses his employment and his contacts with his bosses and workmates. Living under these conditions for a long period can drive a person towards insanity. Prisoners also must be able to know what is happening in the outside world. He must be able to know the political, social, economic and other changes taking place in the society. If not when he is released from the prison after a long sentence he will feel a complete stranger

in the society and his re-settlement will be made very difficult. This is specially so in countries where political and economic changes take place at a rapid rate.

It is with a view to overcome these problems arising out of imprisonment that Standard Minimum Rules 37, 38 and 39 under the Caption "Contact with the outside world" have been established. Standard Minimum Rule 37 requires that prisoners be allowed under necessary supervision to communicate with their family and reputable friends—at regular intervals. Standard Minimum Rule 38 states that foreign prisoners be allowed reasonable facilities to communicate with the diplomatic and consular representatives of their countries. It further states that when diplomatic or consular representation is absent in the country or when the prisoner is a refugee or a stateless person similar facilities must be permitted to communicate with the diplomatic representative of the country which is looking after their interest or any national or international authority whose task it is to protect such persons. Standard Minimum Rule 39 states that "prisoners shall be kept informed regularly of the more important items of news by reading of newspapers, periodicals or special institutional publications, by hearing wireless transmission, by lectures or by similar means as authorised or controlled by the administration." Sri Lanka is fully committed to the ideal of rehabilitating the prisoners. Therefore contact with the outside world is not only permitted but also encouraged.

Prison Rules (227 (1)) make provision for every newly convicted prisoner to receive visits from and communicate with any of his relations or friends for the purpose of preferring an appeal or providing bail.

He is allowed to receive visits or communicate with friends as often as the Director considers it necessary to arrange for the management of his property or other family affairs.

In Sri Lanka every convicted prisoner is permitted to receive visitors once every month during the term of his imprisonment. He is also permitted to send one letter a month and receive a reasonable number of letters. However, the rules allow the director of the prison to permit a prisoner to receive visitors more than one day in a month or to send more than one letter a month under special circumstances. In the Sri Lankan prisons this discretion is used very often due to the liberalised policy on visits and correspondence. On special holidays of national importance such as the Independence Day, Christmas, Wesak and New Year's Day, prisoners are allowed to have any number of visits. They are also allowed to receive items of food at such visits.

In the Open Prison Camps where a more liberal and relaxed atmosphere prevails visits are allowed unsupervised. However, our liberalised visits have still not reached the stage of conjugal visits.

The unconvicted or the prisoners awaiting trial are entitled to receive visits, once a day lasting not more than fifteen minutes. The Director has the discretion to allow more than one visit a day or to extend the duration of the visit to more than fifteen minutes.

Though Sri Lanka has adopted a policy of liberalised visits to prisoners there are obstacles to its practical application. Due to the overcrowded situation in prisons the duration of visits (in the closed prisons) have to be curtailed in order to accommodate more numbers of visits.

Sri Lanka is fortunate in not having a large number of foreign prisoners. When foreign prisoners are admitted to prisons it is the duty of the director to inform the diplomatic or consular representative of the country. Thereafter as and when necessary, visits from the diplomatic mission are permitted.

In recent years many national and international human rights groups and other organizations have shown interest in the

administration of prisons and the treatment of prisoners. Government has permitted many such groups to visit prisons and interview prisoners. These groups have been helpful to prisoners specially to those who have no friends and relatives to help them.

In Sri Lanka prisoners are provided with daily newspapers in all three major languages, Sinhala, Tamil and English. They are also provided with radio and television facilities. Newspapers are censored and news items on prison escapes and riots whether foreign or national are deleted. The radio and television facilities are available only during fixed hours of the day other than on weekends and holidays.

In addition to these media facilities documentary films and video tapes are exhibited to the prisoners on a wide range of subjects on a regular basis. These have been very helpful in educating the prison inmates on AIDS and drug abuse. Arrangements are made and facilities provided for both government and non-governmental organizations to deliver lectures, and conduct educational and training classes on topics of interest and of correctional value.

What has been discussed in this paper are the basic or minimum physical and other requirements for the treatment of prisoners. The problem of the application of these standard minimum requirements could be analysed from several angles. One is the problem arising out of non-adoption of the Standard Minimum Rules into local legislation. Another is the difficulty in the applicability of the rules to the same degree in all places at all times due to the varying economic, legal, social and other conditions. A very common situation that is observed in many developed as well as developing countries is the difficulty in implementing the Standard Minimum Rules due to conditions beyond the control of the Prison Administrators, even though the Standard Minimum Rules are adopted into local legislation. Here I refer to the situation of overcrowding in prisons.

The application of the Standard Minimum Rules for Prisoners has been discussed from time to time at various forums. One such forum of the United Nations is the Congress on the Prevention of Crime and Treatment of Offenders. The Conference of the Commonwealth Correctional Administrators is another. In fact the Commonwealth Secretariat has drawn up their own "Minimum Standard Rules for the Treatment of Prisoners." The regional United Nations Institutes for crime prevention and criminal justice such as the HEUNI—Helsinki Institute and UNAFEI—United Nations Asia and Far East Institute too have examined the application of Standard Minimum Rules at various times.

At the International Preparatory meeting for the Seventh United Nations Congress on Prevention of Crime and the Treatment of Offenders held in Italy in September 1984 the following observations were made regarding the implementation of the Standard Minimum Rules for the Treatment of Prisoners.

"It was noted that so far the United Nations had made three inquiries on the implementation of the Rules. Those surveys had revealed that the Rules had had a significant impact on the laws and current practices of many countries and that, to a large extent, the principle of the Rules had been embodied in prevailing prison regulations. It was observed, however, that the results of the three surveys confirmed that there were still wide areas in which the Rules, in particular those dealings with accommodation and decent living conditions for prisoners as well as separation of categories and prison work, had not been implemented."

The above statement is very true regarding Sri Lanka and I believe is true regarding many developing countries too. In most of these countries single-cell accommodation with the minimum standards men-

tioned in the Standard Minimum Rules could be considered a luxury. Due to the severe overcrowding in Sri Lanka, single-cell accommodation is provided only to specially watched prisoners such as escapees, dangerous criminals and those requiring protection from others. All others share cell accommodation or are kept in overcrowded dormitories. Prison overcrowding in many developing countries is not merely a problem of numbers or space. It is a problem of gross inadequacies in essential requirements such as sanitary and bathing facilities and sometimes clothing and bedding. In Sri Lanka excepting two new prisons all the prisons are over one hundred years old. Most of them have lived beyond their age. Most of these prisons presently hold three times the number they are authorised to hold. Though provisions are made in the law, acting according to the rules and regulations specially regarding accommodation are almost impossible in practical terms. Most single cells are occupied by five or more prisoners making it not only inconvenient but unhygienic. Sanitation becomes difficult due to overcrowding. Maintenance of lavatory and other sanitary installations become a recurring problem. Providing adequate bathing and washing facilities in keeping with the Standard Minimum Rules becomes extremely difficult if not impossible.

Overcrowding of prisons and its resulting problems are not limited to developing countries. Even in the developed world the problem exists in different degrees. In a White Paper presented to the Parliament in September 1991 by the Home Office entitled "Custody, Care and Justice: The way ahead for the Prison Service in England and Wales," the following was mentioned about the situation in England and Wales.

"The problem of overcrowding, particularly in local prisons, has been a drain on the Prison Service over many years. It has made it very difficult to provide acceptable conditions. It engenders tension amongst staff as well as prisoners and their families. It puts pressure not just on cell accommodation, but also on many of the other facilities in the prison. A decent service depends on the end of overcrowding."

Unfortunately, in Sri Lanka and most of the other countries prison authorities have no control over the numbers admitted to prison. Whatever the numbers the courts order to be admitted will have to be admitted to the prisons.

The problem is worse as most of these countries do not have plans for new prisons. Building new prisons is an exorbitantly costly exercise. Owing to severe budget restrictions and the high cost of building most developing countries cannot afford to build new prisons or add new buildings to existing institutions. Further, as in Sri Lanka in most developing countries prisons occupy a very low position on the priority list of the government. Therefore, the overcrowded conditions in prisons will prevail for some time and with them the resultant difficulties in the implementation of the Standard Minimum Rules will continue. The only hope for these countries lies in the adoption of alternative sentences to imprisonment and ways and means to reduce the heavy remand population.

Summary

From the above discussion it would be seen that for the complete adoption of the Standard Minimum Rules several conditions have to be fulfilled in the adopting countries. The most important of these conditions is to make the necessary rules and regulations in the local legislations. The second is the provision of adequate funds in the national budgets to provide the necessary facilities to establish and maintain minimum standards. The governments must be made to understand that like the schools, hospitals, police and courthouses,

etc., prisons are also essential social institutions in the society and that prisons should also be given their due place in the total social development plan of the country. The third and most effective and important aspect regarding the implementation of the Standard Minimum Rules is the intensified training of the prison personnel at all levels. In this respect the services that could be rendered by the affiliated regional institutes such as UNAFEI of Japan and HEUNI the Helsinki Institute have been much emphasised.

The other important matter is to make the society understand that even the prisoners need to live as decent human beings. Even in the developed countries criticism is levelled against correctional administrators that they are pampering the prisoners by providing them with too many facilities. Therefore the education of the general public about the importance of the implementation of the Standard Minimum Rules is essential for their acceptance by the society.

Finally, the beneficiaries of the Standard Minimum Rules, the prisoners themselves must have a proper understanding and knowledge of them. For the proper maintenance of the Standard Minimum Rules, it is essential that prisoners know what their rights are.

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Current Problems in Institutional Treatment and Their Solution in Pakistan

*by Muhammad Shoaib Suddle**

Ever since the publication in the US of Robert Martinson's (1974) short paper "What Works? Questions and Answers about Prison Reform," those working with offenders both in and out of prison have not only been confronted with the most pessimistic ever—Nothing Works—penal policy doctrine, they have also been led to reflect seriously on the true value of their work. Long gone it seems, are the days of rehabilitating offenders, particularly in the institutional setting. Other researchers (e.g., Brody 1976; Folkard et al. 1976) have also contended that imprisonment has no effect on recidivism. More recently, Andrew Rutherford, Chair of the Howard League, in the introduction to "The State of the Prisons—200 Years On" (Whitfield 1991) has observed:

> The most striking aspect of prison reform over the last two centuries is how little of it there has been (p. 2).

Before we proceed to analyze whether and to what extent the "Nothing Works" slogan has any real foundations, let us try to put the life in the prison in perspective.

The Prison Community

Who are the people who inhabit the prisons? What are their problems? How is the individual inmate affected by prolonged periods of incarceration? A systematic study of these and other related issues is important for a proper understanding of what plagues our prisons.

There is a variety of people entering into prisons: professionals and amateurs; neurotics and psychopaths; first offenders and chronic recidivists; convicted and unconvicted (remand) prisoners; lifers and short-termers; sex deviates and the sexually normal; those coming from broken homes and those from stable family relationships; rich and poor; employed and jobless; young and old; sick and well; educated and illiterate; male and female—depending on what crimes they have committed and how efficient the relevant criminal justice agencies are in bringing them into "the net"—who are all held in close association. They are not "born criminals," but—mostly—just ordinary humans.

Despite diversity in populations, the penal institutions have many common characteristics. The classic accounts of "Prison Community" by Clemmer (1958) and "The Society of Captives" by Sykes (1958), though relating to maximum-security prisons, give harrowing tales how the observed inmates appeared to have vegetated over time.

The Pains of Imprisonment

There are several psychological and sociological pains that prisoners may suffer from during their confinement to prisons. Sykes (1958) categorizes these pains as (1) deprivation of liberty, (2) deprivation of goods and services, (3) deprivation of heterosexual relationships, (4) deprivation of autonomy, and (5) deprivation of security. These deprivations potentially cause grievous injury to an inmate's self-image, weak-

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en his ego, impair his defences, generate anxieties, and exacerbate his frustrations.

Goffman (1961) calls prisons "Total Institutions," where all aspects of life including working, eating, and sleeping are conducted in the same place in presence of others, according to a tight schedule as ordered by the prison administration, and where the inmate undergoes a series of abasements, degradations, humiliations, and profanations of self. His self is systematically, if often unintentionally, mortified. By losing most of his civil rights, he dies a "civil death"; he suffers property dispossession, personal defacement, and disfigurement; his mail is censored; any visits by his spouse (or friends) are closely supervised, exposing his secrets both to the prison staff and to other inmates. Goffman calls this "contaminative exposure" whereas Cohen (1974) characterises this trend as being towards the growth of "human warehouses," where inmates are "stored" rather than, to use Goffman's phrase, "tinkered" with.

The pains of long-term institutional "storage" can be particularly severe. In Richards' (1978) study on British "lifers" and "fixed-termers" (serving more than ten years), the five most severe problems indicated were: (1) missing somebody, (2) feeling that life is being wasted, (3) feeling sexually frustrated, (4) missing little "luxuries," and (5) missing social life. These problems related to the deprivation of relationships in and with the outside, rather than to the privations of institutional life.

Flanagan (1980), using Richards' (1978) methodology on American "long-termers," has concluded that loss of relationships with family and friends is probably the most serious deprivation of prolonged periods in imprisonment, although the five most severe problems of long-term institutional confinement indicated in his study are not identical to those of the English study.

In their paper "The Prisoners' Perceptions of Their Problems and Coping Strategies," presented at the International Seminar on Criminal Justice—Problems and Prospects, held at Islamabad (21–23 July, 1992) under the auspices of Asia Crime Prevention Foundation Pakistan, Tariq and Abbas (1992) reported findings of their replica study on Pakistani long-term prisoners. The ranking order indicative of the five most severe problems of imprisonment was as follows: (1) wishing that time would go faster, (2) feeling guilty that family got in trouble because of me, (3) feeling that life is being wasted, (4) desiring for an honourable life after release, and (5) missing someone. Like Richards (1978) and Flanagan (1980), Tariq and Abbas found that problems pertaining to "outside world" received higher severity scores compared with the ones related to "inside world." The "physical problems" were not perceived as severe as "future worries" or "psychological stresses."

It may be noted, however, that although cross-cultural comparisons between the British, American, and Pakistani results indicate a certain degree of universality, it is important not to generalize until more—conclusive—work is carried out; according to Goffman (1961), for instance, it is not so much the "outside world" as the "internal conditions" of a "total institution" which determine a prisoner's assessment of that institution. More importantly, Bukstel and Kilmann (1980) have pointed out that an inmate reacts to his prolonged custodial experience in an idiosyncratic manner.

If psychological and sociological determinants of a prisoner's perceptions/reactions to institutional confinement are individually based, the penal policy implication of this is that any treatment programme aimed at his rehabilitation will not work unless specifically tailored to suit his individual circumstances. Whenever incarceration of an offender seems absolutely essential, it is important that he is kept in "positive custody" (May Committee 1978: para. 4.26), and as far as possible, in a

place close to his home so as to facilitate frequent and meaningful contact between himself and his family, friends, and the rest of the "outside world."

The issue of pains of imprisonment is also inextricably linked with crowding conditions in the prison system. Not only does the existence of such conditions exacerbate the psychological and physical pains of imprisonment of the inmates, it can also lead to crisis situations for the prison management; many prison riots are the direct result of "intolerably inhuman prison conditions" caused by overcrowding.

Prison System: The Overcrowding Crisis

The crux of the overcrowding crisis is often perceived to be a problem of accommodation: too many inmates are crowded into places, with inadequate facilities for attending to such basic personal needs as going to the lavatory and keeping oneself clean. Important though these issues are, they considerably understate the problem.

Overcrowding in the prison system is almost always disproportionately concentrated in the local (district) prisons—primarily meant for remand prisoners, awaiting trial. In January 1993, there were 68,533 prisoners in the entire prison system of Pakistan as against the authorised prison accommodation of 36,478 prisoners (see Annex.), giving an overall crowding factor of 188%. Of these, almost two-thirds were remand prisoners. But since they were not evenly distributed, the local prisons and remand centres bore much more than their "share" of the burden of overcrowding. This meant that remand prisoners, in particular, were being routinely herded into squalid prison dormitories. When extra prisoners have to share accommodation with existing prisoners, they are, in thousands, doubled up, even tripled up in single cells, or in equivalent space per prisoner in double or multiple cells. Under these conditions, how prisoners manage to respond to the calls of nature when necessary constitutes a continuing nightmare.

Overcrowding can also lead to prison indiscipline and many other management problems. It becomes virtually impossible for the prison staff to let prisoners have sufficient time out of cells. Resultantly, whatever training programmes are there are not adhered to. At times, even daily exercise is denied to the inmates on the familiar excuse of shortage of staff. The continuous "locking up" of prisoners for up to 23 hours a day has serious adverse effects on the morale and behaviour of prisoners, leading to avoidable staff-prisoner frictions. Indeed, if this situation continues for some days, the impoverishment of the prison regime can lead to riots, causing loss of life and property. The prisoners, in order to cope with high levels of stress, often start looking for drugs, or indulge in homosexual activities or some other "diversions."

In the above discussion, I have given a brief overview of some of the current problems confronting the penal institutions. Before we proceed to analyze the vexed issue of "what works?" in the field of institutional corrections, let us take a cursory look at the UN Standard Minimum Rules for the Treatment of Prisoners.

The UN Standard Minimum Rules for the Treatment of Prisoners

The Standard Minimum Rules for the Treatment of Prisoners (SMRTPs) were adopted by the first quinquennial United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Geneva in 1955. In 1957, the Economic and Social Council of the United Nations approved these rules *vide* Resolution 663 C I (XXIV) of 31 July 1957. The Rules represent the minimum standards which are accepted as suitable by the UN and are, therefore, intended to guard against any maltreatment, especially with regard to

enforcement of discipline and the use of instruments of restraint in penal institutions.

The Government of Pakistan felt able to ratify these rules in 1966, although the existing prison rules could not be brought closer to the UN standards until 1978, and further amended in 1981 (In Punjab province only). The state of actual implementation of the UN Rules, however, is still elusive; it presents a rather gloomy picture, although not wholly unrelieved by brighter spots.

The Standard Minimum Rules comprehensively deal with almost all aspects of prison life, including accommodation, personal hygiene, clothing and bedding, food, exercise and sports facilities, medical services, discipline and punishment, information to and complaints by prisoners, contact with the outside world, treatment, classification and individualization, and education and recreation. Their application extends to all categories of prisoners: criminal, civil, awaiting trial, convicted, insane and mentally abnormal, and arrested or detained without charge.

If properly followed, the Standard Minimum Rules can—within the constraints of local political, cultural, social, legal, and economic practices—provide solutions to most contemporary problems of institutional confinement of prisoners, including those pertaining to growing overcrowding of penal establishments.

If after all non-custodial measures as, for instance, given in Tokyo Rules are considered and found inappropriate in view of the grave nature of the offence, and the offender is sent to a penal institution *on* punishment, not *for* punishment, there seems to be absolutely no moral or legal justification for using prison as a "human warehouse." In the final part of this paper, I propose to have a critical look at the doctrine that "nothing works" as regards institutional treatment and rehabilitation of offenders.

What Works—Nothing or Everything?

The penal policy doctrine that "nothing works" has had a profound impact during the past almost two decades. As a result, even the prison staff had tended to lose faith in any positive justification for the inherently unpleasant tasks of their profession.

Indeed, if we are to accept the research findings of Martinson (1974), Brody (1976) and others then effectiveness in terms of recidivism rates is likely to be limited. However, the situation is far from clear and even Martinson himself revised his view in 1979 stating that "contrary to my previous position, some treatment programmes do have an appreciable effect on recidivism". Thornton (1987) looked again at the same data used by Martinson in his original studies and came to much more positive conclusions.

In recent years, there have been some attempts to interpret the prison in terms of social psychological theory as a complex community having a "culture" that is in a measure unique, with characteristic processes of individual and social accommodation, and with typical attitudes and values shared by inmates. This probing into the nature of prisons promises to enrich our knowledge of the issues involved in institutional treatment of offenders and to stimulate efforts to overcome some of the inherent difficulties involved in the correctional process.

It is the author's belief that the main elements in the treatment programmes of contemporary prisons, including vocational training, education, religion, work, psychotherapy, special activities, and discipline, are relevant; if not for significantly reducing recidivism at least for providing essential ingredients for the regime of "positive custody," where prisoners would not live in sterile and deteriorative idleness.

It should be noted that so far we have not been successful in developing an accu-

rate and refined technique of measuring the effectiveness of institutional treatment. Nor are we able to grapple with the real issue: how, when, and why a particular treatment programme is relevant to the specific needs of a particular offender.

In conclusion, Martinson's argument is fundamentally flawed in two ways: (1) by reliance upon recidivism as the sole measure of success of a treatment programme; and (2) by a failure to address the problem of how sentences are implemented and operate in practice. Let us not allow the inconclusive recidivism argument stall our efforts aimed at discovering new frontiers in the realm of individual-based corrections, thereby discontinuing potentially highly useful work that can be done in our prisons.

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Annex

Monthly Prisons Population Statement of Provinces for the Month of January 1993

	Province						
	Punjab	Sindh	Nwfp	Balo-chistan	Azad Kashmir	Northern Areas	Total
Jails							
Central	10	4	3	2	1	–	20
Distt	15	9	11	10	3	3	51
Splo/Women/B.I.	2	2	–	–	–	–	4
Sub	1	–	4	–	–	–	5
Total Prisons	28	15	18	12	4	3	80
Authorised Accom-modation	17,771	7,805	6,758	3,982	110	52	36,478
Male Priosoners							
Convicts	11,228	2,054	3,101	1,624	29	14	18,050
Under Trials	26,723	7,557	5,376	2,039	38	24	41,757
Condemned	1,996	74	63	26	5	–	2,164
Female Prisoners							
Convicts	156	8	13	5	2	–	184
Under Trials	542	49	47	13	6	–	657
Condemned	18	–	–	–	–	–	18
Foreigners	2,850	1,927	576	350	–	–	5,703
Total	43,513	11,669	9,176	4,057	80	38	68,533

Current Problems in Institutional Treatment and Their Solution—Iwahig: One of the World's Best Correctional Systems

*by Bernardo R. Calibo**

I. Introduction

Hidden in the pages of a dusty Blue Ribbon Committee Report of the Philippine Senate is the startling fact that, years ago, the Iwahig Penal Colony, a depository for excess prisoners from the congested national penitentiary, had gained international recognition as the "first and most successful open penal institution in the world."

The recognition was given by no less than the United Nations Congress on Crime Prevention and the Treatment of Offenders held many years ago in India. That U.N. Congress declared that Iwahig was "the most advanced and unique type of institution in the world."

With this dramatic discovery, one wonders why the Iwahig method has not been replicated nationwide. One basic reason is the lack of adequate information on the matter.

If every province could have an Iwahig-type open penal institution to accommodate excess prisoners from congested provincial and town jails, the old problem of congestion could be readily solved—nationwide.

We have been trying to look for solutions to congestion. We need not look any further. The solution is right before our eyes: the Iwahig Solution. To borrow the expression of a renowned NGO leader, "We do not have to reinvent the wheel."

Nothing is, of course, perfect, and this holds true for Iwahig, that is, the Iwahig concept could stand improvements. I, therefore, prepared a blueprint which I have discussed with officials of the Bureau of Corrections, Bureau of Jail Management and Penology, non-government organizations (NGOs), etc. Some of these officials are alumni of UNAFEI. They have expressed enthusiasm for the blueprint, belief in the validity of the method, and support for its immediate implementation.

Among the concepts I have added to the Iwahig Method are:

1. The Transmigrasi Model
2. Prison Facility Design
3. The Fallback Alternative to the Usual Livelihood Training
4. Behavioral Control through Nutritional Therapy
5. Self-Induced Reformation through the Ignatian Method
6. Inclusion of Detention Prisoners in the Iwahig Concept (a bill is being prepared for the legislature for this purpose).

II. The Philosophy of Iwahig

The success of Iwahig is anchored on a sound philosophy, specifically, Scholastic Philosophy.

Since ancient times, man has sought to strike a balance between crime and punishment. In the process, man has developed two fundamental theories of corrections. One school of thought teaches that corrections is *retributive* in nature, while another school maintains that corrections should

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be *utilitarian* in essence.

The philosophers Kant and Hegel advocate the retributive theory. For them, there should be punishment through fine or prison, that is, "punishment in purse or person." The retributive aspect abides by the doctrine of vengeance: "An eye for an eye, and a tooth for a tooth." For Kant and Hegel, punishment serves no other purpose except this.

On the other hand, the ancient Greek philosopher, Plato, argued for the utilitarian theory of corrections, stating that it is meant for the reformation of criminals and to be a deterrent against others from doing similar criminal acts. He taught that it would be unrealistic for the community to retaliate against the criminal for past and irremediable acts. This is retrospective. The concentration, he said, should be prospective, that is, corrections should look towards the future: to prevent the criminal and others from committing the same act.

Another Greek philosopher, Socrates, distinguishes between, on one hand, criminals who are curable and can be improved by punishment, and, on the other hand, criminals who appear incurable. The latter, in serious cases, should be, according to Socrates, subjected to the punishment of death. This is the ultimate in crime prevention: you prevent, not just the commission of the crime, but also the existence of the person who may further commit crimes.

The great European Thomas Aquinas, the anchorman of Scholastic Philosophy, pursues an eclectic method: he combines to a certain extent the retributive and utilitarian theories, draws out the best of each, and weaves a solid synthesis that has withstood the test of centuries. The moral order, according to Aquinas, requires that penalty be imposed to right wrongs. However, the method of application should be in such a way that the system provides for the reformation of the criminal and enhances deterrence—to keep him and others from the commission of similar acts.

Our present correctional system combines all three elements as embodied in Scholastic Philosophy: retribution, reformation and deterrence.

III. Statement of the Problem

The bottom line in Corrections is to transform the convict into a normal, responsible citizen.

Many correctional institutions have swanky buildings, state-of-the-art technology, so-called advanced educational systems, and sophisticated technical training. But their inmates, upon release, often go back to a life of crime. The millions spent for these benefits are meaningless if they fail to accomplish the goal of corrections: *transforming the convict into a normal, responsible citizen.*

This failure is due to a number of reasons. The effort exerted by correctional officials inside the institution often do not reflect the actual needs of life outside prison. Furthermore, reformation methods are often imposed on the convict, rather than making use of tried psychological techniques wherein the convict motivates himself to desire self-reform through his own decision—not the decision of prison authorities. Finally, correctional personnel often do not keep up with advances in other fields of knowledge and endeavor which could be applied to the needs of the correctional system.

Indeed, these are problems. But for every problem, there is a solution. And this is what this paper is all about.

IV. Analysis and Solutions

Congestion constitutes the biggest reason for prison riots and the non-reformation of criminals.

Under the Iwahig-inspired concept, there is no overcrowding. The inmate is given a small farm, enough to support not just himself, but also his family. The family of

the inmate is allowed to live with the latter in the settlement, so as to make the life of the prisoner remain as normal as possible.

Inmates who are allowed to settle with their families are, as a rule, happier and better behaved. The members of the family are a big help in the rehabilitation of the inmate and contribute much for his peace of mind. For one thing, he does not have to worry about what the wife may be doing, or what may be happening to the children. The arrangement helps maintain the closeness and intimacy of the family unit and helps preserve marital fidelity. It also helps prevent sexual abnormalities, such as sodomy.

The authorities help the families put up small native huts for housing. Some subsistence is given to the families to help them get started in agricultural work.

The inmates' children are allowed to go to school together with the children of the staff. Those of the same religion share the same chapel.

The Iwahig concept provides a more normal and wholesome atmosphere than closed institutions. Tension is mitigated. The inmates feel satisfied and are more sociable.

Unlike in closed institutions, the gang situation is not present in Iwahig. Brotherhood ties are weakened among gang members. The various gangs work in the same fields.

Incidentally, the prisoners are given the option to work in the prison shop established for skilled labor. But the emphasis is more on scientific agri-business because the latter ensures more stability, as will be explained later.

Ironically, many prisoners, after serving their terms, beg Iwahig prison authorities to allow them to stay on in Iwahig. That is how successful Iwahig has been. Compare this to the frequent jailbreaks in other institutions ...

Apparently, these prisoners have found paradise within the boundaries of their institutionalized treatment, indeed a unique phenomenon.

This reminds us of the wisdom of Frederick Langbridge, who wrote:

> Two men look out through the same bars:
> One sees the mud, and one the stars.

A. Criteria for Admission under Iwahig Concept

The criteria for admission under the Iwahig concept are determined by the suitability of the inmate for this type of social rehabilitation. Common sense plays a key role in the evaluation of an inmate's suitability. Much will depend on the interview conducted by prison officers who have had occasion to deal with the inmates who are candidates for admission.

All offenders who are sentenced to 1 year and 1 day are eligible under the Iwahig concept, provided they do not belong to any of the following categories, to wit:

1. Multiple convictions;
2. Inclination to escape;
3. Subversives;
4. Offenses against chastity, such as rape;
5. Sex deviates.

A prisoner-candidate must have exhibited good conduct and served at least 1/5 of his sentence before he can avail of this type of treatment.

In the institutionalization of the Iwahig concept in the local level, inmates, whose offences are bailable but who cannot put up the required bail, can then avail of the Iwahig-type treatment. Inmates whose offences are non-bailable would of course be disqualified.

B. Work Therapy

Inmates under the Iwahig concept are kept busy with wholesome work, in line with the motto of one of the most successful reformers of juvenile delinquents, John Bosco, who once stated, "An idle mind is the

devil's workshop."

Under the Iwahig concept, there is no idleness. Every inmate has a special task. Iwahig gives special emphasis to agribusiness. It has also room for non-agricultural pursuits, such as construction, other types of engineering work, handicrafts, cultural arts, institutional service and educational work (those who have sufficient academic background act as teachers and instructors).

Upon arrival in the Iwahig-type settlement, the inmates are given a one-month orientation wherein they are briefed on the type of work available and wherein the inmates are helped in choosing the type of work suited for them. Because of the differences in inclination, education and training, work is varied. Primarily, the inmates are assigned to work where they have had training and experience.

Secondly, where possible, the inmates are trained in other types of work, so that upon release, if they cannot be accommodated in one type of job, they would have bigger chances of being accommodated in other forms of work.

Under the Iwahig concept, efforts are made that the type of training meet the standard required in work outside. The work hours also approximate those outside, with no interruption, except in meritorious cases.

Although training in various types of work is practised, the inmates are at the same time encouraged to remain in one type of work long enough to attain expertise, so that they can be competitive once they leave and seek jobs outside.

The Iwahig-type institution concentrates on goods and services that find a ready market.

Inmate labor is geared to be productive. For example, it would be counterproductive if inmates are made to shatter huge rocks just to tire them. This would be demoralizing. Inmates should see that their work is put to good use, that they are duly compensated and given adequate and relevant training—these things constitute a big morale booster. Remuneration increases inmate efficiency, enables them to support their families, and ensures some savings they could use upon release.

Compensation for inmates may not be the same as that given outside but is programmed to be substantial enough to impress upon them that they are not being exploited.

C. Security

Under the Iwahig concept, there is a minimum of physical precautions (such as walls, locks and guards). Discipline is relaxed but firm—there is no constant and close supervision. The inmates are encouraged to use, not abuse, their limited freedom.

The newly-arrived inmates are considered medium-security prisoners. Good conduct would enable them to "graduate" to minimum-security. Repetitive troublemakers or those who attempt to escape are re-categorized to maximum-security, segregated in a barricaded compound and returned to the national penitentiary.

D. Location

In the location of the Iwahig-type settlement, it would be preferable to have it situated in a non-urban area, but near enough the capital or city proper, so as to enable the prison staff to avail of the amenities of life and at the same time enable the inmates to be close to the influence of educational institutions and social organizations.

The neighborhood should be adequately informed of the aims and methods of the project so as to dispel unfounded fears and ensure the cooperation and support of the community.

E. Staff

The staff members should be selected based on their ability to look after the needs

of others and who can give good moral influence. By no means should the project retain personnel who have been assigned to jail as a form of punishment. For how can such a person give good moral influence to the inmates when he himself needs "reformation." As the saying goes: "Nothing comes from nothing."

The number of inmates should be such that the staff would have occasion to be familiar with the personal circumstances of every inmate.

F. Additional New Concepts

1. The Transmigrasi Model

The Transmigrasi Model will be applied to further enhance the Iwahig concept. It will cover both those who are still in prison, and those who rejoin society, but are unable to get a job.

The Transmigrasi Model revolves around the concept of resettlement. This type of resettlement is different from the older version wherein a site is allocated and people are just dumped there. The Transmigrasi provides for the amenities of community life: roads, markets, medical facilities, church, schools, livelihood opportunities, etc. All these involve extensive planning and effective leadership.

The successful Transmigrasi Model is taken from Indonesia, where people are resettled in sparsely populated islands, like Sulawesi, near the southern tip of the Philippines. Incidentally, a scientist from the Philippines acts as a consultant of the Indonesian govermnent in the Transmigrasi Model.

The core of this settlement project is made up of 37 semi-private development companies, referred to as PTP. These are big development firms similar to the Philippines' San Miguel Corporation (recently adjudged as Asia's No. 1 Corporation). These firms, which are into highly diversified business operations, are responsible for the planning and development of a Nucleus Estate and Smallholders Project.

In one settlement, the PTP, as a business corporation, develops 3,000 hectares into a Nucleus Estate, that is, it develops the farms, irrigation, factories, electricity, communications, roads, bridges, markets and other infrastructures. Depending on the feasibility study, the PTP plants rubber, coffee, coconut, black pepper, oil palm, rice, etc. Then factories are set up to process the produce for local and foreign markets.

Total development in the settlement generates employment opportunities, not only for farmers, but also for doctors, teachers, carpenters, drivers, mechanics and all professions in a thriving community.

In addition to funds coming from the Indonesian government, the PTP can borrow part of the financial requirements to develop the Nucleus Estate from international lending institutions, such as the Asian Development Bank (ADB), World Bank (WB), etc. These are paid with the earnings of the PTP from its various agri-industrial projects.

The PTP manages a viable business operation that makes use of the natural resources of the settlement. It makes a "business out of resettlement."

Outside the 3,000-hectare Nucleus Estate is a bigger area of 15,000 hectares for smallholders. This Smallholders' Area surrounding the Nucleus Estate is also developed by the PTP—into several viable communities. In one community with an area of 750 hectares, 25 families may be resettled. Each family is entitled to 3 hectares, but these are not given outright. Only 1/4 of a hectare is given for the construction of a home and a vegetable garden.

The Indonesian government pays PTP for the development of the smallholders' community, which covers a road network, markets, schools, hospitals, other infrastructures and all the amenities of community life.

The PTP, in developing the farms into

productive entities, make use of the settlers as their workers. The latter get their salaries from the PTP. Thus, the settlers are not left to their own devices to survive in a new environment. Everything is organized. The settlers are assured of livelihood opportunities, not only by working in their farms, but also through the service needed in a progressive community.

2. Prison Facility Design

The prisons and jails in the country are patterned after Western building standards, usually using concrete and G.I. sheet roofing. In the tropics, these often become heat traps, especially during summer.

We have talked with representatives of prisoners, and they prefer the cool bamboo-cum-nipa huts. One who lives in a cool, airy atmosphere normally is more comfortable, satisfied and happier.

In fact, many citizens who own houses, even mansions, often have a bamboo-cum-nipa hut in the compound, usually in the backyard, to which the houseowner retires for rest. They have two reasons for this, namely, comfort and keeping to a reasonable level their electrical bills (air-conditioners usually result in exorbitant electrical bills—at least in the Philippines).

This prisoner-preferred housing has other practical advantages, such as:

a. The availability of bamboo all over the country. It even grows wild.
b. Bamboo is very cheap. Therefore, there will be not much problem in case of non-availability of funds on the part of the government. Private citizens, especially NGOs, are often sensitive to this type of problem and are quick to respond.
c. The government does not have to pay for expensive carpentry and mason work, because the inmates can build the huts themselves.

With proper designs the bamboo-cum-nipa huts can be made aesthetically pleasing to the eyes.

3. Fallback Alternative to the Usual Livelihood Training

The government spends a huge amount to train inmates to learn skills. Upon release from prison or jail, they often cannot be considered as on a competitive level with those who are not ex-convicts. Quite often, a former inmate may be highly skilled, but because of the stigma of being an ex-convict, he cannot break into the labor market. He remains jobless, and so we are back to square one. It was his joblessness which, in the first place, drove him to crime—just to survive.

While it may be all right to continue with the usual skills training, it would be imperative to also have a training in another type of skill that one may fall back on, just in case he cannot get a job. A most stable fallback would be agri-business.

Again, we have talked with representatives of prisoners. They become usually enthusiastic when it is proven to them that with scientific agri-business methods they will earn more than double, even ten times more, than the regular skilled laborer with whom they could not compete because of the latter's stigma. So why still compete with them, when the ex-convicts can earn much more. The enthusiasm of the ex-convicts go even higher when they are given actual case histories of office workers who left their jobs because they could earn much more from agri-business.

One of the country's top agriculturists has expressed willingness to impart agri-business knowledge to the inmates. A television station, that runs a regular series on agri-business techniques, is willing to provide video tapes for the inmates showing successful agri-people and "their practical ideas that work."

Many of these inmates have farm lots in the rural areas. They had migrated to the urban centers, not knowing of the potential wealth in their rural farm lots. Many

of them are now willing to go back to their roots.

For those inmates whose families have no farm lots, there are still plenty of undeveloped government lands that could be converted to agricultural pursuits. The term "non-agricultural land" is no longer tenable because of scientific techniques. Even deserts can now be converted into lush, green farms. Classic examples of these are those former barren lands of Israel which have become fertile lands. Ironically, graduates of the University of the Philippines College of Agriculture have been consultants of the Israelis

Among the other advantages of agri-business training for inmates are the following:

a. The biggest cut in one's budget goes to food. With agri-business, this cut is virtually non-existent, because the inmate can produce the food he needs for his family—right in the farm itself.
b. Another huge cut in the salary of the average white-collar or blue-collar worker is the transportation cost for the daily commuting between home and office or factory. In agri-business, this cut hardly exists because the inmate's place of work is where he lives—the farm.
c. As for dwelling, the inmate's farm can produce the wood, bamboo, etc., he needs for house expansion or improvement. Since he has all the time, he can also produce cimva-ram bricks that use only 5% cement and 95% subsoil to make concrete-like blocks. Buildings in Europe using the latter method have lasted for more than a century. The method is so simple that the inmate does not have to hire the expensive services of a mason.
d. Agri-business does not require much talent.
e. Fluctuation in the world economic scenario will hardly affect the basic needs of the agriculturist.
f. Work in the outdoors promotes physical and mental health. For example, a textile manager was given by the doctor only one year to live. He resigned from his job and turned to agri-business. He is still alive for more than 10 years now and has in fact become robust.

4. Behavioral Control through Nutritional Therapy

Alexander Schauss and Barbara Griggs have come up with scientific findings showing a direct link between diet and the propensity for crime. Even the incidence of the worst crimes (such as assault, rape and robbery) is affected by diet.

Schauss' findings are contained in two volumes, namely: "Diet, Crime and Delinquency" and "Nutrition and Behavior." On the other hand, Grigg's findinys have been published in "The Food Factor: Why We Are What We Eat."

Schauss was a probation officer whose duty was to evaluate remand centers for juvenile delinquents in the State of South Dakota. It was in one of these remand centers that he discovered the direct relationship between diet and criminal behavior. The "house parents" of this particular remand center had invited him for lunch. This gave the former the opportunity to explain to Schauss their philosophy behind the diet of the inmates.

The inmates were fed only natural foods grown in their own gardens. The surplus harvest was frozen for the winter. Among the no-nos in the remand center were fizzy drinks such as colas, coffee, tea and almost all sugar. The bread and cereal served were made from whole wheat grain—not from bleached, refined flour.

At first, Schauss was skeptical and considered the house parents of the remand house as mere faddists. Curiosity however got the better of him and upon arriving at his office he checked out the records of the remand center. He found out that some of the worst cases in South Dakota were assigned to this remand center. Surprisingly,

many of the juvenile delinquents were ready for discharge after three months. None stayed longer than six months.

With his interest aroused, Schauss deliberately sent to this remand center the most incorrigible juvenile delinquents. He knew from experience that if these delinquents were sent elsewhere, they would be subjected to standard psychiatric counselling and would remain in custody at least for two years. In the remand center to which he sent them, they could be expected to be out in six months.

Schauss decided to take a crash course in nutrition and biochemistry. He tested his novel diet therapy on dozens of probation cases. It worked in most cases. He published his research finds. Interest spread throughout USA. Scores of similar experiments were replicated in other schools and remand centers. The results were the same when junk food was junked in favor of nutritious, balanced diet. Teachers reported quieter classrooms and better attention, while house parents in remand centers reported violence drastically reduced.

The junk food industry expectedly reacted. They contended that there was insufficient scientific proof.

Research pieces were replicated on thousands more. The Schauss theory was tested over and over again. The results were the same. A typical research piece is that from a remand center in Virginia which reported that trouble was down by 80%.

The Schauss' findings were put into practice on a wide scale only when it was discovered that a healthy diet was cheaper to finance than junk food diet. Many big city education authorities adopted the Schauss diet. Whenever this was practised, delinquency took a nose dive.

Another researcher, Schoenthaler, applied the diet therapy to 17,000 juvenile delinquents in Los Angeles. Whenever the diet change was implemented, bad behavior fell by half. More interestingly, other improvements were observed, especially in classroom performance.

At this point in time, New York decided to adopt the new diet program. School meals were systematically de-junked. The results were impressive. In prior years, the average rating in New York schools was 11% below the national average. In the period since the adoption of the diet therapy, the academic performance of the student was 5 points above the national average.

Gwilyn Roberts, a senior science master in North Wales, embarked on an ambitious piece of research to determine the connection between diet and intelligence in his school. He made a detailed analysis of the children's diet. One hundred children, with the cooperation of the parents, wrote what they ate each day. These were then forwarded to the Institute of Optimum Nutrition in London for analysis by computers. Overall, it was found out that the meals lacked ten basic nutrients. These missing vitamins and minerals were involved in enzymes absolutely essential for optimum brain function.

School authorities permitted Roberts to test the theory in a scientific way. At the beginning of an academic year, all members in the second year were given a range of IQ tests. A vitamin manufacturer was hired to devise a pill with all the necessary vitamins and minerals and an identical pill with nothing of nutritive value.

Doctor David Benton of the Department of Psychology, University College Swansea, supervised the experiment. The second year in Roberts' School was divided into two categories, one fed the genuine pill, and the other given the fake pill. Only Doctor Benton knew which group took which pill. Every day 6 children took the pills, 3 genuine, 3 fake. For added precision, Dr. Benton arranged that the children were comparable in age, sex, social class and ability.

Dr. Benton was skeptical. He could not accept that behavior and ability had anything to do with diet. After 9 months, the

children were again given IQ tests. The data were sent to Dr. Benton in Swansea. In the non-verbal IQ tests, a drastic change was evident: while there was no change in those who took the fake pill, the children who took the genuine pill had scores that shot up a staggering 9 IQ points.

The experiment arrived at a fairly conclusive proof. Where junk food was junked in favor of a nutritious and balanced diet, intelligence and behavior significantly improved.

In a way, this was known to the ancients. The Italians have a saying for this, "Buona cucina, buona disciplina"—"Good food means good discipline." The ancient Latins put it this way: "Mens sana in corpore sano"—"A sound mind in a sound body." In fact, perceptive parents know that if they give too much chocolate regularly to a child, the latter will become hyperactive. The scientific experiments merely corroborate what has been known through tradition and the experience of many families the world over.

5. Self-Induced Reformation through the Ignatian Method

As earlier mentioned, the bottom line in corrections is to transform the prisoner into a normal and responsible citizen.

Inmates often return to their old ways because of the lack of inner conversion. Inner conversion involves a personal desire for what is right; it is not imposed by higher authorities. The good is freely and enthusiastically desired by the individual, because of the benefits he sees. This is where the spiritual factor comes in.

A key to all these is the Ignatian Method. Its effectiveness has been proven through the centuries. Although the method was formulated by Ignatius of Loyola, the soldier-founder of the Jesuits, which is a Roman Catholic international organization, it has been adopted by Protestants. In fact, it can be adopted by other religions by just making some changes—after all, the process is basically psychological in nature.

Dr. Schleich, a Protestant, professor of the Faculty of Medicine at Berlin, emphatically asserts:

> "I say with all assurance and conviction that with these norms and exercises in our hands we could even today transform our asylums, *prisons* and mental institutions, and prevent the commitment to them of *two thirds* of the people today within their walls." (Underscoring supplied.)

Quoted hereunder verbatim is a synopsis written by internationally known Jesuit psychologist, Narciso Irala:

The Protestant Dr. Vittoz had a great admiration for St. Ignatius Loyola. He believed that Loyola was three centuries ahead of his time in the fine introspection and effective pedagogy revealed in his Exercises and Examens. The purpose of St. Ignatius is to make a man perfect. He proceeds according to the most sublime laws of our higher mental activity without allowing the lower levels of activity or disordered feelings to disturb this process. This is indicated in the very first paragraph of his little book. ("... just as walking and running are bodily exercises, so also any method of preparing and disposing the soul to remove from itself all disordered affections (feelings and impulses) and then to seek and find the divine will in arranging one's life with a view to the soul's salvation, these are called spiritual exercises.")

To this end he uses the will's legislative power in the Exercises to choose and determine a concrete way of life. In the examens he uses the will's executive power to bring this down into practice.

The Exercises propose motives which are most strong and noble in themselves and which are reinforced by the feeling of love for Jesus Christ. These motives are to be

subjectively felt and adopted by the exercitant. When his higher mental activity has been so directed that passions do not deroute it, then come meditations preparatory to the "Election" (or choice of a way of life). And then come decisions about concrete details of the future way of life.

The executive power of the will has a very efficient instrument in the "particular examen." This is truly a control and stimulus to the will. The particular examen makes us perform true will acts by making them concrete, each the subject of some one virtue or vice, and in a determined place and time. It makes us feel their possibility and facility by limiting the expenditure of energy and vigilance to a half day at a time. Finally it makes us renew our decision three times a day, and strengthen it by comparison of one examen with another, with contrition when we fail and with love of Jesus Christ. *It is a spiritual treatment which is most efficacious for curing moral illnesses.*

V. Conclusion

The Senate Committee on Justice had long ago pushed for the replication nationwide of the Iwahig concept, by proposing smaller versions in the provinces.

To ensure instant implementation with assurance of success, we will involve the non-government organizations (NGOs). As earlier stated, the Bureau of Corrections, Bureau of Jail Management and Penology and the NGOs are ready to do their thing. Alumni from UNAFEI are ready to help us out. I will give a regular feedback to UNAFEI, ACPF and JICA, so they will know what their alumni are doing back home.

We believe we can do all these. Thoughts are the limits of one's activities. If we think that we cannot do a certain thing, then we can never do it. As the ancient citizens of Imperial Rome used to say, "They can because they think they can."

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SECTION 2: PARTICIPANTS' PAPERS

A Brief Outline on the Treatment of Special Categories of Offenders in Hong Kong

*by Shek Lui, Bailey**

I. Introduction

The Correctional Services Department of Hong Kong operates under the regulations of the following ordinances:

Prisons Ordinance (Cap 234, Laws of Hong Kong, 1954);
Training Centres Ordinance (Cap 280, Laws of Hong Kong, 1953);
Drug Addiction Treatment Centres Ordinance (Cap 244, Laws of Hong Kong, 1968);
Detention Centres Ordinance (Cap 239, Laws of Hong Kong, 1972);
Criminal Procedures (Amendment) Ordinance (Cap 221, Laws of Hong Kong, 1980);
Prisoners (Release Under Supervision) Ordinance (Cap 325, Laws of Hong Kong, 1987);
Mental Health Ordinance (Cap 136, Laws of Hong Kong, 1989).

Sentencing an offender to any of the correctional programmes within these legal ambits is based on the nature of the offence itself and a host of other factors including, for example, age, health, etc. These ordinances circumscribe the limitation that only persons aged 14 or above will be admitted to a particular correctional programme.

Over the years Hong Kong has developed a penal system which places increasing importance on correcting and rehabilitating persons sentenced to a period of detention by Courts of Justice. To achieve this objective, comprehensive treatment and training programmes have been developed for different categories of inmates/prisoners.

As of the end of 1992, the department has an establishment of about 7,300 staff and is responsible for the administration of 19 correctional institutions capable of accommodating 9,170 inmates/prisoners. These include minimum, medium and maximum security prisons, a psychiatric centre, and training, detention and drug addiction treatment centres. There is also a staff training institute, an escort unit and three halfway houses; and the department runs an extensive community based aftercare service. In addition, the department is also responsible for managing detention centres and closed centres housing Vietnamese Migrants. (Appendix A).

II. Differential Treatment for Special Categories of Inmates/Prisoners

The classification and categorization of inmates/prisoners are important measures adopted to assign offenders serving a custodial sentence to the types of custody and treatment appropriate to individual rehabilitative needs. This process helps the individual offender to derive the best benefits from his/her incarceration and to minimize the adverse effects of institutionalization.

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Classification is primarily used to divide major differences amongst inmates/prisoners such as sexes, first offenders and recidivists, local and foreign prisoners, and to separate the young from the adult, the geriatrics, the drug dependents, the mentally handicapped, etc. Categorization supplements classification in that it identifies the security grading appropriate to each offender.

The combined use of these two systems not only assists prison administrators in determining the degree of security surveillance required of individual offenders, but also provides basic background information for them to identify different needs of persons in different categories in a constructive way conducive to the rehabilitation and subsequent re-integration of the particular offender.

III. Assignment of Special Categories of Inmates/Prisoners

Prisoners are assigned to an institution dependent upon their security rating, which takes into account the risk they pose to the community and whether or not they are first offenders. Fourteen institutions accommodate male prisoners, which include:

(a) Five maximum security;
(b) Five medium security;
(c) Four minimum security.

Prisoners serving long sentences, (over 12 years including those sentenced to life imprisonment) as well as those who are of high security risk, are housed in maximum security institutions. The criminally insane and those requiring psychiatric treatment will be accommodated in a psychiatric centre. Unconvicted persons awaiting trial are kept in reception centres appropriate to their classification and categorisation.

The four minimum security institutions hold prisoners who are suitable to work in community projects or services outside the institution.

Amongst those institutions, there is a special section for geriatric prisoners. Those who are adequately healthy undertake light industrial tasks or gardening. The incapacitated may be hospitalised.

Male prisoners under 21 years of age serve their sentences in one of the three institutions designated solely for young inmates/prisoners.

For female prisoners, there are two multi-purpose institutions, one of which is reserved for those under 21 years of age. Separate sections within these institutions are set aside for the differential treatment of prisoners, persons on remand, drug addiction treatment centres' inmates and training centres' inmates.

Apart from these afore-mentioned institutions, two other institutions are set aside as training centres for young male inmates. All inmates in this category undergo half-day education and half-day vocational training.

As for inmates sentenced to receive training in a detention centre, they will be detained in a detention centre to undergo a rigorous programme designed mainly for first offenders. The detention centre programme emphasizes strict discipline, physical labour and a harsh routine with few privileges.

One institution is designated for the treatment of male drug dependents sentenced to receive treatment in the drug addiction treatment centres.

Apart from the above, there are also six other institutions with a capacity of 35,824 for the detention of Vietnamese Migrants kept under the Immigration Ordinance.

IV. Overall Objectives of Differential Treatment

Albeit to the design of different treatment/training programmes for special categories of persons convicted of criminal offences, the underlying base across these

programmes is alike, which includes:

(1) to give effect to court sentences and orders which involve custody;
(2) to facilitate the re-integration of prisoners and inmates into the community;
(3) to provide purposeful employment for prisoners with a view to help them cultivate positive work habits, and to enhance their ability to resettle eventually in the community.

As a general rule, all prisoners certified fit by the Medical Officer are required to work. Tasks vary from institution to institution and prisoners are assigned work based on individual skills, aptitude and physical fitness. They may be allocated to laundries and industrial workshops, to carry out minor construction or maintenance work, or to provide domestic services. Those in minimum security institutions are from time to time deployed to work outside the institutions on local community projects. Some of the work performed is of high commercial value. The proceeds obtained may perhaps be viewed as income, offsetting part of the expenses incurred by the Department.

Young prisoners follow a comprehensive correctional programme which includes vocational training, educational classes, counseling, therapeutic group activities, physical education and recreation.

V. Treatment of Special Categories of Inmates/Prisoners

(A) Vietnamese Migrants

As a result of more restrictive criteria adopted by resettlement countries for the intake of Southeast Asian refugees, and in view of the likelihood of a continuing influx of people from Vietnam, the Hong Kong Government introduced the "closed centre" policy in July 1982. Vietnamese people arriving in Hong Kong pending resettlement elsewhere after the introduction of that policy will not be allowed free movement in the territory.

However, the influx of these Vietnamese Refugees continued and the Vietnamese detainees increased from 1,700 in 1982 to some 27,000 in 1991. In view of the drastic intensification of the continuous inflow as well as the belief that a large number of the arrivals essentially left Vietnam merely for economic reasons, the "Screening Policy" was launched in June 1988 whereupon the "economic refugees" will be sent back to Vietnam.

In accordance with the agreement between the Government and the United Nations High Commissioner for Refugees (UNHCR), conditions in the detention centres are similar to those in the closed centres for refugees before liberalization. Basic necessities are provided and UNHCR officials have access to these detention centres for the purpose of discharging their responsibilities mainly concerning protection and assistance for these people.

In general, the department and voluntary agencies under the aegis of the UNHCR worked jointly to provide a wide variety of services for the Vietnamese Migrants including the issue of clothing and relief items, advice on family planning, birth registrations, counseling, tracing and family reunion services, education, vocational training, work programmes, well-baby services as well as recreational activities. On the whole, the department assumes the discipline and control role whereas the voluntary agencies serve the role of rendering social welfare services. The Vietnamese migrants are not compelled to work but venues are sought to liaise with external employers to provide job opportunities for them inside the detention centres. The engagement in work not only helps to relieve their financial constraints, but also helps them to develop positive work habits.

(B) Foreign Prisoners

Apart from Vietnamese Migrants who

are kept in special centres, those who have been given a custodial sentence upon conviction of criminal offences will be treated as convicted persons under the relevant Ordinances. Foreign prisoners are also subject to categorization and they will be assigned to institutions appropriate to their criminal background. All alike, foreign prisoners do not receive special treatment throughout the correctional programmes. However, due consideration will be given to special religious needs and/or other requirements.

On reception of a foreign prisoners/remand, the Superintendent of the institution will approach the Consular Officer and afford the latter the earliest opportunity to visit and to arrange assistance where appropriate. A foreign prisoner will, if he so desires be allowed to communicate with his Diplomatic and Consular Representative in Hong Kong and to receive a visit from such representative.

If the foreign prisoner is a citizen of a commonwealth country other than the United Kingdom, he may be allowed to communicate with the High Commissioner or other accredited representatives of his country in Hong Kong and to receive a visit from such representative. Any such visit will be in the sight and out of hearing of the staff.

In general, any prisoner who is a citizen of a country other than Hong Kong may as a right correspond on any matter, or be visited by, an accredited representative of his country. He may send Air Mail Letter Forms to relatives in place of ordinary letters at public expense.

On the whole, prisoners of nationalities other than Hong Kong may receive personal attention by their Consular Representatives and under no condition will they be discriminated and segregated from normal association with other prisoners. They will be assigned to workshops commensurate with their trade skills and special diets may be arranged to meet justifiable needs.

(C) Drug-Addicted Offenders

Drug addicts found guilty of an offence punishable by imprisonment may be sentenced under the Drug Addiction Treatment Centres Ordinance to a drug addiction treatment centre.

An order of detention can be made for a minimum of two months and a maximum of 12 months, the actual period being determined by the inmate's progress and the likelihood of continued abstinence from drugs following release. To assist re-integration into the community there is compulsory supervision for one year following release. During this period, the supervise can be recalled for further treatment if any condition of the Supervision Order is breached.

The treatment programme aims at the complete cure of an inmate's dependence on drugs. This involves the uprooting of physical, psychological and emotional dependence on drugs, the restoration of physical health and assistance towards the inmate's readjustment to society. On admission, all inmates undergo a thorough medical examination and appropriate medical treatment is given for withdrawal symptoms. Those who require specialist care are referred to appropriate clinics and hospitals. Regular medical check-ups are also carried out to monitor progress towards physical recovery. Psychological dependence is tackled through a combination of work therapy and individual and group counseling. For more complex cases, a clinical psychologist is available to provide intensive counseling. Work therapy is an important part of the programme and is designed to restore self-confidence and to promote good working habits.

As a person is most vulnerable to relapse into drug addiction during the first year following release, the social readjustment part of the programme ensures that adequate arrangements are made for post-release employment and accommodation, as well as for intensive follow-up supervi-

sion by an after-care officer for one year following release.

Inmates released under supervision from a drug addiction treatment centre who are either homeless or without family ties and who are in need of close supervision and intensive counseling are provided with accommodation in the Correctional Services Department's halfway house.

(D) Treatment of Female Prisoners

Female prisoners/inmates are kept in institutions used solely for the safe custody of female offenders. In all cases female offenders shall be attended by female staff. A male officer shall not enter a prison or part of a prison appropriated for the use of female offenders except on duty and in company of a female staff.

One of the two institutions accommodates mainly adult female prisoners and remands. There ia a separate section for the treatment of female addicts under the Drug Addiction Treatment Centres Ordinance. Most women work in a large industrial laundry which serves a number of Government departments and public hospitals. Others are employed in gardening, tailoring and domestic services. Female prisoners under 21 years of age are housed in a separate institution. There are different sections for training centre inmates, drug addiction treatment centre inmates, young prisoners and persons on remand.

Ante-natal and post-natal care is provided in these institutions. Facilities and trained staff are available for emergencies, but arrangements are normally made for babies to be born in public hospitals. Special attention is given to the treatment of women offenders with babies and their treatment is stipulated in Prison Rules, which state that the child of a female prisoner may be received into prison with its mother and kept during the normal period of lactation and any child so admitted shall not be taken from its mother until the Medical Officer certifies that it is in a fit condition to be removed.

When any child received into prison is over the age of nine months or attains that age while in prison the Medical Officer shall report to the Commissioner whether, in his opinion, it is necessary or desirable that such child should be retained in prison. The Commissioner may commit such child to the care of such relative of the child as may be willing and able to undertake such care and who may, in his opinion, be a fit and proper person to undertake such care. If the Commissioner is unable to find any relative of the child to whose care such child may properly be entrusted, then he may commit such child to the care of any person or institution approved by the Governor.

Notwithstanding the above-mentioned provisions the Commissioner may permit any child to remain in the prison until the mother has completed her sentence or such child has attained the age of three years whichever is the earlier. During the period whence the child is retained in prison he/she may be supplied with clothing at the public expense.

(E) Organized Crime Offenders

All prisoners will on reception be assigned to a specific category by the classification Board. The categorization of prisoners encompasses many factors and one of these is that a convicted prisoner who is in prime need of security either because of his subversiveness or recalcitrance, will be classified in the highest security-risk group.

The institutional management will review periodicall r to ascertain the managerial needs for such prisoners. The institutional Classification Board may de-categorise a prisoner to a category requiring lower security surveillance if for any reason, the risk of that prisoner has been reduced.

(F) Geriatrics

Since 1975, all geriatric prisoners have been kept in the Geriatric Unit at an insti-

tution situated in the urban area. Those who are 60 years and over, as well as those who are considered to be clinically old by the Medical Officer, are placed in this Unit, provided that they are serving sentence of five years or less.

For management purposes, the Psychiatric Centre also operates a Geriatric Unit for aged prisoners requiring special treatment. The main objective of these units is providing the elderly prisoners with a comprehensive rehabilitation programme during incarceration in order to prevent further relapse to crime after discharge. The tailor-made "Geriatric Prisoners' Programme" emphasizes their physical and mental well-being and social independence.

Intensive medical care is administered during their incarceration aiming at the early detection and immediate intervention of ill health. Particular attention will be made to common geriatric illnesses and symptoms. As far as possible, staff supervising geriatric prisoners would undergo hospital in-service training to equip them with the knowledge in detecting such symptoms amongst the aged prisoners. To better improve their health, "Taichee" (Chinese shadow boxing) is introduced to volunteers who are physically fit to practise such exercise under the supervision of a qualified Taichee Instructor. In view of their physique and health, normal work requirements which call for physical labour and immense exercise are considered unsuitable for this category of prisoners. Those fit to work are therefore assigned to light task only geared to their physical capability.

VI. Issues for Prison Administrators in Dealing with Special Categories of Prisoners

(A) Total Institution Approach for Vietnamese Migrants

A total institution approach is adopted in the caring for of Vietnamese Migrants. With the support and close coordination with voluntary agencies, a wide variety of social welfare services are provided apart from the provision of basic necessities (food, accommodation, lodging, etc.). The department has at the moment some 27,000 Vietnamese Migrants under its care, the majority of whom are likely to be sent back to Vietnam eventually.

This generates a huge amount of anxieties, worries and uncertainties amongst the Vietnamese Migrants which the provision of social welfare services alone is unable to resolve. Thus the department is working under immense tension and risks, and often riots and disturbances occur in the detention centres. Though these hostile protests are not primarily aimed at the department, the department (and its staff) is nonetheless at the front line of confrontation as they are representatives of the Government and responsible for implementing the policy.

(B) Discrepancy in Expectation of Treatment

Foreign prisoners are inclined to expect being treated as if they are serving sentences in their native countries. Those coming from more tolerant societies, such as Europe, tend to have high demands which exceed the normal provision of the society where they actually serve their sentence. As a result, conflict arises if they (the foreign prisoners) fail to recognize and accept the principle of fairness of treatment prevalent in the society where they serve their sentence.

On the other hand, foreign prisoners belonging to a more restrained community would not have much expectations. In surplus to their sheer expectation of food and lodging, the relatively "abundant" provision of services which they did not expect provides them a venue for abuse. Incessant attempts may be made to take advantage over this discrepancy in expectation, not out of good will, but from the pursuit of advantages and benefits by whatever means possible. Prison administrators are thus faced with the task of matching different

expectations with the Standard Minimum Rules for the Treatment of Prisoners. Such a dilemma in expectation will never diminish but remains as a challenging task for prison administrators to tackle. It is unrealistic to eliminate the difference in expectation, but it is capable of being narrowed down in an open system.

(C) Stigmatization of Prison Administration

Despite being named the *Correctional Services* Department, this department essentially is responsible for putting people behind bars as ordered by the Courts or by the appropriate authority under the relevant ordinances. The public image is but amongst one of those least popular departments and it is a fact that ancient prisons were operated on the basis of strict disciplinarianism and despotic authoritarianism. The department has undergone enormous evolution during the past decades and the managerial hierarchy has been decentralised and a more participatory mechanism has been devised to involve staff's contribution. This greatly helped to ameliorate the public image of the department and less stigma is adhered to its staff. However, there is apparently insufficient public concern towards the treatment of prisoners and there are still a large portion of the population conceiving penal institutions as negatively connotated.

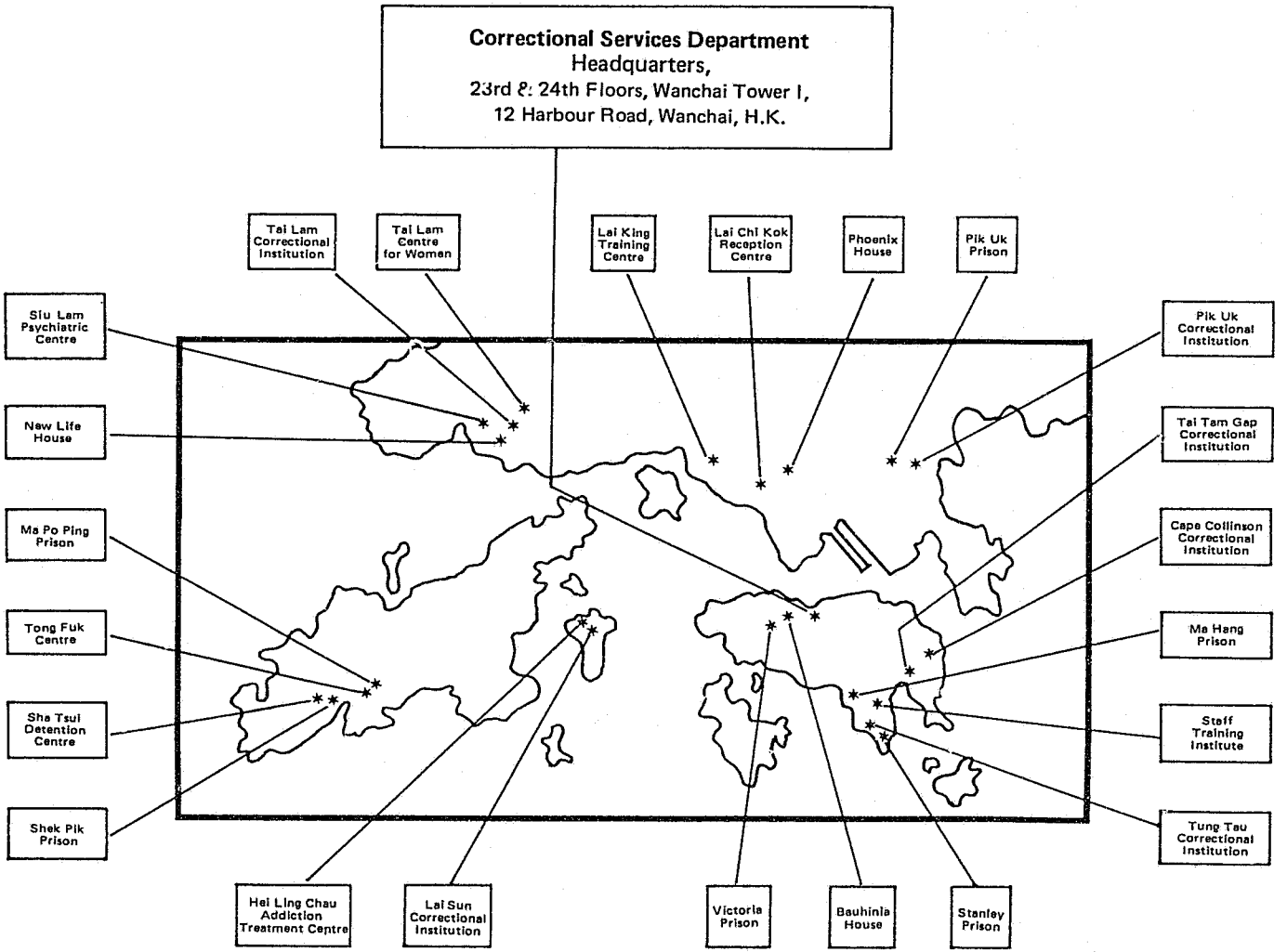
Amongst this traditional group of the older generation, some staff may also be much hampered by their rigid self-perception and pace of professional growth. Unless they break through their traditional concepts in working with prisoners and move in line with the ever-changing penological practises, the efficiency and effectiveness of the Department at large will suffer and be limited in its development and growth. Thus it is of paramount importance that the prison administrators be kept abreast of the current trends on the related fields and train their staff with up-to-date knowledge and skills. New insights and professional advancement are requisites for the de-stigmatization of the Department and prison administrators, presenting to the public the proper perspective relating to the work they perform.

VII. Conclusion

Differential treatment of inmates/prisoners has become one of the prevailing concepts in penology. To give the department full impetus for meeting the rapid social change, prison administrators holding the hierarchical positions should on one hand be well aware of their strengths and weaknesses, and on the other hand, open themselves for incorporating new practises and methodologies in addressing the rehabilitative needs of different categories of inmates/prisoners.

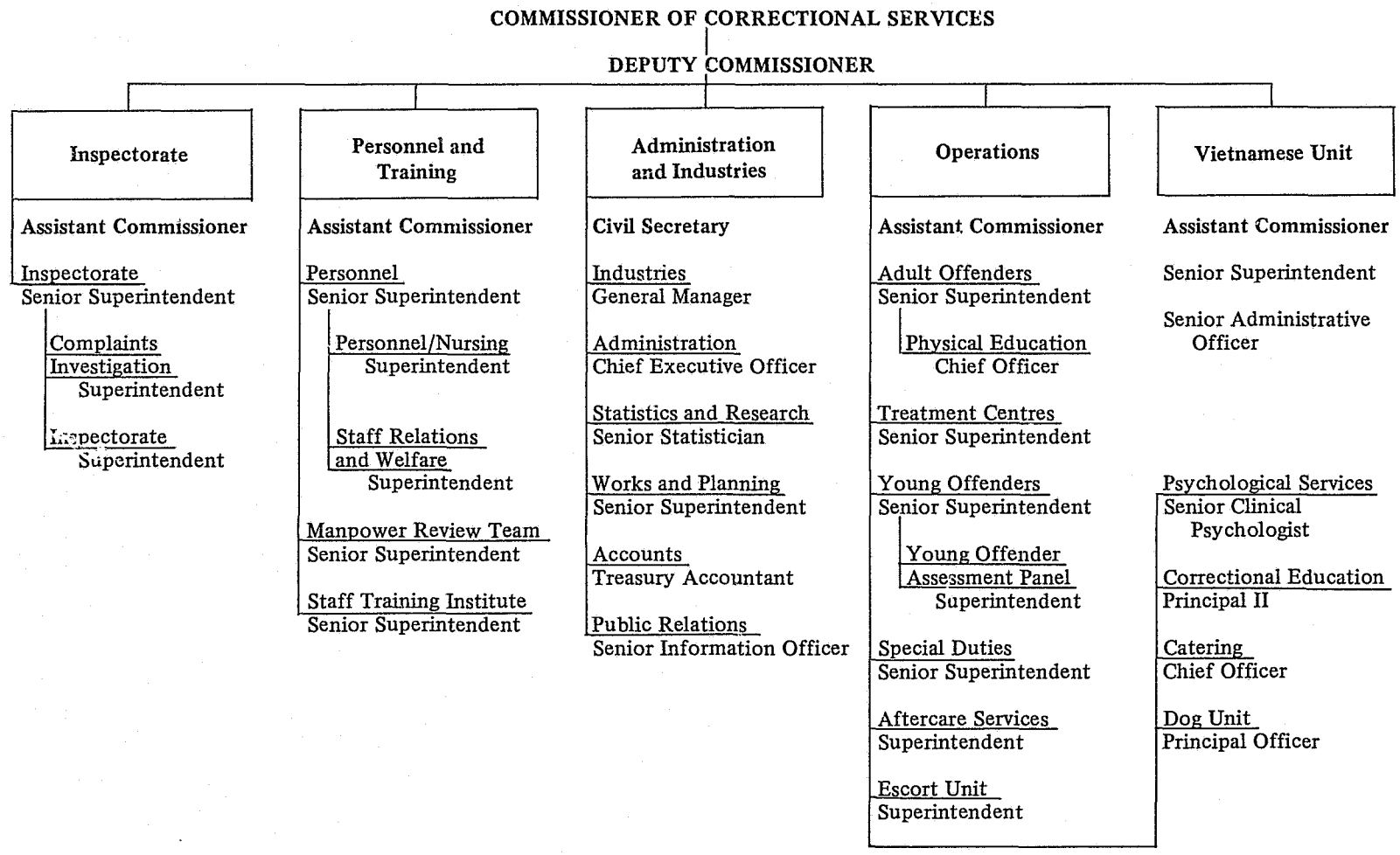
Appendix A1

LOCATION OF HEADQUARTERS AND INSTITUTIONS



Appendix A2

ORGANIZATION OF CORRECTIONAL SERVICES DEPARTMENT HEADQUARTERS



Appendix B

Staff Training in Correctional Services Department, Hong Kong

A. Training System

After recruitment formalities, recruits will report to the Staff Training Institute to undergo recruit training as follows:

1. Recruit Training
   (1) Recruit Officer Training (26 weeks); and
   (2) Recruit Assistant Officer Training (23 weeks).
2. Development Training (for serving staff)
   (1) for Assistant Officers;
   (2) for Officers;
   (3) for Principal Officers; and
   (4) for Senior Officers (Chief Officers, Superintendents, and Senior Superintendents, etc.).

B. Course Structures

1. Recruit Training

(1) Recruit officer training (26 weeks)

(a) Prison Duties and Operational Knowledge;
(b) Relevant Laws of Hong Kong;
(c) Criminology and Penology;
(d) Psychology;
(e) Management Studies;
(f) Social Work;
(g) Confidence Training/Orienteering and Expedition;
(h) Weapon Training;
(i) First Aid;
(j) Drill/Parade;
(k) Physical Education;
(l) Tactical Formation Training, and Self Defence and Control Tactics;
(m) Observational Visits;
(n) Institute Hygiene and Recreational Activities;
(o) Field Placement;
(p) Course Management; and
(q) Test/Examination.

(2) Recruit assistant officer training (23 weeks)

(a) Prison Duties and Operational Knowledge;
(b) Relevant Laws of Hong Kong;
(c) Psychology and Human Growth;
(d) Social Problems;
(e) Management;
(f) Crime and Treatment of Offenders;
(g) Confidence Training/Orienteering and Expedition;
(h) Weapon Training;
(i) First Aid;
(j) Drill/Parade;
(k) Physical Education;
(l) Tactical Formation Training, and Self Defence and Control Tactics;
(m) Observational Visits;
(n) Institute Hygiene and Recreational Activities;
(o) Field Placement;
(p) Course Management; and
(q) Test/Examination.

2. Development Training

Tailor-made programmes on specified areas of training for Assistant Officers, Officers, Principal Officers, and Senior Officers.

Examples: 1. Junior Command Course for Officers with three years of service.
2. Assistant Officer Refresher and Development Course for Assistant Officers II with three years of service.

C. Training Related to Career Development and Posting

(1) *Assistant Officers II*, after completing their recruit training, will be posted to custodial duties in penal institutions. In-service training on a weekly basis will be provided to them at the institution to which they are posted.

(2) *Assistant Officers II*, after having a minimum of three years of custodial experience, can apply for the various types of development training courses:

— Detention Centre Course;
— Training Centre Course;
— Drug Addiction Treatment Centre Course;
— Hospital In-service Training Course (General or Psychiatric);

— Emergency Support Group Course, etc.

After completing any one of the development training courses, an Assistant Officer II may be posted to the particular institutions concerned or assigned to perform the specialized functions concerned.

(3) *Assistant Officers II*, after completing three years of service, will be arranged to attend a Refresher and Development Course which will qualify them, upon successful completion of the Course, for consideration for promotion to Assistant Officer I.

(4) *Officers*, after completing their recruit training, will be posted to medium-security institutions, minimum-security institutions, drug addiction treatment centres, training centres, or detention centres. In-service training on a weekly basis will be provided to them at the institution to which they are posted.

(5) *Officers*, after having three years of service, will be arranged to attend a Junior Command Course. They may also apply for the various types of development training courses and be posted thereafter to the particular institutions concerned or assigned to perform the specialized functions concerned.

(6) *Officers*, after having seven years of service, will be arranged to attend an Intermediate Command Course.

(7) *Officers and Principal Officers* are arranged to attend language and writing courses, management courses, and computer courses organized by the Civil Service Training Centre.

(8) Senior Officers are arranged to attend advanced management courses organized by the Civil Service Training Centre or by the Department jointly with management consultant firms.

D. Training of Trainers

1. *Training Officer Course* organized by the Department;
2. *Training Officer Course* organized by the Civil Service Training Centre;
3. Weekly in-service training for training officers at the Staff Training Institute; and
4. Attachment training at penal institutions to gain more operational experience.

E. Overseas Training Courses

1. Japan: UNAFEI (The United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders).
2. United Kingdom, Australia, and U.S.A.:

   — Management training;
   — Correctional training;
   — Training for Administrators, etc.

3. Exchange scheme of attachment training between Hong Kong and Australia is being arranged.

Report on Hungarian Corrections

*by Peter Ruzsonyi**

The extensive codification of criminal legislation started in Hungary in the middle of the seventies.

Act no. IV. 1978, called the Criminal Code, which synthesized the legal development of that period came into effect in 1978. The Criminal Code ordered the execution of all of the punishments and measures resulting in the loss of liberty to be the tasks of the Hungarian Correctional System.

Parallel to the modernization of the Criminal Code there was another legal project going on. The aim of this work was the complex regulation of the activities carried out by the correctional system.

This rule of law, regulating the execution of punishment and measures was the Statutory Rule no. 11/1979.

The Hungarian corrections carries out its tasks within the main boundaries, set forth in these two rules of law, which have been modified several times since they came into effect. Today these tasks are the execution of imprisonment, intensified reformatory and educative labour, compulsory medical treatment, pretrial detention and short-term detention of offenders, committing petty offenses.

The Bill on the Modification of the Statutory Rule, which is before the Parliament right now, does not include the execution of intensified reformatory and educative labour among the tasks of corrections. The execution of intensified reformatory labour sentence of the last offenders, sentenced to this type of measure, has been interrupted by the Minister of Interior. Thus this task of the correctional system has ceased to exist.

According to the rules of law in effect, the minimum duration of determinate sentence of imprisonment is three months. The maximum duration is 15 years. In case of imprisonment for life, an inmate can be released on parole only after he has served 20 years of imprisonment.

In case of adult offenders, imprisonment is executed on three security levels, respectively on minimum, medium and maximum security level; in case of juveniles imprisonment is executed on minimum and medium security level. The maximum security level is the strictest level, the minimum security level is the most lenient level of imprisonment. The security level is determined by the sentence of the court. On the respective security levels, inmates' segregation from the society at large, the regime of life and movement privileges within the parameters of the correctional institution, the money allotted for inmates' personal needs, the type of rewards and disciplinary actions, and inmates' participation in the activities of inmate organizations are different.

The tasks to be carried out by the correctional system are regulated by rules of law of different levels. The Criminal Code determines the criteria of respective security levels. According to this, the court shall determine imprisonment in maximum security correctional institution for those offenders, who have been sentenced to imprisonment for life or for the duration, longer than three years if they had committed crimes against the State, terrorist crimes against human race, murder, high-

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jacking, rape, causing emergency situation affecting the public, and if they are recidivists who have been sentenced to imprisonment for the duration of more than two years.

Imprisonment shall be executed in medium security prisons in case of sentences for committing other intentional crimes.

Offenders, sentenced for committing misdemeanors, and negligent felonies serve their imprisonment in minimum security "half open" correctional institutions.

The rule of law determines that supervision, detention, housing diet, clothing, medical care of inmates and other conditions necessary for inmates' education, rehabilitation and employment must be provided. Inmates also must be able to exercise their rights and to prepare for their release.

The rules of law also emphasize that inmates shall be treated with humanity; their human dignity shall not be violated.

The system of corrections is directed by the National Prison Administration supervised by the Ministry of Justice.

All criminal sanctions resulting in the loss of liberty are executed by a network of 33 Hungarian correctional institutions. Among these institutions the county correctional institutions and the county jails—which usually can be found in the county towns together with the county courts—mainly execute pretrial detention and short-term detention.

Among the 12 correctional institutions with statewide jurisdiction seven institutions have maximum and medium security imprisonment, in the other five institutions imprisonment on medium and minimum security level are executed. Juveniles and female offenders are housed in special correctional institutions. The Hungarian correctional system also has two central medical institutions, these are the Central Hospital for Corrections and the Institution for Forensic Observation and Mental Hospital for Corrections.

The total capacity of the Hungarian correctional institutions is 17,000 people.

Before we provide the data related to imprisoned offenders, let me familiarize you with the Hungarian crime rates and the practice of justice.

In 1991 440,370 crimes were reported. Among these, the offenders have not been found in 260,909 cases. The number of offenders apprehended was 129,641.

Out of 6,640 accused juveniles, 6,200 were sentenced. The procedure was terminated in 366 cases and 74 more juveniles were acquitted. Juveniles were sentenced to imprisonment in 897 cases.

The same data related to adult offenders are the following:

> Out of 61,557 accused adults the criminal procedure was terminated in 2,137 cases, and 1,255 adults were acquitted. Adults were sentenced in 58,165 cases, and out of this number 11,721 were sentenced to imprisonment.

During the last decade considerable change in inmate population could be perceived. Due to the decriminalizing effect of the condification in 1978–79, the number of inmates slightly declined in the next year. After this period inmate population rapidly increased; in 1985 it was higher by 30% than five years before. The population had increased till the beginning of 1987, but after this year a continuous and significant decrease was experienced in all of the groups of detained offenders.

The decline of inmate population was especially experienced in the years of 1989 and 1990, when following the political changes in Hungary the change in some elements of criminal politics had resulted in several modifications of criminal law and procedure.

Out of the detained offenders one offender was sentenced for committing crime against the State. There are 286 alien citizens imprisoned in the Hungarian correc-

tional institutions, they are citizens of 29 nations. First-time offenders are 2,474 inmates, 6,279 inmates are recidivists. The rate of imprisoned juveniles is 6.5%, and the rate of female offenders is 4.5%.

Fifteen percent of inmates are serving imprisonment shorter than one year, 25% of the offenders are serving imprisonment longer than five years. Sixty-five percent of the offenders were sentenced because of crimes against property. Forty-five percent of the inmates have not completed their elementary education.

When the rates are compared to the rates of Western European countries, the rate of inmate population compared to the general public in Hungary is still high. In 1988 there were 196 inmates imprisoned per 100,000 citizens of the general population, by the year of 1990 this rate decreased to under 130 inmates, and today this number is 150.

In Western European countries, if the rate is over 100 inmates per 100,000 of the general population, it is considered high. This is the situation in Austria and Great Britain. In the Scandinavian countries this rate is around 50–70 inmates per 100,000 citizens of the general population.

The security level of the correctional institutions is basically adequate. However, this can be maintained as a result of especially strong efforts, since the financial conditions and conditions related to human resources cannot meet the demands of the present days. That we can still speak about the adequate level of security, is the result of the proper preparedness and professional work of the correctional personnel. They maintain correct contact with inmates, the treatment of inmates is based on the respect of human rights and the manner of it is getting more and more moderated, but in the same time it works parallel with the demands and expectations related to inmates' observance of necessary order and social norms of the correctional institutions.

The Security devices and tools are characterized by the traditional security devices which can hardly meet the demands of the present situation. Modern security devices have been introduced in five correctional institutions.

These security devices, directed by central computers ensure the protection of the correctional institutions' parameters, the supervision of the events taking place within the parameters of the institutions, operate the alarm system, and facilitate the personal protection of the correctional personnel. One of these security systems costs approximately 15–30 million Forints depending on the size of the correctional institution.

When we are talking about security, it should be noted that certain events and especially escapes occasionally receive more extended and unnecessary publicity.

In the rest of the 20–25 annual cases, usually offenders employed in the fields of agriculture simply walk away from open places. Unfortunately there are some more serious cases annually when inmates plan and carry out escapes from transporting vehicles or closed institutions.

The high number of crimes committed by inmates against each other, the so-called inmate on inmate violence has a bad effect on security and also constitutes a major problem.

Due to the lack of necessary funds, the process of modernization had to be suspended or slowed down.

It should be noted that despite the unfavorable circumstances, the Hungarian correctional system is free from the kind of emergency situations which endanger public safety and the order of the society.

Housing and Medical Care of Inmates: The operation of the correctional system is effected by the circumstances related to housing and living standards of inmates. The structural and aesthetic condition of outdated buildings makes the effective work more difficult. To provide inmates' housing on a level equal to the European norms

requires an enormous investment by the State.

The picture of our prison buildings is really mixed. Some of our correctional institutions built in the end of the previous century or around the turn of the century reflect the practice and theory of corrections, existing in Europe and in the world at that time.

The level of bed spaces built in the sixties, seventies and eighties shows also a mixed picture. However they have one common characteristic. Eight-to-twelve inmates are housed together, the personal space is small or nonexistent, and there is no privacy even during nighttime.

One of the tasks of corrections is to protect and maintain the health of inmates and to cure the illnesses of inmates. Based on the theory of the Hungarian System of medical care inmates are provided with total medical care, adequate to the current state of science. Medical care for inmates is free of charge. The amount of the medical care can be characterized by the following numbers:

> In 1988 the number of cases when inmates received out-patient medical care was above 180,000, the number of inmates sent to hospital for treatment was more than 4,000, and the number of cases when inmates received dental care was over 28,000. We think that another contributing factor to this is that the number of unnecessary requests is high.

With the help of testing procedures the spread of especially dangerous AIDS could be prevented. Since there is no commonly accepted international practice dealing with this problem we have chosen the segregated housing of inmates infected with HIV virus. We have had so far a total number of five inmates infected by HIV virus. The reason for this method is the right of other inmates to be in a healthy environment and the personal protection of the infected inmates.

Employment of inmates has changed specially in Hungary. The correctional enterprises were established in the fifties. One main source of our problems today is related to this field.

Employment of inmates takes place in workplaces established within the parameters of the correctional institutions, or at civil enterprises outside of the parameters of the correctional institutions.

Inmates may be employed in these correctional enterprises and also can be employed to perform maintenance activities within the correctional institutions.

The 12-prison enterprise system works under special circumstances. Besides the tasks related to production of goods the enterprises have to carry out the tasks of corrections. Due to this, the enterprises are not competitive, or only in a limited way, with the civil enterprises which have a similar profile. The competitiveness of these enterprises can be maintained and ensured only with special regulations.

Among the characteristics of inmate employment are the poor quality of labour force due to the lack of training, the low educational level, the occasional participation in the bearing of social burdens and the high level of turnover.

The character, that is related to the history of inmate employment shows that most of the enterprises are in the field of light industry. Thus a large number of male inmates are employed in those types of professions such as sewing, shoemaking and weaving which are traditionally carried out by female employees.

Under the former regime of planned economy, these enterprises were viable with the use of preferences and financial support of the state. In this year, on the motion of the Minister of Interior, the Hungarian Government has given financial support of hundred millions of Forints to support the enterprises work. However for the reorganization of these enterprises

and to maintain the enterprises' viability, we have to find new methods.

Under the conditions of market economy, these enterprises will be non-competitive due to the poor quality of the labour, the quality of products, and the large costs. For the maintenance of inmates' employment, state support and new organizational conditions will be needed.

Education of inmates: In concordance with the demands set forth by the international norms, the educational and cultural opportunities have grown continuously since 1979. There are 1,500–2,000 inmates participating in elementary education and approximately 120 inmates participating in secondary school education. Inmates are excused from work when they are preparing for their exams.

Inmates can participate in vocational training when they are employed in the correctional institutions.

The network of libraries necessary for the productive and cultural use of leisure time has been established and has been extended, and professional organizations have been established.

The sources of information have become extended, and inmates have access to the written media, and to the broadcasts of the radio and television. The number of elective channels have been extended. Visits have become more frequent, the conditions of visits more comfortable, and there is no limitation on correspondence through mail. Due to the improvement of the quality of human resources the individual treatment of inmates has become more professional.

The order of inmates' treatment is based on the fact that a counselor, who has usually a university degree in pedagogy, is responsible for a group of 20–30 inmates in case of juveniles and a group of 50–70 inmates in case of adults. Sometimes the number of inmates is even greater. The counselor has to coordinate the everyday life, activities, and education of inmates. The counselor also has to supervise the inmates and help them to solve their personal problems.

Our basic principle is that inmates should be isolated from the society at large only to the most necessary extent.

We want to improve and strengthen their positive relationships with the society at large and especially this is the case with their family relationships. This is the main goal of the Bill on the Modification of the Statutory Rule no. 11/1979. This bill would like to establish the opportunity of short-term absence of leave.

The work of counselors is helped by psychologists and other independent experts. The organizational framework and methods of treatment of inmates in need of special medical care and educational treatment have been established. During the most recent years, social organizations and foundations contribute to the treatment and education more extensively. These organizations also help to solve the individual problems of inmates. This trend was speeded up by the change of the political regime in Hungary. The increasingly active participation of churches in the spiritual education and care of inmates is also significant. The necessary circumstances needed for this activity are ensured by the respective correctional institution.

We have to note, that the correctional network would be able to achieve its goals only with the existence of an effective network of after-care, that could help and support the offenders upon their release. Under the present circumstances this task cannot be carried out.

After-care is not among the tasks of corrections, but the problems of after-care could diminish the possible positive effects of corrections.

The number of correctional personnel is 5,460, out of which 87% are professional correctional officers, and civilians are 13%. Out of the total number 41% work in the field of security, 20% work in the field of

treatment and education, 3% work in the field of administration, 19% in the field of finance, 4% in the field of accounts, 9% in the field of medical care and 4% work in other fields. Out of the total number of the staff 77% are male and 23% are female employees.

The prison enterprises employ 519 professional correctional officers and 1,550 civilian employees.

The Hungarian Government made decisions on the continuous rise of the number of correctional personnel. As a result of this, we could raise the number of the staff by 100 new employees in the year of 1992. Our discussions give hope for a further recruitment of 500 employees.

During the recent years, the theory, that the inmate is part of the society as well, and therefore has the same civil rights as the ordinary citizen, and that these rights can be curtailed to the extent it is justified by the protection of the society, has gained importance.

Due to this new viewpoint there were a number of new principles established which make the reexamination of the correctional system necessary.

From these the most important is the development of a fair procedure, which makes inmates capable of exercising these rights. We modified the circumstances and conditions of the corrections to ensure that besides the necessary curtailment of personal liberty there will not be other deprivations inflicted.

The conditions in the correctional institutions must be normalized, and have to make approaches to the forms and norms existing in the society at large.

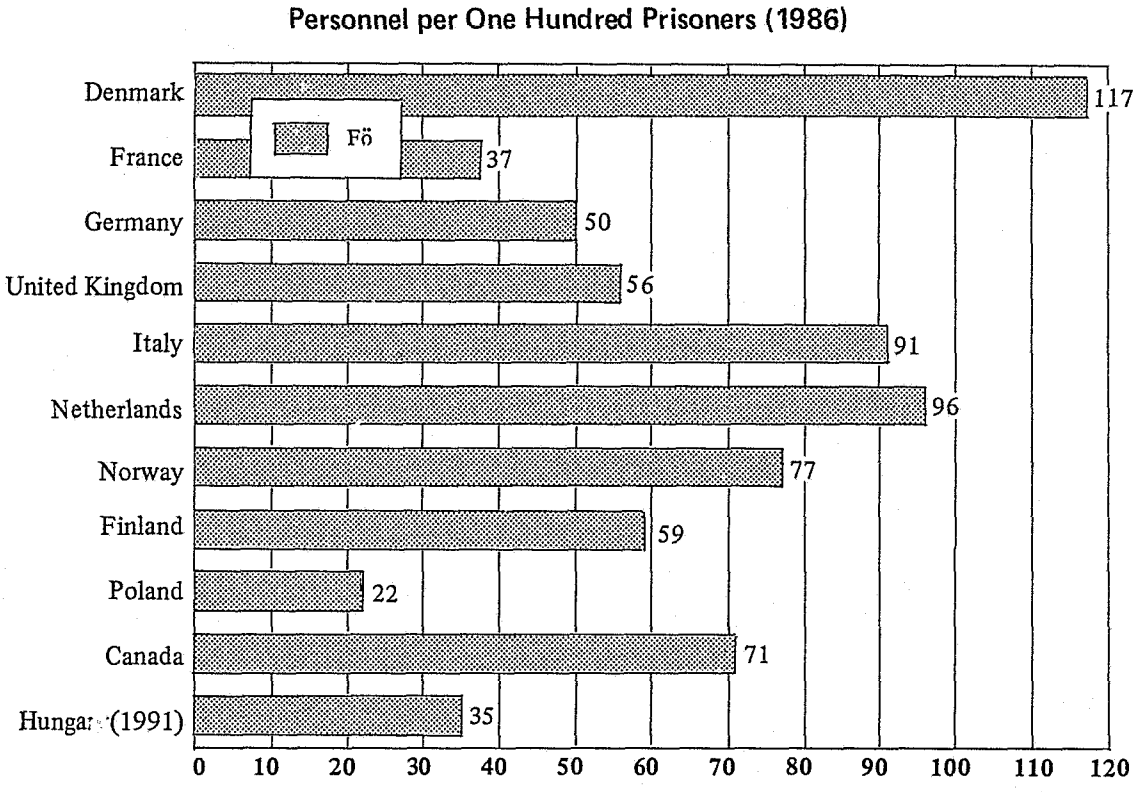
Inmates' relationship with the society at large must be strengthened, the activities of outside organizations and experts must be supported. The demands related to adequate number of well-qualified morally competent personnel, capable of dealing with inmates and their problems must be taken special care of.

Due to our joining with the European Council, the comparison of the Hungarian rules of law, regarding corrections with the recommendations of the organizations and committees of the EC is an urgent task. We have to note, that this is already and ongoing project in its advanced stage.

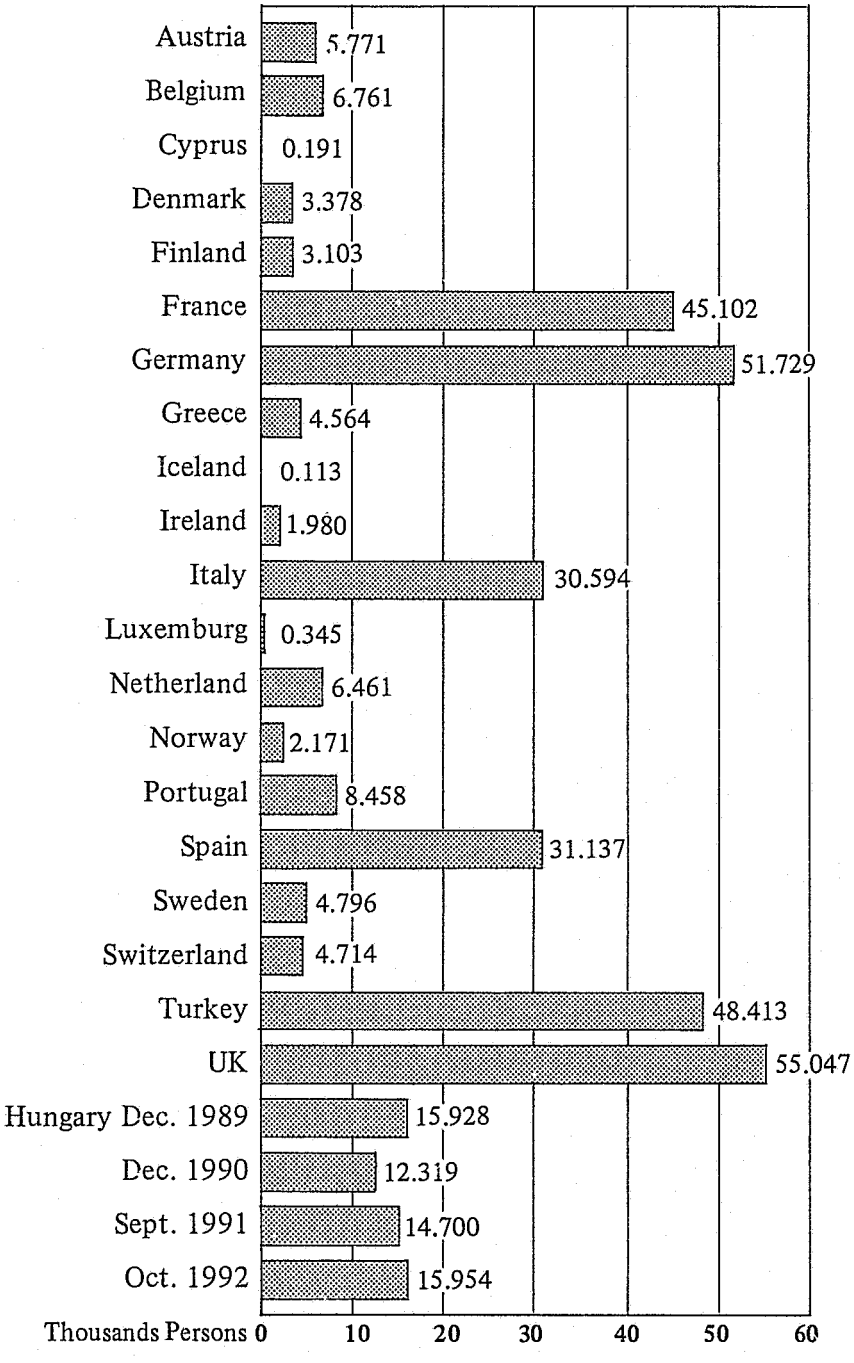
During this process of examination there is an excellent opportunity to take immediate actions and also to plan further steps.

Besides the reconsideration of the rules of law, it is necessary to reexamine the whole correctional system from a viewpoint of whether, and how, the European recommendations are adjustable to the traditions of the Hungarian corrections and to the general opinion and demands of the public.

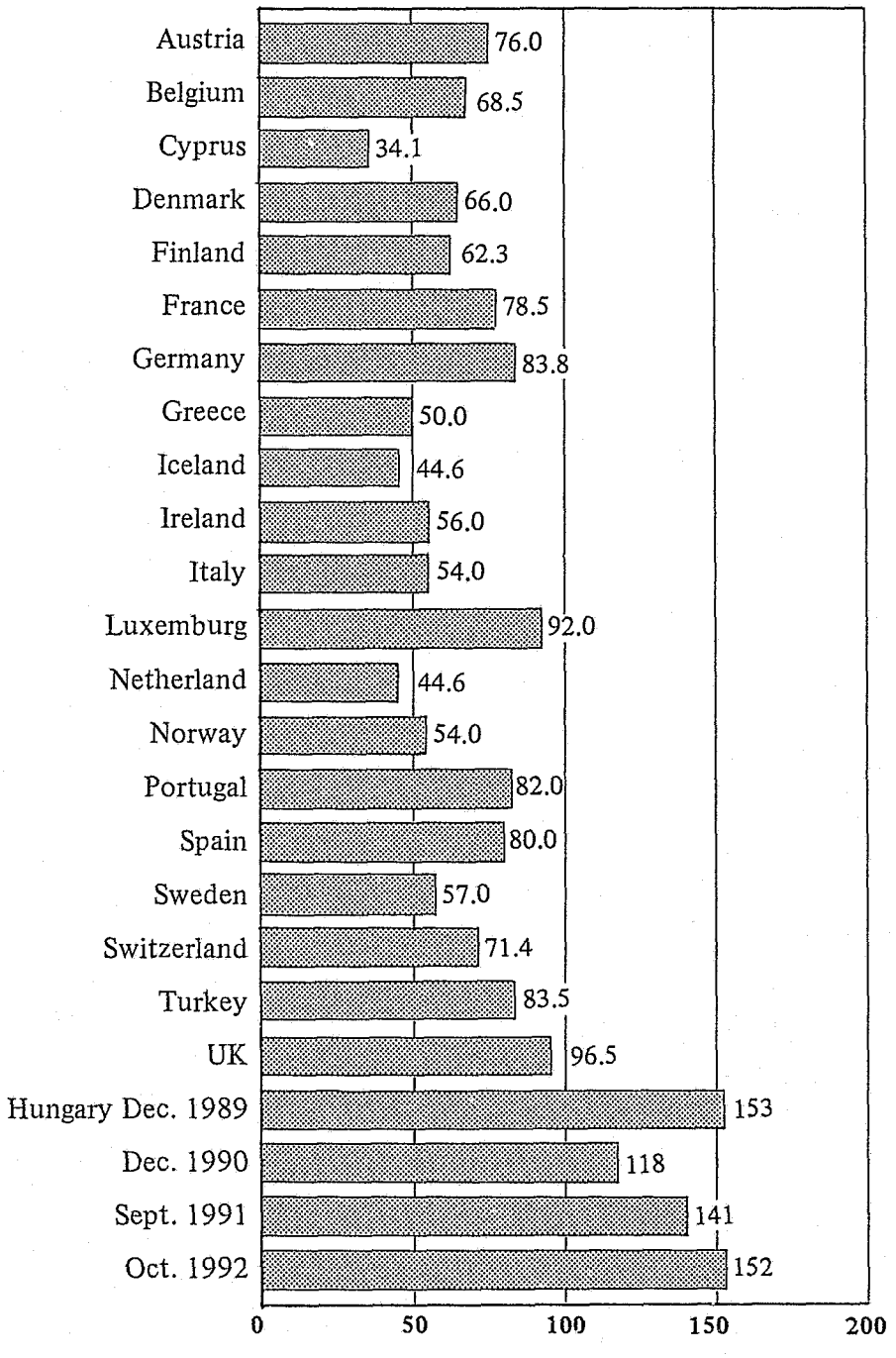
Last but not least it is very important to find and develop the social consensus regarding the tasks of the corrections, regarding the tools to be used and conditions to be provided in order to achieve these goals. Only in this way can we gain the better moral and hopefully financial recognition and appreciation of this profession which is in need of full devotion and a high level of professionalism.


Personnel per One Hundred Prisoners (1986)
Denmark
France
Germany
United Kingdom
Italy
Netherlands
Norway
Finland
Poland
Canada
Hungar (1991)
Fö
117
37
50
56
91
96
77
59
22
71
35
0
10
20
30
40
50
60
70
80
90
100
110
120

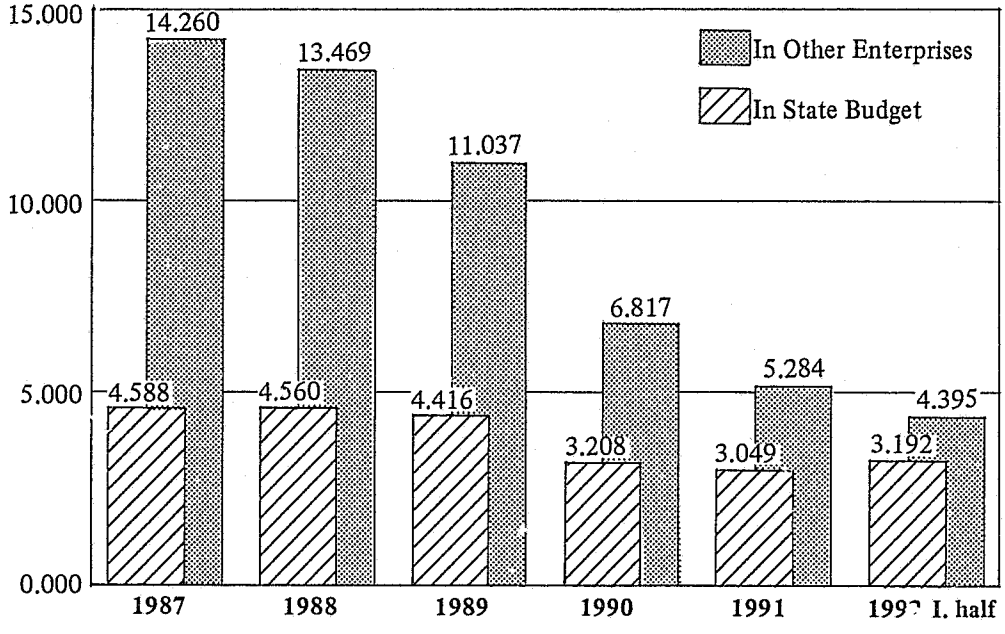
Inmate Population in the Member Countries of European Community Based on the Data of September 1989
Total Number of Inmates



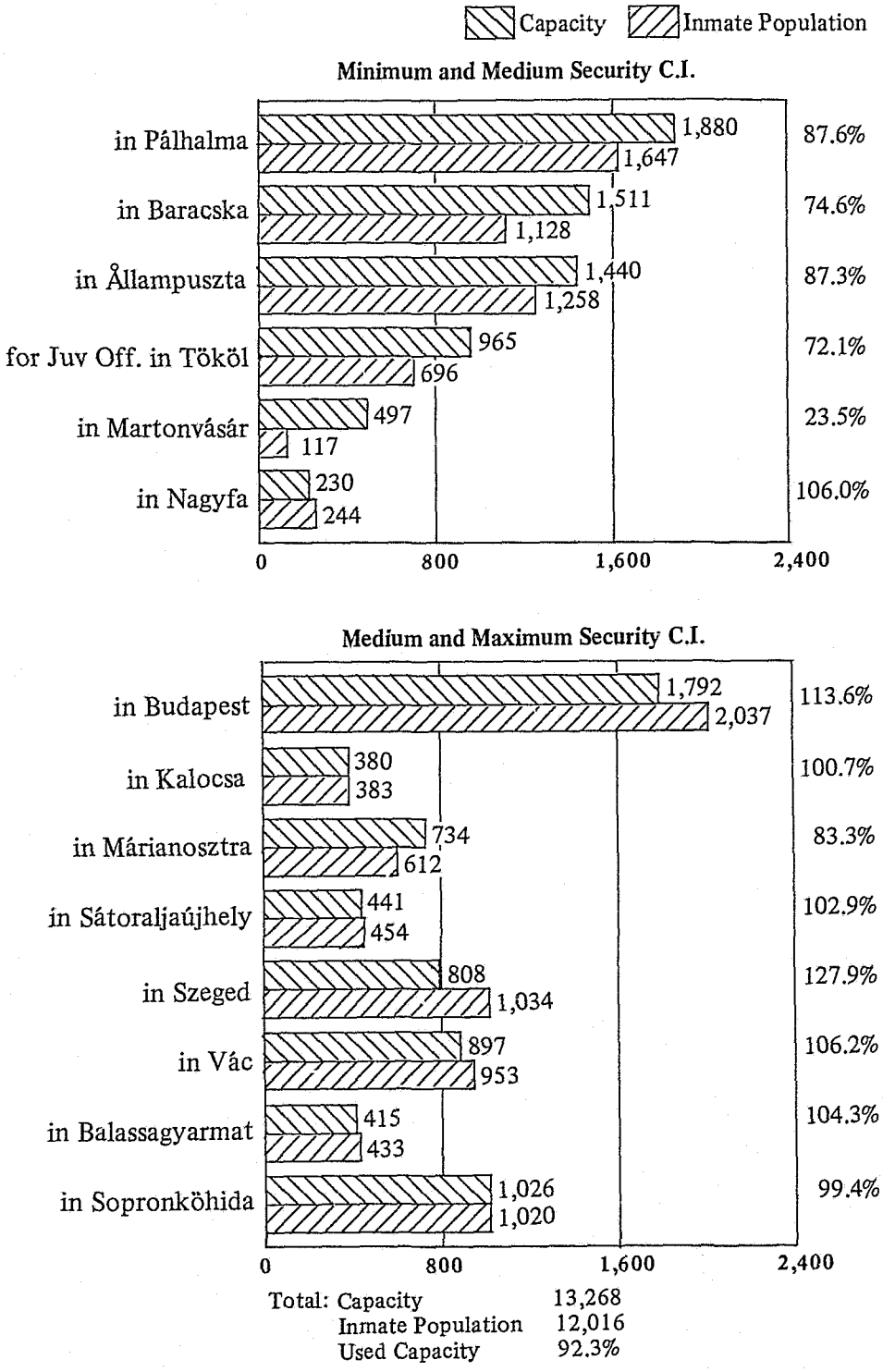
Inmate Population in the Member Countries of European Community Based on the Data of September 1989 Number of Inmates per 100,000 of the General Population



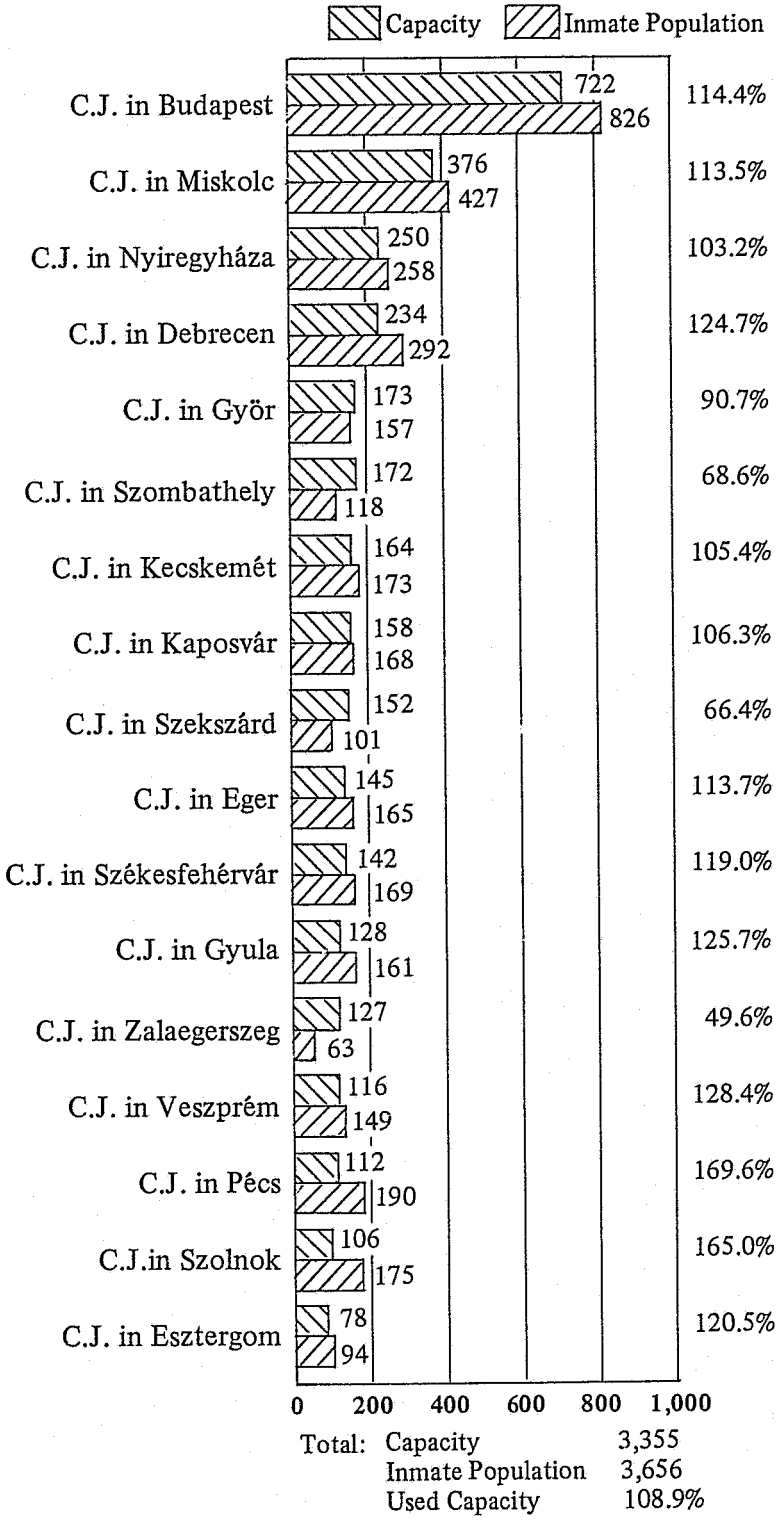
Number of Employed Inmates



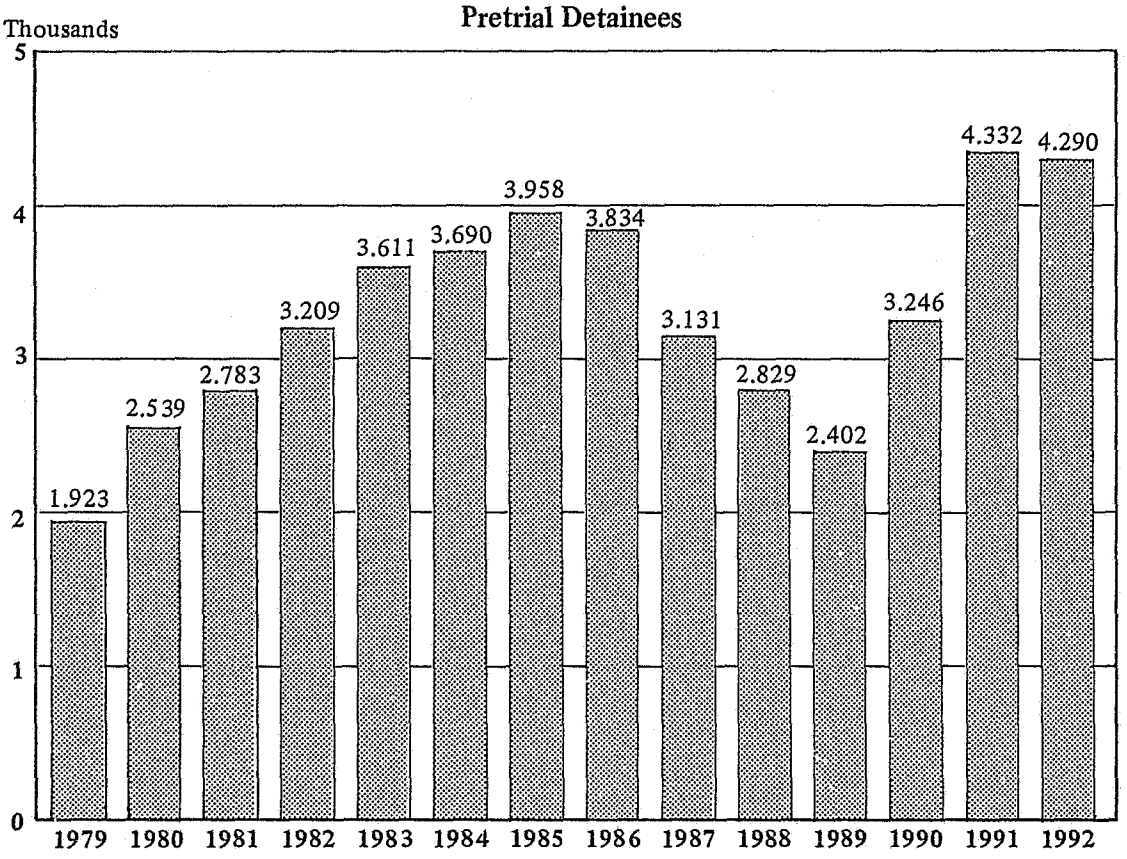
Used Capacity of Correctional Institutions in Hungary October 1, 1992



Used Capacity of Country Jails in Hungary
October 1, 1992



Number of Imprisoned Offenders in Hungary between 1979 and 1992
Pretrial Detainees



Criminal Procedure in Malaysia— Delayed Trials: Reasons and Solutions

*by Mohamad Fozi Bin Md. Zain**

1. The Courts

Hierarchy of the Courts

The hierarchy of the courts in Malaysia is as follows.

1) The Supreme Court
2) The High Court
3) The Sessions Court
4) The Magistrate's Court
5) The Perghulu's Court

A court which is parallel in jurisdiction with the Magistrate's Court is the Juvenile Court.

Jurisdiction

1) The Perghulu's Court

These courts only exist in West Malaysia. The Perghulu's Court can hear cases minor in nature and can only impose fines not exceeding $25. But Section 95 (3) of the Subordinate Courts Act gives the right to any accused person to elect to be tried by a Magistrate Court.

2) The Magistrate's Court

Section 87 (1) of the Subordinate Courts Act provides that a first class magistrate may pass any sentence not exceeding:

a. five years imprisonment;
b. a fine of not exceeding ten thousand Malaysian Ringgit;
c. whipping up to the maximum of 12 strokes;
d. any sentence combining any of the above sentences.

The proviso in subsection (1) gives the power to the magistrate to award punishment for any offence in excess of the power described above and instead award full punishment authorized by the law. Subsection 2 of section 87 gives additional power to the magistrate to impose punishment in excess of the above, provided that the accused person must have been convicted before and it is provided by the law.

For example, S-380 of the Penal Code for the offence of theft in a building, tent or vessel, where the maximum punishment is imprisonment for seven years and fine; for a second or subsequent offence, imprisonment and fine or whipping. Thus, a magistrate in exercising his jurisdiction and discretion may impose the maximum sentence of seven years imprisonment after taking into consideration the previous conviction of the accused.

The second class magistrate in West Malaysia can pass sentence not exceeding:

a. three months imprisonment;
b. a fine of $250;
c. any sentence combining either of the sentence above.

In Sabah and Sarawak (East Malaysia) they may pass sentence as follows:

a. six months imprisonment;
b. a fine of $1,000;
c. any sentence combining either of the sentences above.

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Normally, Magistrate's Court Registrars will sit as second class magistrates and in all the district Magistrate's Courts, the Assistant District Officers will normally be gazetted as second class Magistrates.

3) The Sessions Court

Section 65 of the Subordinate Courts Act provides that a Session Court shall have jurisdiction to try all offences other than offences punishable with death and section 65 gives the power to pass any sentence allowed by law other than the sentence of death.

Under section 78A and section 60 of the Act, no person shall be appointed to be a first class Magistrate or a Session Court judge unless he is is a member of the judicial and legal service of the Federation of Malaysia. Under the law, magistrates in the Federal territory and Session Court Judges will be appointed by the King on the recommendation of the Chief Justice. Magistrates and Judges in the other states will be appointed by the state authority on the recommendation of the Chief Justice.

4) The High Court

There are two High Courts of coordinate jurisdiction; The High Court of Malaya and the High Court of Borneo. The criminal jurisdiction of the High Court is laid down in section 22 of the Courts of Judicature set 1964. It has jurisdiction to try all offences committed within its local jurisdiction, or on the high seas on board any ship or any aircraft registered in Malaysia. The High Court may pass any sentence allowed by the law. Normally cases involving capital punishment such as death penalty will be tried in the High Court such as murder under S-302 of the Penal Code, drug trafficking under S-39B of the Dangerous Drugs Act, kidnapping or abducting in order to murder under S-364 of the Penal Code and offences under the Firearms (Increased Penalty) Act.

Section 26 of the CJA provides the High Courts with the power to hear appeals from subordinate courts according to any law for the time being in force within the territorial jurisdiction of the High Court. The High Court may also exercise its reversionary powers in respect of criminal proceedings and matters in subordinate court.

Judges of the High Courts will be appointed by the King acting on the advice of the Prime Minister and after consulting the Conference of Rulers. But the Prime Minister before giving his advice to the King must consult the Lord President of the Supreme Court first. The Chief Justices also must be consulted before such an appointment can be made.

Any Malaysian citizen who at least 10 years preceding his appointment, has been an advocate of the Courts or any of them or a member of the Judicial and Legal Service of the Federation or of the Legal Service of the state can be appointed as a High Court Judge.

A High Court Judge shall hold office until he attains the age of 65 and can only be removed on the ground of misbehaviour or of inability from infirmity of body or mind or any other cause. If he cannot properly discharge the function of his offence, the King shall appoint a tribunal and based on the recommendation of such tribunal, remove the judge from office.

5) The Supreme Court

Section 50 (1) of the Courts of Judicature Act Provides that:

> "The Supreme Court shall have jurisdiction to hear and determine any appeal by any person convicted or otherwise found guilty or by the Public Prosecutor against any decision made by the High Court in the exercise of its original criminal jurisdiction subject to this or any other written law regulating the terms and conditions upon which criminal appeals may be brought."

There should be no appeal if an accused person has pleaded guilty except as to the extent or legality of the sentence. A High Court Judge may also reserve for the decision of the Supreme Court any question of law which has arisen in the course of a trial. The accused person or the public prosecutor may also apply to the Supreme Court for leave to refer any question of law of public interest which has arisen in the course of an appeal that has been earlier determined by a High Court Judge.

2. Summary Trials

Summary trial procedure is observed in the lower courts in Malaysia, that is in the Magistrates and Session Courts. The procedure in the Juvenile Court is provided in section 10 of the Juveniles Court Act which is almost similar to the summary trials procedure Chapter 19 of the CPC laid down the procedure of a summary trial.

Any charge framed against an accused person shall be read and explained to him and his plea should be taken. Usually interpreters will be used to interpret charges to accused persons. The accused person must fully understand the nature and form of his plea of guilty and the consequences of such plea, e.g. what kind of punishment that is provided under the law. If he cannot understand the charge read to him, it is the duty of the court to find an interpreter for the language required and the court will be satisfied that the interpreter is competent to do his work efficiently.

The plea of an accused person must be made by him personally irrespective of whether he is represented or not by defence counsel. In the case of PP v Low Chow Teng, the Supreme Court decided:

> "It is not sufficient for counsel to say that the accused wishes to claim trial or to plead guilty. The accused must himself plead ... The only exception is where the charge is preferred under statute which expressly allows the accused to plead guilty by letter."

If the charge contains one or more ingredients or questions, and the accused is not represented by counsel, each ingredient should be explained to the accused by the magistrate himself or through an interpreter.

In Lo Lim Peng & Ors v PP, B.T.H. Lee J said:

> "In a case as this, where the charge contains one or more ingredients or questions, and where the accused is not represented by counsel, it is desirable that each ingredient and each question involved should be explained by the magistrate himself through the interpreter to the accused and that the accused's replies should be recorded. If, after recording them, the magistrate is in any doubt the plea is an unequivocal plea of guilty, a plea of not guilty should be entered and the evidence should be called."

Right to Counsel

Article 5 (3) of the Federal Constitution states that:

> "Where a person is arrested he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice."

It should be noted that this is a Mandatory requirement under the constitution of Malaysia—The words used are "shall be allowed to consult and be defended" by a legal practitioner of the arrested person's own choice.

It is important to give an accused person a reasonable opportunity to obtain the services of a counsel of his own choice and reasonable opportunity should also be given to him to brief his counsel. Failing to do so, his trial may be regarded as a nullity and his

chances of getting a conviction are much higher.

There were occasions where accused persons were unable to engage a counsel during the hearing date and hence had to apply for postponement. Usually during the first hearing date, such postponement will be allowed by the court.

Even though it is stated in the Federal Constitution of the right to a "legal practitioner of his choice," this is not an absolute right. In Mohamad bin Abdullal v PP and Palaniappa Chettiar v Arunasalam Chettiar it was decided that the right to counsel of the accused's choice is only if the counsel is willing and able to represent him.

Rule 6 (a) of the Legal Profession (Practise and Etiquette Rules) 1978 prevents a lawyer from accepting cases unless he is reasonably certain of being able to appear and represent his client on the required hearing date. The lawyer appointed is also prevented from withdrawing from any particular case (once accepted) unless sufficient reason and reasonable notice is given to the client.

Certain unforeseen circumstances may arise. Even though a particular lawyer can be retained by an accused person and he is required to attend court on a required date, that lawyer may, on short notice, be asked to appear in the High Court or the Supreme Court in another case—which has already been filed earlier—based on such reasons, the lawyer reluctantly will have to apply for postponement.

However, the court may record a plea of guilty from an accused person in the absence of his counsel, but should not accept such plea. Though the plea is good in law, its acceptance is bad as stated by the Supreme Court in PP v Low Chow Tang:

> "... as without counsel's advice the accused could not be said to have understood the nature and consequences of his plea or to have intended to admit without qualification the offences alleged against him."

Witness

All witnesses from whom statements have been recorded should be brought to court by the prosecution. The Prosecution has the right not to call every witness from whom a police statement has been taken, if in his opinion it is unnecessary or if the witness is obviously hostile. Those witnesses not called or offered for cross-examination must be brought to the attention of the court and made available to the defence or by the court should the court consider this necessary. This is important in order to prevent the defence from involving section 114 (g) of the Evidence Act that is, to prevent the defence from commenting upon the honesty of the prosecution and thus raising the presumption of adverse inference against the prosecution.

Prima Facie Case

The Privy Council in Haw Tua Tau v PP delivered a landmark decision on the definition of prima facie case in the history of criminal law in Malaysia. Lord Diplock while delivering the judgement of the court said:

> "At the conclusion of the prosecution's case what has to be decided remains a question of law only. As decider of law, the judge must consider whether there is some evidence (not inherently incredible) which, if he were to accept it as accurate, would establish each essential element in the alleged offence. If such evidence as respects any of those elements is lacking then, and then only, is he justified in finding that no case against the accused has been made out which if unrebutted would warrant his conviction. Where he has not so found, he must call upon the accused to enter upon his defence, and as decider of fact, must keep an open mind as to the accuracy of any of the prosecution's witnesses until the defence has tendered such evidence, if any, by

the accused or other witnesses as it may want to call and counsel on both sides have addressed to the judge such arguments and comments on the evidence as they may wish to advance."

Then, Federal Court of Malaysia adopted the decision of the Privy Council in several decided cases and is binding on all the other courts in the country.

Amendment of the Charge

Para (h) of section 173 of the CPC imposes a duty on a Magistrate to consider the charge before him and amend it if necessary. The amendment (if any) shall be read to the accused as amended and his plea should be taken as again. Explanation of the amended charge is important because the accused may require to recall prosecution witnesses for cross-examination. If he pleads not guilty, then the accused shall enter his defence.

Defence

Para (j) of section 173 of the CPC provides that the accused shall be called to enter his defence and to produce his evidence (prime facie case made out against him) and shall be allowed to recall witnesses and cross-examine any available witness. If the accused is unrepresented by an advocate he should be informed of his right to give evidence on his own behalf and the principle points of the evidence adduced by the prosecution must be brought to his attention in order to give him the opportunity to explain them.

There is no duty cast upon the accused person to call any evidence and he is at liberty to do so. No inference unfavorable to him can be drawn by the trial court it he fails to call any particular witness. It is a cardinal principle in criminal law that the prosecution must prove his case beyond reasonable doubt and it is not the duty of the accused to establish his innocence.

The only duty of the accused is to raise a reasonable doubt on the truth of the prosecution evidence. This burden can even be discharged at the prosecution stage by cross-examining the prosecution's witnesses. If the accused chooses to remain silent, a finding of guilty must be entered since by remaining silent, he had failed to raise a doubt on the prosecution's case.

If the court has entered a finding of guilty, then conviction must follow. The prosecution will normally press for a deterrence sentence and the accused or his counsel will be given the opportunity to submit their plea in mitigation. A list of his previous convictions can be tendered by the prosecution, if any, and should be read to the accused and admitted by him.

Postponement of Cases and Delayed Trials

Section 259 of the CPC gives the power to the court to postpone or adjourn proceedings if a witness is absent or any other reasonable cause. The court may, by order in writing, from time to time, postpone or adjourn the trial on such terms it thinks fit for such time it considers reasonable.

There is no exact definition of the words "reasonable cause" and Raja Azlan Shah J (as he then was) in Tan Foo Su v PP commented that reasonable cause is a term of art for lawyers and no definite ruling can be laid down; each case must be dealt with according to its peculiar circumstances.

Contrary to popular belief, the courts alone are not responsible for unnecessary postponing of cases. This is important especially in relation to the problems faced by remand prisoners in our prison. September to February 1992, there was a total of 4,456 remand prisoners in our prisons (see Table 1). From this figure, 2,150 of them, committed non-bailable offences mainly under S.39B of the Dangerous Drugs Act and 2,606 of them were prisoners for bailable offences but unable to raise the bail (refer Tables 2 and 3). This has worsened the prison condition in Malaysia since a total of 17,671 prisoners were detained up

to February 1992 whereas our prisons could actually accommodate 12,945 prisoners. Some of these prisoners have been detained for two years or more (see Table 4).

Even though, directives have been issued to magistrates to dispose of cases concerning remand prisoners within a six-month period, nevertheless, despite all cautions, there have been postponements. It is common for subordinate courts to fix two or more cases in one day hoping that one case will proceed. However if more cases are ready for trial, priority has always been given to the case where the prisoner is on remand.

The most common reasons for postponement of cases are as follows:

1. lawyer engaged in another court;
2. witness not available due to all sorts of reasons;
3. interpreters not available;
4. investigation not completed.

Missing Lawyers

Harun J in Mohamad bin Abdullah v PP held that:

> "... no part of the court proceedings should be held in the absence of counsel or without first giving an opportunity to counsel to be present, and if this procedure was not followed, it would deprive an accused person of his right to be defended by a legal practitioner of his choice as guaranteed by Article 5 (3) of the Federal Constitution."

With the problem of backlog of cases in the courts, the courts are normally quite reluctant to grant postponement of cases set down for trial unless there are good reasons for doing so (see Table 5). In most cases, lawyers are not able to be present in court due to illness (normally medical certificate will be tendered) or engaged in another court. Lawyers can come up with many possible reasons when requesting for postponement, but as professionals they should not accept cases if they know that they will not be able to represent the client at the trial. Some lawyers are taking too many cases and yet they knew that they had limited time and ability to represent their client at the trial proper.

There were also occasions where defence counsel purposely applied for postponement because of reasons best known to them such as legal fees still not paid by the client or being absent on the trial date without even informing the accused due to the same reason.

Missing Witness

During trial, we have come across so many cases where witnesses especially civilian witnesses could not be traced. The investigating officer normally fails to locate certain witnesses after their statements were recorded during investigation. This is normally due to false address given to the investigating officer or the witness has moved to an unknown place. In such a situation, the prosecuting officer will have no alternative but to apply for postponement.

Police officers involved with the case may also not be available on the hearing date for various reasons. They may be attending training or courses such as at UNAFEI, a witness in another trial fixed on the same date before another court, on medical leave or even on vacation.

It has been shown in several decided cases, instances where postponement can be granted or refused. The absence of prosecution witnesses due to their having to attend a High Court case as witnesses is a reasonable cause for an application for postponement as long as there has been no repeated postponements before.

It is very important for investigating officers to coordinate the movement of the prosecution's witnesses and should inform the court through the prosecuting officer if the hearing date fixed by the court is not suitable to any important witness.

Sometimes, subpoenas issued against civilian witnesses cannot be served because of inaccurate or wrong address or several other reasons.

Incomplete Investigations

As admitted by Hj. Kamaruddin bin Hamzah, OCDD of Petaling Jaya, Malaysia during the 90th International Seminar at UNAFEI in 1992, incomplete investigation is one of the main reasons for postponement of cases in Malaysian courts. he had this to say:

> "Investigations not completed is one of the common causes of delays. This problem arises because of too many cases of arrest first and investigate later. Police should complete investigations first and charge the accused later after taking into consideration the evidence. If there is need to investigate further, then the accused person must be given bail."

Another reason that leads to delays is that cases are postponed because further directions are needed from the Public Prosecutor. Normally in these kinds of cases, the court has a discretion to discharge the accused. But this is not preferred because the accused person would normally be re-arrested and re-charged and the whole process will start all over again.

Harun J in PP v Tan Kim San stressed:

> "The principle is that a person should not be in court until the investigation into the case against Kim has been completed and there is a prima facie evidence to prosecute him of the charge. In other words, a person should not be put in peril of criminal trial unless the prosecution is able to prove the case against him. To do otherwise is an injustice."

The learned Judge proposed that the accused be discharged under s 173 (9) of the CDC instead of granting postponement of the case. To avoid re-arrest and thereafter re-charging the accused the Public Prosecutor has come up with the 90% rule that is not to charge any accused person until and unless the prosecution (the police, at the lower court level) is 90% sure of conviction.

Since not all cases will be referred to the Public Prosecutor for advice and further directions, the implementation of this rule is yet to be fully observed by the police.

Shortage of Interpreters

Right now, Malaysian courts are experiencing an acute shortage of Chinese interpreters. According to statistics (see Table 6), 24.85% of remand prisoners in 1989 were Malaysian Chinese and another 29.84% were foreign nationals. Even though, through experience, most of them can speak and understand English or Malay language, they prefer to speak in their mother tongue during trials and interpreters must be available. This is because a witness or accused can testify in the language of their choice. Low salary is the main reason why Malaysian Chinese are not interested in the job as an interpreter since they can get better pay in the private sector.

Other Reasons

There are several other common reasons for postponement of cases in Malaysia. Incomplete hearing due to lack of time or short hearing days provided is one of the main reasons. Reserved judgement at the end of the prosecution's case on full trial is also common. Magistrates and Sessions Court Judges will be subject to transfer throughout their careers in the judicial service. If a magistrate is transferred to another state, he may continue hearing all the cases that he started until completion. But if he is transferred to be a Deputy Public Prosecutor, normally the magistrate so succeeding may have the trial "de novo" (re-heard). As a principle a DPP should be disqualified from continuing his part-

heard cases.

A Magistrate or Sessions Court Judge may not safely act on evidence partly taken by him and partly by his predecessor especially relating to evidence of crucial witnesses taken by his predecessor. The High Court may on appeal or revision set aside any conviction made on evidence not wholly recorded by the magistrate before whom the accused was convicted, if the court is of opinion that the accused has been prejudicial and may order a new trial. A new trial may further prolong the stay of a remand prisoner in jail.

A Magistrate or Sessions Court Judge who is on leave will normally be covered by another magistrate or judge. Usually, this covering magistrate or judge is quite reluctant to proceed with hearing of cases in that court, because he himself has his own cases ready for trial. As a result, postponement is the way out.

Remand Prisoners—Problems Posed and Suggested Solutions

According to statistics in 1991, a total of 16,278 remand prisoners were under detention in our prisons (see Table 7). This is 25.74% of the total number of prisoners throughout the whole year of 1991. Up to 15 February 1992, there were a total of 4,756 remand prisoners. Out of this figure 2,478 remand prisoners were magsitrate's court remand prisoners who were unable to raise bail offered to them.

Usually, the prosecuting officer will advise the court on whether bail is being offered and if so, the amount. It is common for the prosecution to propose high bail but s-389 of the CPC provides that the amount shall be fixed with due regard to the circumstances of the case or being sufficient to secure the attendance of the person arrested, but shall not be excessive. Though, there are some offences under the Penal Code which are categorised as non-bailable, s-388 (1) provides that those accused under non-bailable offence may be released on bail either by the police (during investigation) or by the courts unless there are reasonable grounds for believing that the person concerned is guilty of offence punishable with death or imprisonment for life. The proviso of this section provides that the court may direct any person under the age of 16, a woman or any sick person accused of such an offence be released on bail.

There were occasions where hard-core criminals were ignored by their families and no one was willing to bail them out. Accused persons who are drug addicts will also normally be left in custody since their families feel a lot safer leaving them behind bars rather than bailing them out. Normally these remand prisoners will be cramped in cells measuring 9' x 10' with seven to 12 other inmates. Though our Prison Rules (rule 4) provide that one cell should accommodate one inmate at one time and for certain special reasons up to three persons. Due to unavoidable reasons, more than the stated numbers are allowed. This will cause mental stress, unhygienic conditions and thus result in their committing offences against the Prison Rules. Those first-timers will have to mix with seasoned criminals and this is totally unhealthy and will be a bad influence to these newcomers. There have been instances of persons after having been remanded for a long period pleaded "guilty to get over the charge." By then, their life has been disrupted and has been exposed to penal life and to criminals.

As a solution to this problem, bail conditions must be reasonable and realistic. Courts should not insist on cash securities as practiced now. It is sufficient for the bailor to produce a statutory declaration that he is worth the amount or he has a fixed income sufficient to satisfy the amount of bail if the person absconded. If the declaration is false, the prosecution can always charge him for making false declaration and be dealt with.

Court interpreters should be given salary revision and it is time for the relevant

authority to consider seriously a new-pay scheme for them. The Chief Registrars Office of the Supreme Court has conducted a thorough study on this matter and several proposals to upgrade the post of court interpreters has been submitted. Magistrates and sessions court judges should stop the practice of having part-heard cases. Cases once started should be completed as soon as possible. Both the prosecution and defence counsel should give their full cooperation in order that long delays or postponement would not happen.

Until and unless investigation is completed no person should be charged in court. Magistrates and judges should exercise their power under s-173 (9) of the CPC to discharge an accused person whenever the prosecution asks for postponement on the above ground.

The court should consider exercising more often alternative custodial sentences provided in the CPC such as fines (s-283, 284, CPC), binding over certain offenders after admonition or caution to the offender (s-173A CPC), probation (s-173A (2) CPC) and police supervision as provided in s-295-297 of the CPC. First offenders who have been convicted of any offence punishable with imprisonment, after taking into consideration their character, antecedents, age, health or mental condition should be considered to be released upon entering into a bond with or without sureties as provided in s-294 of the CPC.

The system of suspended execution of sentencing which is widely used in Japan should be seriously considered in Malaysia. Last year, the Justice Ministry of Malaysia organized a seminar on sentencing in order to find alternatives to the present mode of sentencing in Malaysia.

However before introducing new measures or modes of sentencing in Malaysia, proper and thorough surveys and research should be conducted to determine which particular aspect or area of the sentencing structure that needs revision or change. Perhaps, the guideline proposed by Hilbery J in R v Ball is thought-provoking. He had this to say:

> "In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime but also in the hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It may deter others who might be tempted to try crime as a means to easy money on the supposition that if the offender is caught and brought to justice, the punishment will be negligible. Such a sentence may also deter the particular criminal from committing a crime again, or induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living. Our law does not, therefore, fix the sentence for a particular crime, but fixes a maximum sentence and leaves it to the court to decide what is, within that maximum, the appropriate sentence for each criminal in the particular circumstances of each case. Not only in regard to each crime, but in regard to each criminal, the court has the right and the duty to decide whether to be lenient or severe."

Wan Yalyahya J in New Tuck Shen v PP 2 further stressed that:

> "... Public interest varies according to the time, place and circumstances of each case including its nature and prevalance. What may be of public interest in one place may differ from another. Similarly inducement to turn from criminal ways into honest living can take several forms and will have to depend to a greater extent on the attitude of the offender and his suitability for any particular type

of rehabilitation."

Deciding the appropriate sentence for a convicted person is never an easy task for Judicial officers on the bench. It is indeed a difficult and heavy responsibility to each one of us. But somebody has to do the job and it is up to the public to assess and judge our fairness and impartiality while performing the duty burdened on our shoulders.

Table 1: Unconvicted Prisoners as of 15.02.92

Prisons	Lower	Session	High	Total
Kajang (Wanita)	55	4	28	87
Pudu, K. Lumpur	816	0	181	997
Taiping	465	0	108	573
P. Pinang	564	42	210	816
J. Bahru	377	47	121	545
A. Setar	218	33	127	378
P. Chepa	235	65	92	392
Sg. Petani	23	6	5	34
B. Hilir, Melaka	184	26	14	224
Kuantan	98	11	44	124
Kuching	34	1	14	49
Miri	42	7	3	52
Sibu	70	0	27	97
Sri Aman	1	0	2	3
Limbang	4	0	1	5
K. Kinabalu	6	39	36	136
Tawau	83	28	33	144
Sandakan	67	0	25	92
K. Kinabalu (Wanita)	6	0	2	8
Total	3,394	309	1,053	4,756

High: Refers to unconvicted prisoners who are being remanded pending trial in High Court.
Session: Refers to unconvicted prisoners who are being remanded by order of Session Court.
Lower: Refers to unconvicted prisoners who are being remanded by order of Lower or Magistrate's Court.

Table 2: Unconvicted Prisoners as of 15.02.92 by Offence

Prisons	Penal Code (F.M.S. Cap. 45)	Dangerous Drugs Act, 1952	Firearms (I.P.) Act, (1971)	Other Offences	Total
Kajang (Wanita)	15	62	0	10	87
Pudu, K. Lumpur	449	444	19	85	997
Taiping	471	92	8	2	573
P. Pinang	158	616	18	24	816
J. Bahru	247	248	7	43	545
A. Setar	114	254	3	7	378
P. Chepa	92	289	2	9	392
Sg. Petani	18	13	0	3	34
B. Hilir, Melaka	114	83	5	22	224
Kuantan	36	87	0	1	124
Kuching	47	2	0	0	49
Miri	46	1	5	0	52
Sibu	93	1	3	0	97
Sri Aman	3	0	0	0	3
Limbang	5	0	0	0	5
K. Kinabalu	75	31	26	4	136
Tawau	82	45	6	11	144
Sandakan	39	22	6	25	92
K. Kinabalu (Female)	7	1	0	0	8
Total	2,097	2,303	109	247	4,756

Table 3a: Unconvicted Prisoners as of 15.02.92

Institution	Bailable/No Bailor			Not Bailable			Total
	Lower	Session	High	Lower	Session	High	
Kajang (Wanita)	21	0	0	34	4	28	87
Pudu, K. Lumpur	593	0	0	226	0	178	997
Taiping	328	0	0	137	0	108	573
P. Pinang	451	2	0	113	40	210	816
J. Bahru	330	26	0	437	21	121	545
A. Setar	151	33	0	627	0	127	378
P. Chepa	211	44	0	24	21	92	392
Sg. Petani	13	0	0	11	5	5	34
B. Hilir, Melaka	116	12	0	68	14	14	224
Kuantan	77	7	0	12	4	24	124
Kuching	2	1	0	32	0	14	49
Miri	13	1	0	29	6	3	52
Sibu	52	0	0	18	0	27	97
Sri Aman	0	0	0	1	0	2	3
Limbang	1	0	0	3	0	1	5
K. Kinabalu	8	0	0	53	39	36	136
Tawau	9	2	0	33	26	74	144
Sandakan	30	0	0	37	0	25	92
K. Kinabalu (Wanita)	0	0	0	6	0	2	8
Total	2,478	128	0	920	180	1,050	4,756

High: Refers to unconvicted prisoners who are being remanded pending trial in High Court.
Session: Refers to unconvicted prisoners who are being remanded by order of Session Court.
Lower: Refers to unconvicted prisoners who are being remanded by order of Lower or Magistrate's Court.

Table 3b: Remand Prisoners by Offence—as of 31.12.1991

The breakdown of the remand prisoners (in descending order of majority) in accordance with the offences charged against them is as follows:

		(%)
Dangerous Drugs Act, 1952	2,482	(54.00)
Penal Code (F.M.S. Cap. 45)	1,646	(35.81)
Firearms (I.P.) Act, 1971	115	(2.50)
Minor Offences Ord., 1955	87	(1.89)
Immigration Act, 1959	36	(0.78)
Internal Security Act, 1960	24	(0.52)
Kidnapping Act No. 41/61	13	(0.29)
Gambling Act, 1951	7	(0.15)
Customs Act, 1975	5	(0.11)
Anti-Corruption Act, 1961	3	(0.07)
Road Traffic Ordinance, 1958	3	(0.07)
Restricted Residence Enactment	1	(0.02)
Prevention of Crimes Ord., 1959	1	(0.02)
Other Offences	173	(3.77)
Unconvicted Prisoners—(Table 12B)		

Of the 8,219 unconvicted prisoners in the prisons, 3,739 (45.49%) had been remanded or detained for less than three months and 4,480 (54.51%) for three months and above.

Table 3c-1: Annual Admission in 1991—Remand Prisoners by Offence and Court

Penal Code (F.M.S. CAP. 45)			High	Session	Lower	Total	Percentage
Sec. 109	120 P.C.	Offences of Abetment	0	2	15	17	0.10
Sec. 120A	120B P.C.	Offences of Criminal Conspiracy	0	0	1	1	0.01
Sec. 121	130 P.C.	Offences against the State	0	0	0	0	0.00
Sec. 131	140 P.C.	Offences Relating to the Armed Forces	0	0	2	2	0.01
Sec. 143	160 P.C.	Offences against the Public Tranquility	0	0	46	46	0.28
Sec. 161	171 P.C.	Offences By/Relating to Public Servants	0	0	33	33	0.20
Sec. 172	190 P.C.	Contempts of the Lawful Authority of Public Servants	0	0	3	3	0.02
Sec. 193	229 P.C.	False Evidence and Offences against Public Justice	0	0	19	19	0.12
Sec. 231	263 P.C.	Offences Relating to Coin and Government Stamps	0	0	5	5	0.03
Sec. 264	267 P.C.	Offences Relating to Weights/Measures	0	0	0	0	0.00
Sec. 269	294 P.C.	Offences Affecting the Public Health/Safety/ Convenience/Decency/Morals	0	0	8	8	0.05
Sec. 295	298 P.C.	Offences Relating to Religion	0	0	77	77	0.47
Sec. 302	P.C.	Murder	26	3	223	252	1.55
Sec. 304	P.C.	Culpable Homicide not Amounting to Murder	4	19	31	54	0.33
Sec. 304A	P.C.	Causing Death by Rash or Negligent Act	0	0	0	0	0.00
Sec. 305	P.C.	Abetment of Suicide Committed by a Child/Insane or Delirious Person/an Idiot/a Person Intoxicated	0	0	0	0	0.00
Sec. 306	P.C.	Abetting the Commission of Suicide	0	0	0	0	0.00
Sec. 307	P.C.	Attempt to Murder	0	1	5	6	0.04
Sec. 308	P.C.	Attempt to Commit Culpable Homicide	0	0	0	0	0.00
Sec. 309	P.C.	Attempt to Commit Suicide	0	0	0	0	0.00
Sec. 312	318 P.C.	Offences of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births	0	0	1	1	0.01
Sec. 323	338 P.C.	Offences Relating to Voluntarily Causing Hurt or Grievous Hurt	0	15	261	276	1.70
Sec. 341	348 P.C.	Offences of Wrongful Restraint and Wrongful Confinement	0	0	7	7	0.04
Sec. 352	358 P.C.	Offences of Criminal Force and Assault	0	1	72	73	0.45
Sec. 363	369 P.C.	Offences of Kidnapping or Abduction	0	0	12	12	0.07
Sec. 370	374 P.C.	Offences of Slavery and Force Labour	0	0	0	0	0.00
Sec. 376	P.C.	Rape	0	70	89	159	0.98
Sec. 377	P.C.	Unnatural Offence	0	2	11	13	0.08
Sec. 377A	P.C.	Outrage on Decency	0	1	0	1	0.01
Sec. 379	P.C.	Theft	0	2	1,677	1,679	10.31
Sec. 380	P.C.	Theft in a Building/Tent/Vessel	0	0	779	779	4.79
Sec. 381	382 P.C.	Other Types of Theft	0	0	104	104	0.64
Sec. 384	389 P.C.	Various Offences of Extortion	0	0	57	57	0.35
Sec. 392	P.C.	Robbery	0	4	366	370	2.27
Sec. 393	P.C.	Attempt to Commit Robbery	0	0	25	25	0.15
Sec. 394	P.C.	Robbery with Causing Hurt	0	23	52	75	0.46
Sec. 395	P.C.	Gang Robbery	0	14	36	50	0.31
Sec. 396	P.C.	Gang Robbery with Murder	0	1	15	16	0.10
Sec. 397	P.C.	Robbery with Arms or with Attemtp to Cause Death or Grievous Hurt	0	3	46	49	0.30
Sec. 399	402 P.C.	Conspiracy to Commit Gang Robbery	0	0	1	1	0.01
Sec. 403	404 P.C.	Offences of Criminal Misappropriation of Property	0	0	10	10	0.06
Sec. 406	409 P.C.	Offences of Criminal Breach of Trust	0	6	65	71	0.44
Sec. 411	414 P.C.	Offences of the Receiving of Stolen Property	0	1	177	178	1.09
Sec. 417	420 P.C.	Offences of Cheating	0	2	116	118	0.72
Sec. 421	424 P.C.	Offences of Fraudulent Deeds and Disposition of Property	0	0	4	4	0.02
Sec. 426	440 P.C.	Offences of Committing Mischief	0	1	25	26	0.16
Sec. 447	462 P.C.	Offences of Criminal Trespass	0	4	840	844	5.18
Sec. 465	489D P.C.	Offences of Forgery Relating to Documents and to Currency Notes and Bank Notes	0	2	73	75	0.46
Sec. 491	P.C.	Criminal Breach of Contracts of Service	0	0	0	0	0.00
Sec. 493	498 P.C.	Offences Relating to Marriage	0	0	1	1	0.01
Sec. 500	502 P.C.	Offences of Defamation	0	0	0	0	0.00
Sec. 504	510 P.C.	Offences of Criminal Intimidation, Insult and Annoyance	0	0	21	21	0.13
Sec. 511	P.C.	Attempt to Commit Offences	0	0	46	46	0.28
Total			30	177	5,457	5,664	34.80

Table 3c-2: Annual Admission in 1991—Remand Prisoners by Offence and Court

Firearms (Increased Penalties) Act, 1971		High	Session	Lower	Total	%
Section 3	Discharging a Firearm in the Commission of a Scheduled Offence	6	2	10	18	0.11
Section 3A	Being an Accomplice in Case of Discharge of Firearm	1	1	14	16	0.10
Section 4	Exhibiting a Firearm in the Commission of a Scheduled Offence	1	27	4	32	0.20
Section 5	Having Firearm in the Commission of a Scheduled Offence	0	12	12	24	0.15
Section 6	Exhibiting an Imitation Firearm in the Commission of a Scheduled Offence	0	2	1	3	0.02
Section 7	Trafficking in Firearms	0	0	0	0	0.00
Section 8	Unlawful Possession of Firearms	0	10	25	35	0.21
Section 9	Consorting with Persons Carrying Arms	2	5	7	14	0.08
Total		10	59	73	142	0.87

Table 3c-3: Annual Admission in 1991—Remand Prisoners by Offence and Court

Dangerous Drugs Act, 1952 (Revised 1980)		High	Session	Lower	Total	%
Possession of Raw Opium/Coca Leaves/Poppy-Straw/Cannabis	Section 6	0	18	617	635	3.90
Planting or Cultivation of Any Plant from Which Raw Opium/Coca Leaves/Poppy-Straw/Cannabis May Be Obtained	Section 6B (1)(a)	0	2	3	5	0.03
	Section 6B (1)(b)	0	0	0	0	0.00
	Section 6B (1)(c)	0	0	0	0	0.00
Possession of/Import into or Export from Malaysia/Manufacture, Sell or Otherwise Deal in Any Prepared Opium	Section 9 (a)	0	0	15	15	0.09
	9 (b)	0	0	0	0	0.00
	9 (c)	0	0	0	0	0.00
Use of Premises, Possession of Utensils and Consumption of Opium	Section 10 (1)(a)	0	0	21	21	0.13
	10 (1)(b)	0	0	0	0	0.00
	10 (2)(a)	0	0	0	0	0.00
	10 (2)(b)	0	0	0	0	0.00
Import into or Export from Malaysia Any Dangerous Drug	Section 12 (1)(a)	0	0	0	0	0.00
	12 (1)(b)	0	0	0	0	0.00
Possession of Any Dangerous Drug	Section 12 (2)/(3)	0	11	4,292	4,303	26.44
Keeping or Using Premises for Unlawful Administration of Dangerous Drug	Section 13 (a)	0	0	0	0	0.00
	13 (b)	0	0	0	0	0.00
	13 (c)	0	0	0	0	0.00
Administration of Any Dangerous Drug to Others	Section 14 (1)	0	0	0	0	0.00
Self Administration of Any Dangerous Drug	Section 15 (a)	0	0	90	90	0.55
	15 (b)	0	0	0	0	0.00
Possession of Heroin or Morphine; or Prepared or Raw Opium	Section 39A	0	187	715	902	5.54
Trafficking in Dangerous Drug (Dadah)	Section 39B	99	67	506	672	4.13
Other Sections of Dangerous Drugs Act, 1952 (Revised 1980)		0	0	504	504	3.10
Total		99	285	6,763	7,147	43.91

Table 3c-4: Annual Admission in 1991—Remand Prisoners by Offence and Court

Kidnapping Act No. 41/1961	High	Session	Lower	Total	%
Section 3 (1)	1	0	3	4	0.02
Other Sections	0	0	11	11	0.07
Total	1	0	14	15	0.09

Table 3c-5: Annual Admission in 1991—Remand Prisoners by offence and Court

Internal Security Act, 1960 (Revised 1972)		High	Session	Lower	Total	%
Section 57 (1)	Possession of Firearm or/and Ammunition or Explosive without Authority	1	0	0	1	0.01
Section 58	Consorting with Person Carrying or Having Possession of Arms and Explosives	0	0	0	0	0.00
Other Sections		0	0	4	4	0.02
Total		1	0	4	5	0.03

Table 3c-6: Annual Admission in 1991—Remand Prisoners by Offence and Court

Other Various Laws/Acts	High	Session	Lower	Total	%
Offences under Immigration Act, 1959 (Revised 1975)	0	0	533	533	3.27
Offences under Anti-Corruption Act, 1961 (Revised 1971)	0	6	15	21	0.13
Offences under Road Traffic Ordinance, 1958 (Including Road Transport Act, 1987—Act 333)	0	0	27	27	0.17
Offences under Customs Act, 1975 (Revised 1980)	0	0	50	50	0.31
Offences under Restricted Residence Enactment (CAP. 39)	0	0	42	42	0.26
Offences under Prevention of Crimes Ordinance, 1959	0	0	61	61	0.37
Offences under Gambling Act, 1951—Act 289	0	0	67	67	0.41
Offences under Minor Offences Ordinance, 1955	1	0	208	209	1.28
Other Offences Not Mentioned Above	10	8	2,277	2,295	14.10
Total	11	14	3,280	3,305	20.30
Grand Total (Table 3c-1 to 3c-6)	152	535	15,591	16,278	100.01

High: Refers to unconvicted prisoners who are being remanded pending trial in High Court.
Session: Refers to unconvicted prisoners who are being remanded by order of Session Court.
Lower: Refers to unconvicted prisoners who are being remanded by order of Lower or Magistrate's Court.

Table 4a: Remand Prisoners—Length of Time in Custody as of 15.02.92

Prisons	Below 3 Months	3–6 Months	6–12 Months	12–24 Months	24–36 Months	36–60 Months	60–84 Months	84–120 Months	120 Months and Above	Total
Kajang (W)	36	15	2	8	10	16	0	0	0	87
K. Lumpur	126	370	150	158	106	85	2	0	0	997
Taiping	226	104	71	58	47	42	24	1	0	573
P. Pinang	380	185	86	57	56	33	19	0	0	816
J. Bahru	218	118	59	50	49	38	9	4	0	545
A. Setar	116	45	78	50	30	39	17	3	0	378
P. Chepa	89	73	121	52	42	13	2	0	0	392
Sg. Petani	16	6	4	6	1	1	0	0	0	34
B. Hilir	141	35	17	31	0	0	0	0	0	224
Kuantan	30	49	17	25	3	0	0	0	0	124
Kuching	3	0	0	33	13	0	0	0	0	49
Miri	16	7	3	9	7	9	1	0	0	52
Sibu	36	8	0	26	1	11	15	0	0	97
Sri Aman	0	0	1	0	2	0	0	0	0	3
Limbang	2	2	0	0	0	0	1	0	0	5
K. Kinabalu	23	15	41	18	12	8	16	3	0	136
Tawau	21	0	0	47	19	25	27	4	1	144
Sandakan	30	7	16	12	8	9	8	2	0	92
K. Kinabalu (Wanita)	1	3	1	0	1	1	1	0	0	8
Total	1,510	1,042	667	640	407	330	142	17	1	4,756

Table 4b: Penal Population as of 15.02.92

Prisons	Convicted Prisoners	Remand Prisoners	Detention under Immigration Act	Others	Total Population (15.02.92)	Had Muatan Selesa
Kajang (W)	303	87	442	0	832	580
K. Lumpur	354	997	1,788	1	3,140	2,000
Taiping	1,272	573	39	0	1,884	2,000
P. Pinang	930	816	0	0	1,746	1,500
J. Bahru	546	545	30	1	1,122	1,000
A. Setar	771	378	67	0	1,216	1,200
P. Chepa	505	392	145	0	1,042	1,000
Sg. Petani	380	34	14	1	429	600
B. Hilir	31	224	0	0	255	300
Kuantan	86	124	12	0	222	200
Kuching	193	49	24	0	266	930
Miri	100	52	23	0	175	335
Sibu	76	97	5	0	178	285
Sri Aman	15	3	0	0	18	115
Limbang	22	5	2	0	29	160
K. Kinabalu	405	136	329	3	873	305
Tawau	257	144	45	4	450	280
Sandakan	129	92	157	0	378	130
K. Kinabalu (W)	39	8	123	0	170	25
Grand Total	9,572	4,756	3,328	10	17,665	12,945

Table 5: Number of Cases Registered in Magistrate's and Sessions Court (1988–1990)

States	Magistrate's Court			Sessions Court		
	1988	1989	1990	1988	1989	1990
Kuala Lumpur	44,055	43,519	59,735	232	176	224
Selangor	32,810	23,321	24,148	123	372	178
N. Sembilan	6,608	9,673	13,744	196	149	52
Malacca	7,777	3,607	16,625	21	107	41
Pahang	7,178	12,224	16,664	98	186	128
Johore	35,388	50,863	44,969	222	430	302
Kelantan	11,218	21,233	10,989	82	200	157
Terengganu	13,232	8,741	11,446	26	51	54
Perlis	1,012	3,758	3,746	46	32	33
Kedah	17,705	21,861	23,111	141	179	167
Penang	16,537	15,502	38,269	262	220	214
Perak	30,990	33,974	30,155	188	320	284

Table 6: Unconvicted Prisoners as of 31.12.1989—by Nationality, Race and Court

	Remand			Detention		Total	%
	High	Session	Lower	IMM	Others		
Malaysian (Race)							
Malay	351	147	1,303	0	3	1,809	30.13
Chinese	399	86	1,004	0	3	1,492	24.85
Indian	100	51	620	0	1	772	12.86
Others	35	6	97	0	1	139	2.32
Total	885	290	3,024	0	13	4,212	70.16
Foreigner (Nationality)							
Indonesian	32	17	257	599	0	905	15.08
Thai	21	5	82	23	0	131	2.18
Singaporean	12	2	1	5	0	20	0.33
Filipino	72	0	158	329	0	559	9.31
Others	5	6	16	149	0	176	2.93
Total	142	30	514	1,105	0	1,791	29.84
Total (Malaysian + Foreigner)	1,027	320	3,538	1,105	13	6,003	100.00
Unconvicted Prisoners as of 31.12.1991—by Nationality, Race and Court							
Malaysian (Race)							
Malay	420	166	1,425	2	0	2,013	24.49
Chinese	341	82	725	0	15	1,163	14.15
Indian	118	55	485	0	0	658	8.01
Others	35	23	102	0	1	161	1.96
Total	914	326	2,737	2	16	3,995	48.61
Foreigner (Nationality)							
Indonesian	29	17	206	2,631	0	2,883	35.08
Thai	29	10	60	29	0	128	1.55
Singaporean	2	3	3	11	0	19	0.23
Filipino	79	35	88	447	0	649	7.90
Others	12	4	42	487	0	545	6.63
Jumlah	151	69	399	3,605	0	4,224	51.39
Total (Malaysian + Foreigner)	1,065	395	3,136	3,607	16	8,219	100.00

High: Refers to unconvicted prisoners who are remanded pending trial in High Court.
Session: Refers to unconvicted prisoners who are remanded by order of Session Court.
Lower: Refers to unconvicted prisoners who are remanded by order of Lower/Magistrate's Court.
IMM: Refers to unconvicted who are detained under the order of the Immigration Act, 1959.
Others: Refers to unconvicted who are detained under various orders.

Table 7: Annual Admission in 1991—by Category of Prisoners and Sex

Category of Prisoners	Male	Female	Total	%
Convicted	25,516	3,522	29,038	45.92
Pending Trial (High Court)	137	15	152	0.24
Remand (Magistrate & Session Courts)	14,826	1,300	16,126	25.50
Detention under Immigration Order	14,803	3,008	17,811	28.16
Others	91	23	114	0.18
Total	55,373	7,868	63,241	100.00
Total Number of Prisoners as at 31.12.1991—by Category and Sex				
Convicted	12,719	562	13,281	61.77
Pending trial (High Court)	998	67	1,065	4.95
Remand (Magistrate & Session Courts)	3,384	147	3,531	16.42
Detention under Immigration Order	2,846	761	3,607	16.78
Others	15	1	16	0.08
Total	19,962	1,538	21,500	100.00

Table 8: Annual Admission in 1991—Convicted Prisoners by Age Group and Sex

	Male	Female	Total	%
Age Group				
Below 21 Years	3,476	627	4,103	14.13
21–29 Years	10,955	1,564	12,519	43.11
30–39 Years	7,436	880	8,316	28.64
40–49 Years	2,708	354	3,062	10.54
50–59 Years	779	92	871	3.00
60 Years and Above	162	5	167	0.58
Total	25,516	3,522	29,038	100.00
By Sentence and Sex				
Length of Sentence				
Below 6 Months	12,319	2,830	15,149	52.17
6–< 12 Months	4,978	434	5,412	18.64
1–< 3 Years	6,123	215	6,338	21.83
3–< 6 Years	1,644	28	1,672	5.76
6–< 10 Years	231	5	236	0.81
10–>20 Years	108	4	112	0.39
Lifers	3	0	3	0.01
Natural Lifers	7	0	7	0.02
Ruler's Pleasure	4	0	4	0.01
Death Sentence	99	6	105	0.36
Total	25,516	3,522	29,038	100.00

Table 9: Convicted Prisoners as of 31.12.1991—by Age Group and Sex

	Male	Female	Total	%
Age Group				
Below 21 Years	769	109	878	6.61
21–29 Years	5,067	247	5,314	40.01
30–39 Years	4,778	149	4,927	37.10
40–49 Years	1,438	32	1,470	11.07
50–59 Years	540	21	561	4.22
60 Years and Above	127	4	131	0.99
Total	12,719	562	13,281	100.00
By Length of Sentence and Sex				
Below 6 Months	1,111	209	1,320	9.94
6–<12 Months	1,714	161	1,875	14.12
1–< 3 Years	5,054	115	5,169	38.92
3–< 6 Years	2,804	36	2,840	21.38
6–<10 Years	842	11	853	6.42
10–>20 Years	437	5	442	3.33
Lifers	294	9	303	2.28
Natural Lifers	112	1	113	0.85
Ruler's Pleasure	25	1	26	0.20
Death Sentence	326	14	340	2.56
Total	12,719	562	13,281	100.00

Table 10: Annual Admission in 1991—Convicted Prisoners by Recidivism and Sex

Previous Prison Committals	Male	Female	Total	%
First Time	16,269	2,935	19,204	66.13
Second Time	3,309	455	3,764	12.96
Third Time	2,062	98	2,160	7.44
Fourth Time	1,288	26	1,314	4.52
Fifth Time	899	5	904	3.11
Sixth Time	609	1	610	2.10
Seventh Time	388	0	388	1.34
Eighth Time	271	1	272	0.94
Ninth Time	162	0	162	0.56
Ten Time and Above	259	1	260	0.90
Total	25,516	3,522	29,038	100.00
Convicted Prisoners as of 31.12.1991—by Recidivism and Sex				
First Time	5,345	418	5,763	43.39
Second Time	2,324	80	2,404	18.10
Third Time	1,485	24	1,509	11.36
Fourth Time	1,128	27	1,155	8.70
Fifth Time	800	4	804	6.05
Sixth Time	542	5	547	4.12
Seventh Time	398	4	402	3.03
Eighth Time	269	0	269	2.02
Ninth Time	131	0	131	0.99
Ten Time and Above	297	0	297	2.24
Total	12,719	562	13,281	100.00

Table 11: Annual Admission of Foreign Prisoners in 1991—by Nationality and Sex

Foreigners in Prisons	Convicted			Unconvicted			Total (Con. + Uncon.)			%
	Male	Female	Total	Male	Female	Total	Male	Female	Total	
Indonesian	7,838	1,878	9,716	10,687	1,809	12,496	18,525	3,687	22,212	64.71
Filipino	407	223	630	3,948	1,361	5,309	4,355	1,584	5,939	17.30
Thai	1,362	652	2,014	467	381	848	1,829	1,033	2,862	8,34
Myanmar	377	15	392	471	15	486	848	30	878	2.56
Bangladeshis	254	5	259	499	0	499	753	5	758	2.21
Indian	282	0	282	336	2	338	618	2	620	1.81
Pakistanis	120	0	120	168	0	168	288	0	288	0.84
Vietnamese	84	3	87	133	1	134	217	4	221	0.64
Chinese	67	7	74	112	8	120	179	15	194	0.57
Sri Lankan	57	11	68	53	7	60	110	18	128	0.37
Singaporean	29	5	34	51	8	59	80	13	93	0.27
Taiwanese	0	1	1	33	0	33	33	1	34	0.10
Cambodian	11	0	11	14	0	14	25	0	25	0.07
Iranian	4	0	4	10	0	10	14	0	14	0.04
Briton	2	1	3	3	2	5	5	3	8	0.02
Hong Kongite	3	0	3	3	0	3	6	0	6	0.02
Nigerian	1	0	1	5	0	5	6	0	6	0.02
American (USA)	2	1	3	1	1	2	3	2	5	0.01
Brunei	4	0	4	1	0	1	5	0	5	0.01
German	2	0	2	3	0	3	5	0	5	0.01
Japanese	1	1	2	2	0	2	3	1	4	0.01
Australian	0	2	2	0	1	1	0	3	3	0.01
Mauritian	1	0	1	2	0	2	3	0	3	0.01
Nepalese	1	0	1	2	0	2	3	0	3	0.01
Kenyan	1	0	1	1	0	1	2	0	2	0.01
Swedish	0	1	1	0	1	1	0	2	2	0.01
Albanian	0	0	0	1	0	1	1	0	1	0.00
Brazilian	0	0	0	0	1	1	0	1	1	0.00
Iraqis	0	0	0	1	0	1	1	0	1	0.00
Italian	0	0	0	0	1	1	0	1	1	0.00
Jamaican	1	0	1	0	0	0	1	0	1	0.00
Norwegian	0	0	0	1	0	1	1	0	1	0.00
Omanis	0	0	0	1	0	1	1	0	1	0.00
Russian	0	0	0	1	0	1	1	0	1	0.00
Jumlah	10,911	2,806	13,717	17,010	3,599	20,609	27,921	6,405	34,326	100.00

Current Problems in the Treatment of Offenders in Singapore and Their Solutions

*by Peck Tiang Hock**

1. Introduction

1.1 Background

The Singapore Prisons Department administers 16 institutions comprising two Maximum Security Prisons, three Medium Security Prisons, a Reformative Training Centre, and Female Prison/Drug Rehabilitation Centre, five Male Drug Rehabilitation Centres and four Work Release Camps.

As of 28 Feb. 1993, the Penal inmates' population was 5,975. The population of Drug addicts was 6,146.

1.2 Function of Singapore Prison Service

The Singapore Prison Department is charged with the responsibility to administer the treatment and rehabilitation programmes of prisoners and drug addicts.

The Mission of the Department is:

> "To strive for excellence and professionalism in support of the Singapore Criminal Justice System in the Safe Custody, humane treatment and successful rehabilitation of offenders in preparing them for return to society as law abiding citizens."

1.3 Type of Offenders

1.3.1 Penal Inmates

Penal Inmates refer to persons whether convicted or not, under detention in any prison or Reformative Training Centre.

1.3.2 Inmates in Drug Rehabilitation Centres

Inmates in the DRC refer to persons who are detained on the order of the Director of CNB to undergo treatment and rehabilitation in an approved institution.

1.4 Breakdown of Inmates Population

1.4.1 Penal Inmates

As of 28 Feb. 1993, the Penal population was 5,975 (5,752 (96.21%) males and 223 (3.73%) females).

The breakdown is as follows:

Unconvicted Inmates		
Male Remand Inmates	535	(8.96%)
Male Criminal Law Detainees	821	(13.74%)
Male Aliens	178	(2.98%)
Convicted Inmates		
Male Inmates	4,218	(70.69%)
Female Inmates	223	(3.73%)
Total	5,975	

1.4.2 DRC Inmates

As of 28 Feb. 1993, the population of Drug Addicts was 6,146 (5,843 (95.07%) males and 303 (4.93%) females).

The breakdown is as follows:

Fourth-timers & Above	2,258	(36.74%)
Third-timers	2,094	(34.07%)
Second-timers	1,070	(17.41%)
First-timers	341	(5.55%)
Inhalant Abuse	22	(0.36%)
Residential (EMS)	202	(3.29%)
Pending	159	(2.59%)
Total	6,146	

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2. Current Problems in Institutional Treatment

2.1 Overcrowding

As of 28 Feb. 1993, there were about 11,919 prisoners/drug addicts held at the various penal institutions/DRCs that were meant to hold 10,000, i.e. there was an overcrowding of about 19.19% overall.

2.2 Insufficient Facilities in Non-Purpose-Built Institutions

In Singapore, there are only four purpose-built institutions. The rest of the penal and drug institutions were converted from buildings formerly used as residential or military installations. Thus, the converted physical space limits the types of treatment programmes for different categories of inmates.

2.3 Shortage of Manpower and Treatment Specialists

Shortage of Manpower is a perennial problem faced by the Prisons Department. The inmate population has been growing rapidly over the years. Manpower is not able to keep pace with the rapid rise in inmate population and this has led to grossly inadequate staff/inmate ratio.

Additionally, the shortage of treatment specialists such as psychologists, psychiatrists, counsellors, vocational and educational instructors is another obstacle to the effective implementation of the classification procedures and rehabilitation programmes.

2.4 Staff Recruitment

With the wide spectrum of treatment programmes, a high premium is placed on the good quality of staff recruited at both Senior and Junior level. These staff are expected to interact with the inmates and act as role models. Hence, high calibre staff must be recruited.

However, the recruitment of these high calibre staff is not easy as the Prisons Department will have to compete with other uniformed organisations like Police, CISCO and Singapore Civil Defence Force for such personnel.

3. Practical Measures to Alleviate the Problems

3.1 Physical Development Plan

The Department is currently reviewing the existing physical infrastructure.

The long-term aim is to house all the inmates in re-developed Changi Prison Complex and the 35.7 hectares of land adjoining it. A modern Drug Rehabilitation Centre Complex will also be built on 39 hectares of land at Tampines.

3.1.1 Construction of Two Penal Institutions

Two new penal facilities, viz Tanah Merah Prison and the Changi Women's Prison/Drug Rehabilitation Centre are due for completion in August 1993. These new prisons will alleviate the problem of overcrowding in the Penal Institutions.

The design of these two prisons will facilitate the effective implementation of the new treatment philosophy that emphasises rehabilitation in addition to safe custody of the inmates.

3.1.2 Construction of Tampines Drug Rehabilitation Centre

The Department has also embarked on a comprehensive development plan to construct a Drug Rehabilitation Centre with modern facilities. The project will rationalise the overall DRCs accommodation which will provide for better rehabilitation, optimize scarce manpower resources and a more effective management.

3.1.3 Mechanisation and Modernisation of Security Features

The Department has also completed an upgrading exercise of introducing latest security and communication equipment to enhance physical security features of the

various penal institutions as indicated below:

— Security equipment such as closed circuit televisions, walk-through metal detectors, hand-held detectors, Personal Protection Alarm (PPA) System, etc.
— Communication equipment such as cellular hand-held phones and hand free communication system, etc.

The mechanisation and modernisation of security features has enhanced effectiveness of the prison officers in the control and supervision of offenders.

3.1.4 Other Effective Measures to Cope with Overcrowding

Before the long-term physical development plans can be fully realised, the Department has implemented several interim measures. These include:

— Conversion of 14 buildings at Abingdon Road into a Minimum Security Prison for fine defaulters and short-term prisoners. It can accommodate 650 inmates.
— Renovation of Jalan Awan DRC to increase the capacity of the institution from 700 to 800.
— Renovation of Khalsa Crescent DRC to expand its capacity from 500 to 1,050.
— Conversion of buildings at Lorong Halus into a Medium Security Prison to replace Chia Keng Prison. It can house 530 inmates.

3.2 Implementation of a Centralised Classification System

The current system of classification of inmates is largely a decentralised system performed mainly by Institutional Classification Committee.

The Department will be setting up a Centralised Classification System with a view of implementing a more comprehensive assessment of the prisoner's needs in terms of treatment and rehabilitation and custodial level during his incarceration.

Overcrowding is very acute in maximum security facilities. A proper classification system can help to alleviate this condition by identifying inmates who can be transferred to medium security facilities.

3.3 Development of Non-Custodial Sanction—Electronic Monitoring System (EMS)

The non-custodial sanction (Electronic Monitoring System) was introduced in 1991 to enhance the supervision of drug addicts placed on the new three-phase rehabilitation programme.

Electronic monitoring represents an economically viable method of supervising offenders. It not only saves the cost of keeping the offenders in prison but also reduces pressure on prison facility.

3.4 Application of Dynamic Security

In Singapore we practise the concept of Dynamic Security to ensure the safe custody of prisoners and the security of the institutions. In short, Dynamic Security—Physical Security + Human Dynamics.

The four main elements of these "Human Dynamics" are:

— The rehabilitation model of penal management as opposed to the purely custodial or punitive model.
A punitive model is basically to lock up the offenders with no attempt at their rehabilitation while the rehabilitative model assumes that the offenders can change if they show a desire and willingness to change. But this requires the staff to treat the offenders with "fairness, justice and humanity."
— Productive use of offenders' time/providing meaningful work and training.
— A system of discipline and control.
A system of discipline and control along with reward and punishment is needed to ensure that offenders conform whilst incarcerated.

— Positive, effective and mutual interaction between Prison Officers and offenders. This is to enable the officers to gather information on any potential disturbance or trouble at its earliest stage before it occurs.

3.5 Manpower, Staff Recruitment and Training

To professionalise the service, two measures are undertaken to enhance the image of the Prisons Department.

3.5.1 To Recruit Better Calibre Staff

With the revision of services, terms and conditions, today, the Department is able to recruit better calibre and qualified candidates.

In this respect, the Department will continue to participate in the National career exhibition held annually so as to reach out to the public with the dual aim of creating greater public awareness of Prison work and recruiting prospective candidates to the Service.

3.5.2 To Implement Practical and Systematic Training

Today, training creates special emphasis and priority because the Department recognises its importance. Through training, the officers are taught new skills and knowledge to cope with new challenges of the Department.

The Prisons Staff Training School (PSTS) sets its objective to train, nurture and equip Prison officers for professional work in the correctional field.

Institutional in-service training conducted in the establishment serves to complement programmes conducted in the Prison Staff Training School. It is organised to keep the staff abreast of latest changes and development and provide an overview of basic work procedures/skills at the institutional level.

3.6 Improvement and Upgrading of Treatment and Rehabilitation Programme

3.6.1 Penal Rehabilitation

In 1991, the Prisons Department took over the functions of individual counselling (INDREP) from the Ministry of Community Development. The Department is now entirely responsible for the two-tier Rehabilitation Programme. The first tier is the Institutionalised Rehabilitation Programme comprising work, education, religious/counselling, recreational activities. The second tier is the Individualised Rehabilitation Programme consisting of counselling and specialised activities aimed at meeting the individual needs of inmates. This has helped to bring about better and more effective utilization of existing resources, better delivery of rehabilitative programmes and greater professionalism in the service.

In line with this, the Rehabilitation and Counselling Branch (RCP) was established in 1992 to facilitate the implementation of this system. This unit provides an integrated rehabilitation system linking the various components of the institutional regime with family and individual counselling.

3.6.2 Drug Rehabilitation

3.6.2.1 Exit counselling programme ((ECP)

This specialised counselling programme was implemented in 1988 for drug experimenters. The primary aim is to give new experimental addicts a chance to reform and mend their ways. This two-week long programme incorporates a physically strenuous regime coupled with intensive individual, group and family counselling to create a "short, sharp, shock" effect.

3.6.2.2 Intensive counselling programme (ICP)

This programme is designed to provide drug repeaters who are responsive to institutional treatment with professional coun-

selling therapy.

The ICP takes the form of two months of intensive counselling followed by a four-month Work Release Scheme (WRS) in which the inmates are permitted to leave the camp to work in private enterprises or ventures undertaken by SCORE (Singapore Corporation of Rehabilitative Enterprises).

3.6.2.3 Three-phase drug rehabilitation programme

The implementation of the ICP and ECP programmes have led the Department to formulate the Three-phase Drug Rehabilitation Programme which consists of the following:

— Institutional Treatment & Rehabilitation;
— Institutional Work Release;
— Residential Work Release with Electronic Monitoring.

3.7 Application of Community-Based Treatment

While treatment and rehabilitation of the offenders within the institutions is important, the aftercare services that follow upon the release of offenders is equally crucial.

The Singapore Prison Service together with other Government agencies have taken several measures to upgrade the after-care services as follows:

— Increasing the number of half-way houses for ex-drug addicts;
— Recruiting more volunteer after-care officers (VAOs) to provide guidance to drug supervises;
— Setting up an after-care coordination unit under the purview of Central Narcotics Bureau (for Drug inmates) and Prisons Department (for prisoners) to formulate and direct the after-care activities of the various agencies, e.g. SCORE, SANA, SACA and some private non-governmental organisations; and
— Setting up a Job Placement Unit under the purview of SCORE (Singapore Corporation Rehabilitative Enterprises) to help ex-convicts and ex-drug inmates to get jobs.

4. Conclusion

In order to effectively carry out the institutional treatment of offenders, the Singapore Prisons Department has taken measures to develop new institutions to relieve overcrowding and provide adequate facilities for the effective rehabilitation of offenders. This would facilitate better segregation of prisoners and provide better facilities for the rehabilitation of offenders.

The Department has also planned the setting up of a comprehensive classification system to meet the needs of individual offenders in education, work, counselling, etc.

The taking over of the Prison Welfare Service from the Ministry of Community Development is another step taken by the Department to streamline and strengthen its efforts in the successful rehabilitation of penal inmates.

The existing counselling and intensive counselling programmes have been proven to be effective in rehabilitating drug addicts. As such, a new three-phase rehabilitation programme is now established to further strengthen the rehabilitative roles and functions of the Department.

We are now also taking a lead role in more integrated and consistent after-care services for offenders. This is particularly critical for ex-drug addicts since adequate after-care plays a significant part in helping them to abstain from drugs.

Finally, the upgrading of the terms and conditions of the services has now enabled the Department to attract and recruit more high-calibre people into the service. The recruitment of better qualified and educated staff will ensure that there will be greater efficiency and productivity in the service. A comprehensive staff training programme has also been developed to improve staff performance towards excellence and professionalism in the service.

SECTION 3: REPORT OF THE COURSE

Summary Reports of the Rapporteurs

General Discussion

Topic 1: Issues on the United Nations Standard Minimum Rules for the Treatment of Prisoners

Chairperson: *Mr. Shek Lui, Bailey (Hong Kong)*
Rapporteur: *Mr. Peck Tiang Hock (Singapore)*
Keynote Speakers:
Mr. Abd Manan Bin Haji Abd Rahman (Brunei)
Ms. Rahab Wairimu Mwangi (Kenya)
Mr. Md. Noh Bin Tan Sri Murad (Malaysia)
Mr. Peter Ruzsonyi (Hungary)
Mr. Hasanuddin (Indonesia)
Mr. Kang Dong-Woon (Korea)
Ms. Chizuko Hanada (Japan)
Mr. Shigeru Takenaka (Japan)

I. Introduction

Briefly, the United Nations "Standard Minimum Rules for the Treatment of Prisoners" is a guideline for universal standards concerning the treatment of prisoners. It lays down a comprehensive framework for humane treatment of prisoners whilst under incarceration. It was adopted in 1955 during the first United Nations Congress on the Prevention of Crime and Treatment of Offenders.

The guideline's objective is to set out what are acceptable as good general principles and practices in the treatment of prisoners. The underlying principles form a basis for all countries to act upon, in keeping with their cultural background and local environment. It is intended in practice to guard against mistreatment of prisoners in correctional institutions.

In the implementation of the rules, it is recognized that "in view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times."

Undeniably, the rules have covered all aspects of prison management and institutional treatment of prisoners. After laying down the basic principles, the rules cover various aspects of the registration of prisoners, separation of categories, accommodation, personal hygiene, clothing and bedding, food, exercise and sport, medical services, discipline and punishment, instruments of restraint, information to and complaints by prisoners, contact with the outside world, books, religion, retention of prisoners' property, notification of death, illness, transfer, etc. removal of prisoners, institutional personnel, and inspection. The second part contains the guiding principles for prisoners under sentence. It includes treatment, classification and individualization, privileges, work, education and recreation, social relations and aftercare. For special categories of prisoners, including those insane and mentally abnormal prisoners, prisoners under arrest or awaiting trial, civil prisoners and persons arrested or imprisoned without charge are also specially provided with basic guiding principles.

Bearing in mind the minimum standards set by the United Nations as well as the knowledge of practical constraints in

their application, our group decided to focus the discussions on the following areas:

(I) Environment and Living Conditions;
  (1) Accommodation,
  (2) Personal Hygiene,
  (3) Clothing and Bedding,
  (4) Food and Drinking Water,
(II) Institutional Treatment;
  (1) Prison Work and Vocational Training,
  (2) Education and Recreation/Exercise and Sport,
  (3) Classification and Individualization,
(III) Rights and obligations of Prisoners;
  (1) Discipline and Punishment/Instruments of restraint,
  (2) Information to and Complaints by prisoners,
  (3) Contact with the outside world.

The areas listed above were addressed individually and systematically. Each individual area was examined in terms of:

(a) existing practices and procedures governing the treatment of prisoners with a view to identify the inadequacies; and
(b) making appropriate recommendations in areas which require changes.

II. Discussion of the Rules

(I) Environment and Living Conditions

(1) Accommodation

The rules 9 to 14 of the SMRs include the following areas:

(a) Types and conditions of accommodation;
(b) Standard of sleeping arrangements;
(c) Lighting and ventilation installations;
(d) Sanitary installations and bathing facilities; and
(e) Maintenance and cleanliness of premises.

The participants in general accord that the provision of sufficient living space, basic food, clothing, bedding and other amenities are the fundamental necessities of human life. These necessities are not to be reduced, varied or altered unless through legislation.

It is therefore safe to say that each prisoner should be provided with basic needs and living conditions compatible with human dignity so as to help him to restore his inherent good. In this respect, the conditions of accommodation plays a vital role in the reformation of prisoners.

In Japan, there are two types of accommodation, i.e. individual cells and dormitories. The individual cell houses only one prisoner at a time. As for the dormitory, it is designed to house from 6 to 8 prisoners. In addition, all types of accommodation are sufficiently provided with the following: (a) A tatami mat; and (b) A flush toilet system with sufficient bathing and shower installations.

In Brunei, both individual cells and dormitories are available for prisoners. Forty percent of the prisoners are lodged in individual cells, 60% are in dormitories. However, due to the problem of overcrowding, dormitories are now holding more than their normal desired capacity. The allocation of prisoners to which types of accommodation is determined according to the type of prisoners. Condemned, violent and serious criminals are kept in cell-type maximum security facilities while others are housed in dormitories.

The United Nations SMRs have stipulated that when possible each prisoner should occupy a cell by himself. This standard cannot be implemented in many countries such as Hong Kong, Malaysia, Singapore, Kenya, India, Sri Lanka and Indonesia, due to the problem of overcrowding in their penal establishments. At present, due to the disparate designs of their correctional institutions, two forms of accommodation exist for prisoners. In certain

institutions prisoners are accommodated in cells while other prisoners are housed in dormitories.

Due to overcrowding, in certain correctional institutions whose countries utilize cellular accommodation, the case of one prisoner to one cell is often the exception rather than the norm. In practice, often three prisoners or more are housed in one cell. The standard of one prisoner per cell is utilized only in exceptional cases such as housing violent and insane prisoners or for disciplinary cases in order to effect segregation.

As regards to the health, lighting and ventilation conditions of these accommodations, the assessment is that most are adequate with further improvement desired.

In these countries, proper sanitary facilities are provided. However, there are correctional institutions which do not have these basic facilities. Chamber pots or a soil bucket system are still utilized within the cells. In these facilities, most cells are equipped with a toilet which is not enclosed by partitions. Similarly, facilities for bathing in cellular confinement are communal and are erected by the site of the exercise yard of the accommodation block. The facilities consist of either an open air shower or a communal pool system. Thus prisoners bath together with no partition for personal privacy and all bathing activities are open to scrutiny.

In terms of frequency and access to these facilities, current practices in many countries allow at least one period of access per day.

On the whole, in the area of accommodation and living conditions in relation to lighting, ventilation, sanitary and bathing facilities, most countries represented are abiding by the minimum standard set by the United Nations and the basic needs of prisoners in legal custody.

Through the discussions various recommendations were also presented by the participants to improve further the conditions of prisoners' accommodation:

a) Ensure as far as possible that purpose-built detention facilities are used to house prisoners. This is because converted disused buildings often are not structurally sufficient to be utilized as detention facilities (in terms of space, ventilation and security);
b) Try to ensure that all prisoners' accommodation are equipped with toilet facilities with a low wall to ensure privacy and decency in answering the call of nature. It is also desirable to provide a washing basin for use by prisoners;
c) Apply more alternatives to imprisonment and develop community-based treatment programs to alleviate the problems of overcrowding in correctional institutions. The ideal to strive for is one prisoner per cell; and
d) With regard to shared communal bathing and toilet facilities, adequate units should be constructed. In term of structure, partitions to ensure the privacy of users such as a chest-high wall should be constructed for all communal bathing facilities.

This provides a level of privacy and yet enables proper supervision.

(2) Personal Hygiene

The SMR rules relating to "personal hygiene" are as follows:

(1) Prisoners shall be required to keep their persons clean and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.
(2) In order that prisoners may maintain a good appearance compatible with self respect, facilities shall be provided for the proper care of the hair and beard, and men shall be able to shave regularly.

During the session, all participants were invited to speak on the current practices on

the subject of personal hygiene in their respective countries. It was generally reported that the issue of personal hygiene was one which is taken very seriously in all correctional institutions. The administrations of all the countries understand that in conditions of such dense accommodation, personal hygiene of the highest standard is crucial.

In general, all prisoners are urged to keep their personal and their living environment clean. The following items are issued to them for maintaining their personal hygiene: (a) Personal Shaving Kit; and (b) Toilet articles which include towel, toothbrush, bathing soap, toilet paper, mug, etc. at regular intervals.

In the maintenance of a smart and clean appearance, all prisoners are required to maintain a short haircut, be clean shaven at all times, as well as have access to bathing facilities at least once a week to ensure complete personal cleanliness. Items such as mirrors for shaving and nail cutters are available on a communal basis.

It is therefore recognized that facilities and personal items for the maintenance of personal hygiene of the prisoners are adequate and prisoners' personal hygiene is maintained at a reasonable level in most of the countries represented. In terms of environmental cleanliness all correctional institutions of all participants' countries have domestic maintenance workers to ensure that surrounding areas and the accommodation blocks are kept clean and disease-free. It is felt that the standard of cleanliness is maintained.

(3) Clothing and Bedding

The SMRs 17–19 on "clothing and bedding" are generally adhered to in most of the participants' countries.

In most countries, all prisoners are provided with a complete outfit of clothing and bedding adequate for warmth and health according to approved scales. A standard is maintained with respect to appearance, hygiene and tidiness. The current practice in the issue of clothing to prisoners is divided into two main categories, namely convicted prisoners and unconvicted prisoners. Different practices and procedures are applied to the different categories of prisoners. "Convicted prisoners" refers to persons who are convicted of a criminal offence and committed to custody. "Unconvicted prisoners" refers to persons detained under the Acts which empower the authorities to detain such persons as well as persons on remand.

In Brunei, upon their admission all convicted prisoners are issued with prison clothing by the prison authority. With regard to unconvicted prisoners, they are permitted to wear their own clothing subject to the approval by the superintendent. In case of prisoners going outside the institution for authorized purposes, only unconvicted prisoners are allowed to wear their own clothing. All clothing is washed by the prisoners themselves individually. In addition, all prisoners are supplied with essential bedding items like mats, mattresses, bedsheets, blankets and pillows. For the maintenance of hygiene, all these items are aired and washed regularly.

In Sri Lanka, all convicted prisoners are provided with a pair of shorts, T-shirts, mats, blankets, bed sheets, pillows and slips upon their admission. Unconvicted prisoners are allowed to receive approved items of clothing and bedding from relatives or friends or purchase these items with their own money. If they are unable to supply themselves with clothing and bedding items, these will be provided by prison authority.

In other countries like Malaysia, Singapore and Kenya, all convicted prisoners are issued with standard dress of two pairs of shorts, two pairs of shirts and also working clothes. As for unconvicted prisoners, they are permitted to receive their clothing from home. However, if any unconvicted prisoner is unable to provide himself with sufficient clothing, it will be provided by

prison authority. All prisoners are also allowed to wear their own clothing for all authorized purposes such as attending court, attending the funeral of a family member, attending medical treatment at public hospital, etc. If they are not able to provide themselves with private clothing, they are supplied with civil type clothing by the authority. With regard to bedding, different practices are carried out in different institutions. In some institutions, prisoners sleep on a concrete floor with sleeping mats while in others such as those with dormitories, double decker or bunker beds with wooden planks or mattresses are used. All prisoners are issued with blankets, mats or mattresses, etc. upon their admission. Prisoners with medical or special reasons may be granted additional blankets upon the approval of the superintendent on the recommendation of a medical officer.

Generally, the existing practices governing the provisions of clothing and bedding are adequate and there are no dehumanizing effects stemming from these, however, the practice of providing separate beds to prisoners as advocated under the UN minimum rules is not possible due to the current overcrowded conditions and the lack of purpose-built facilities in most of the developing countries within the Asian and Pacific region.

(4) Food and Drinking Water

The SMR 20 provides that:

(1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.
(2) Drinking water shall be available to every prisoner whenever he needs it.

In most of the countries, food is served three times a day and provided to prisoners in accordance with the approved dietary scales and with due regard to religious factors and recommendation of the medical officers for special cases. This is to ensure that sufficient food is provided to prisoners in terms of quality and quantity to maintain their good health.

In Japan, prisoners are basically supplied with a combination of staple food and side dishes. The staple food is a cooked rice mixture containing 70% white rice and 30% barley. The amount of staple food provided for each prisoner is determined by the type of assigned work he is engaged in, and is rationed in five different fixed quantities. The essential amount of protein, fat and vitamin is contained in the side dishes. This provision is to ensure that the prisoners receive the sufficient amount of the standard nutritional supplements. Those foreign prisoners who cannot take Japanese food due to religious reasons of different cultural background, are given special meals.

In Brunei, there are three dietary scales to cater for the different nationalities and religious beliefs, i.e. Asian, vegetarian and European prisoners. To ensure the high quality of food issued to the prisoners, the superintendent makes his daily inspection check on food served to prisoners, to see that it is of proper quality for human consumption and also visits the prisoners at meal times to inquire into any complaint that may be made to him regarding the quality and quantity of rations.

In Singapore, a major revision on the diet of prisoners in penal establishments was carried out in 1991. In terms of variety and quality of the meals provided, the revised diet is a major improvement over the old diet which consisted of five types of different diet. The new diet has been streamlined to halal and non-halal Asian food. There are no provisions for prisoners of non-Asian origin. As for drug inmates undergoing treatment and rehabilitation in the drug rehabilitation centres, the food provided is equivalent to the food served

in the public hospital.

In Malaysia, in the past, there were several dietary scales to cater for various nationalities and also for prisoners' religious beliefs. However, since 1992 after some revision, only one type of diet, with the approval of the Ministry of Health, which consists of 1,600–2,000 calories is served to all kinds of prisoners each day. However, special diets are available for sick prisoners subject to the recommendation or approval of the medical officer and the superintendent. In addition, during the festivals which include Hari Raya Puasa, Chinese New Year, Deepavali and Christmas, prisoners are allowed to received food from home or religious organizations to celebrate these occasions. In general, the SMRs on "Food and Drinking Water" are strictly adhered to in Malaysia.

In Kenya, all prisoners are served three meals a day. Basically, the food supplied to all prisoners is wholesome in quality, well prepared, of adequate nutritional value and cooked in a clean receptacles. The quantity of food served to the prisoners is determined by the category of prisoners. Generally the amount of food served to the remand prisoners is less than the one served to convicted prisoners. This is because all convicted prisoners are required to engage in various rehabilitative activities such as work training, while remand prisoners are basically not required to work.

In Sri Lanka, two types of diet are served to prisoners; scale "A" is rice with fish or beef and vegetable curries, scale "B" consists of bread, meat and vegetables which cater for sick prisoners. The Sri Lankan Prison Law provides that any prisoner has the right to make complaint in relation to the diet provided to him. He can request to the authority to weigh his diet to ascertain whether he is supplied with the authorized quantity. In addition, the superintendent and medical officer frequently inspect the food provided for the prisoners to see any defect in quantity or quality which they may note.

As regard to drinking water, prisoners in all countries represented are provided with adequate drinking water which is accessible to them at all times.

On the whole, there was full implementation of this rule in *most* countries in most cases. In some countries, prisoners are given different types of food depending upon their nationality or religion. Furthermore, the officer in charge of correction institution is authorized flexibility in giving the special diet for certain categories of prisoners for health reason based on the recommendation of a medical officer.

(II) Institutional Treatment

(1) Prison Work and Vocational Training

The SMRs 71–76 relating to "Prison Work and Vocational Training" can be divided into five parts:

(a) The fundamental principle of prison work;
(b) Operational working hours;
(c) Operational system for the management of prison industry;
(d) General standard of industrial safety;
(e) Remuneration.

Every prisoner, who is medically fit and not restricted by way of the treatment program he is undergoing, should be provided the opportunity to obtain work training. The work programs are designed to:

(a) inculcate good work attitude and habits;
(b) keep prisoners productively occupied and provide an opportunity for them to learn new skills which would help them to secure employment after their discharge; and
(c) keep them mentally and physically busy. This is to prevent undue stress and tension from building up as a result of extreme boredom and idleness.

In Japan, prisoners sentenced to imprisonment with forced labour are obliged to work for not more than 8 hours a day or 40 hours a week. No prisoner is assigned to any work training unless he is certified fit for that type of work by the medical officer, who may exempt a prisoner from work on medical grounds. Suitable work is assigned to all prisoners following the classification process. The prisoners are rewarded with remuneration, which is regarded as a gratuity, not a wage, for the purpose of encouraging them to work. All profits of prison industry are treated as government revenue. With regard to vocational training for prisoners, there are three different types of training: intensive vocational training, special vocational training and ordinary vocational training under the auspices of the institution. Various kinds of vocational training courses are available to suitable prisoners, namely, wood carving, painting, hairdressing, motor mechanics, plumbing, carpentry, electrical wiring, etc. Certificates of qualification are given to the prisoners by the Vocational Training Bureau after completion of training courses.

In Hong Kong, the legislation provides that all prisoners except those classified as medically unfit, are required to work while in prison. Correctional Services Industries (CSI) is set up to allow prisoners to be assigned productive work. Workshops of different sizes are set up in various institutions engaging in various trades ranging from garment making, furniture making, laundry service, etc. Prisoners are paid for their work in accordance with an earnings scheme based on the level of skill required for their work. Prisoners are permitted to spend up to 90% of their earnings for approved purposes such as canteen purchases or family remittance. The balance of their earnings are paid on release. In Hong Kong, prison labour is also employed in community-based services like minor repair work in rehabilitation hospitals. Additionally, the vocational training courses are conducted for eligible prisoners such as radio and television servicing, tailoring and fashion design, painting and book binding, carpentry and electrical wiring, hairdressing, etc.

In Indonesia, prisoners are provided with opportunities to undergo work training based on two categories:

(a) Through Joint Ventures with the private agencies and government agencies; and
(b) Through government allocation.

Prisoners who are assigned to work in the Joint Ventures industries are paid for their work. Fifty percent of their earnings are kept by the prisoners whereas the other half are credited into government revenue, which is used to expand the vocational training programs provided to the prisoners. However, the participant from Indonesia reported that although all prisoners are occupied in some form of useful work the present work training system is faced with the following problems:

(a) Difficulty in attracting private enterprises to set up industrial workshops in the correctional institutions;
(b) Lack of trained and qualified vocational training instructors; and
(c) Lack of funds to purchase equipment and tools.

In Singapore, the work programs available to the prisoners include:

(a) working in industrial workshops set up through Singapore Corporation of Rehabilitative Enterprises (SCORE). The workshops include such trades as electronic components assembly, woodwork, metal fabrication, bicycle parts assembly, printing and baking. The SCORE has now further introduced industries with higher skills content like motor vehicles repair, orchid farming and fish

farming.
(b) performing general physical maintenance work within the institution.

As regard to vocational training, only selected prisoners are given this opportunity to acquire specific skills that would enhance their chances of reintegrating into society and securing a job with reasonable pay. The courses include: Electrical wiring, Pipe-fitting, Motor vehicle mechanic, Hairdressing, Tailoring and Construction Industry Training Centre (CITC) formwork and CITC reinforcement. The CITC courses are for prisoners who participate in the work release scheme. In all the courses, certificates of qualification are issued to the prisoners by the relevant authority upon their successful completion of the courses. The duration of the courses ranges from 3 to 15 months.

In some countries like Brunei, Fiji, Korea, Kenya and Papua New Guinea, work training programs such as carpentry, tailoring, metal work, welding, laundry, gardening, etc. are introduced in the prison with a view to teaching prisoners various jobs suited to their individual needs. They are assigned to any one of these jobs in accordance with their ability, character and adaptability. Female prisoners are employed and taught domestic duties such as cooking, flower arrangement, tailoring, hairdressing, etc. It is hoped that prisoners who have acquired certain skills while in prison, will be able to get a similar or better job upon their discharge.

Generally, the current work programmes of the represented countries are congruent with SMR principles. They are not afflictive in nature, and prisoners are assigned to work subject to their physical and mental fitness. All participants accord that the importance of a work programme is its rehabilitative values. Through working, the prisoners are able to pick up a skill that is relevant to the job market outside. This skill will help them to find a job after their discharge. At the same time, it is vital to instill in them proper work values and the understanding that work is a basic part of life. Also the participants are of the view that the range of vocational training should be increased to include more higher-skill courses like motor mechanics, radio and television repairing, etc. so that prisoners will have a wider range of courses to choose from. When the prisoner is given his choice of training, he will be more motivated to work hard.

(2) Education and Recreation/Exercise and Sport

The SMRs 21, 77 and 78 cover physical exercise and sports activities, and prison education programmes for prisoners.

Basically, the education programmes are designed to provide the prisoners with the opportunities to upgrade themselves academically so that they will be better equipped to reintegrate themselves into society upon their release.

The physical exercise and sports activities are implemented to provide relief from tension and boredom and to enable the prisoners to maintain a satisfactory level of physical and mental fitness, with emphasis on co-operation and teamwork.

In Japan, educational programmes mainly include orientation programme, academic education, correspondence courses and living guidance.

(a) Intake orientation programme provides the prisoners with the necessary information in relation to their imprisonment, daily routine, prison rules and regulations and treatment programme so that they may quickly adapt to group life while serving their sentences. The pre-release orientation is for those prisoners who are going to be released. Up-to-date information is given with respect to employment conditions in the society, formal procedures required for release, and how to use parole services, etc.

(b) The academic education programme is designed for those prisoners who have not completed their ordinary school education. A branch of the junior high school is set up in one juvenile prison, to which the prisoners are recruited from the prisons throughout the country. In addition, correspondence courses for high school education are set up at some juvenile prisons.
(c) Correspondence courses are encouraged for prisoners to improve their academic knowledge and vocational skills. The courses include junior and senior high school curricula, college-level curricula, and vocational training in radio operation, automobile repairing, electricity, bookkeeping, etc.
(d) "Living guidance" refers to general guidance in everyday life. The ultimate purpose is to encourage the prisoners to cultivate an earnest attitude toward life through correctional activities, so that they can be successfully resocialized to lead a law abiding life after release. This guidance includes: meetings, recreational activities, lectures, individual counseling, etc.

During leisure hours, all prisoners are allowed access to some kind of physical exercise such as softball for about 30 minutes on weekdays. Also, they have access to reading materials like books, newspapers, magazines, etc.

In Indonesia, all prisoners including juveniles and young prisoners are encouraged to participate in elementary (primary) education and secondary level education. All illiterate prisoners are required to attend primary educational programmes. Correspondence courses and private studies are also available to convicted undergraduates for continuing to study in prison. Also, adequate recreational activities and exercise are provided for prisoners. Prisoners are encouraged to play various indoor and outdoor games and sports such as badminton, table tennis, volleyball and athletics. Occasionally, films and cultural shows and other special cultural activities are organized inside the prison. All prisoners are permitted access to reading materials such as magazines, books and newspapers. Some institutions also maintain small libraries prisoners' use.

In Hong Kong, education for adult offenders is provided on a voluntary basis in the form of remedial classes, correspondence classes and special cell-study courses. Remedial classes are normally held in the evening while correspondence and special courses are available for prisoners pursuing tertiary education. In the training centres prisoners are required to attend half-day vocational training and half-day educational classes. Vocational training is conducted by qualified instructors in courses like radio and television servicing, vehicle repairs, etc. The educational classes are conducted by qualified teachers following a syllabus planned in accordance with the requirements of the education department. Physical education sessions are also organized daily by qualified physical instructors to instill in prisoners a sense or social discipline and responsibility. All prisoners are also encouraged to take an active part in indoor and outdoor recreational activities including guitar playing, folk songs, drawing, painting, chess and art design. In Drug Addiction Treatment Centres, prisoners are to attend remedial education classes which are conducted by qualified teachers. They are also urged to participate in recreational activities organized in the evening and on weekends.

In Singapore, two basic forms of education are available to suitable inmates: BEST and WISE courses; and academic courses, like the G.C.E. "O" or "N" levels. All educational courses are based on the prisoners' eligibility and personal interests. Prisoners who volunteer for these courses and are deemed suitable may attend the courses in place of the usual work programmes. The

education programme is based on the national educational system. Qualified teachers from the Ministry of Education are seconded to the Prisons Department. Adequate recreational activities and exercises are provided for prisoners. Prisoners are encouraged to play various indoor and outdoor games and sports such as volleyball, basketball and Sepak Takraw. However, due to space constraints and lack of purpose built facilities, space for recreation is limited. This is an unavoidable fact.

In Hungary, prisoners are encouraged to participate in elementary and secondary school education. During their examination, prisoners can be excused from work programme while preparing for their examination. The education service of the prisoners department is a special branch which is responsible for organizing and conducting a series of educational courses for prisoners to assist them in improving themselves and enabling them to acquire the necessary academic qualifications so that they are better equipped to re-adapt to society upon their release.

In line with the United Nations SMRs 77 and 78, it is found that all educational programmes are integrated with the educational system of their respective countries. In some countries, it is noted that education is given a high priority for young offenders, for example, in Korea, Malaysia, Papua New Guinea, Sri Lanka and Thailand.

In terms of recreational activities, prisoners' access to them are judged adequate and sufficient in some countries. However, in terms of space and structure, purpose-built facilities would solve many of the constraints.

(3) Classification and Individualization

The SMRs 67–69 covers two areas:

(a) Purposes of the classification of prisoners; and
(b) Application of classification system for institutional treatment of prisoners.

The classification and categorization of prisoners are important measures adopted to facilitate the process of rehabilitation of the prisoners due to the following reasons:

(a) They contribute to a safe institutional environment by identifying prisoners likely to incite disorder or disobedience; and
(b) They identify the needs of each prisoner in terms of individual rehabilitative needs like education, vocational training and work, counselling, etc. This process helps to increase the likelihood of successful rehabilitation of the offenders.

However, different practices and methods of classification are utilized in different countries depending on their level of development.

In Japan, the classification system is really commendable. With regard to the present classification system, all prisoners are grouped into both the allocation category and the treatment category. The criteria for the allocation category rely on sex, nationality, type of sentence, age, degree of criminal tendency, physical and mental state, etc. As for the treatment category, it is designed to select the best suitable treatment programme in terms of vocational training, academic studies, living guidance, therapeutic treatment, etc., for each prisoner. The main features of the classification system are:

(a) In each correctional region, there is a classification centre which conducts intensive investigation for classification of young male prisoners (under 26 of age). The prisoners are kept in this centre for eight weeks and are determined the allocation corresponding to their specific treatment needs. Careful studies conducted include: diagnosis of personality

and intelligence, family background, social environment, in relation to the development of criminal tendency. The classification centre has qualified classification specialists such as psychologists and all necessary support facilities; and

(b) The use of scientific methods such as psychology, sociology, psychiatry and other professional knowledge and techniques are one of the features which enable the authority concerned to decide on the best measure for each prisoner's rehabilitation programme.

The benefits of the Japanese classification system are:

(a) The classification process takes full account of the rehabilitative treatment needs of the prisoner at the time of assigning him to an institution. Also, the special facilities and manpower resources, especially treatment specialists like psychologists, psychiatrists, and medical officers, are adequate for the full implementation of the classification programme;
(b) The classification centre at each Regional Headquarters plays an important role in the classification process and serves as the leading institution in each area. This system is to provide that the classification management has the full control of the classification procedures and programmes to ensure its fairness and consistency in its administration.

In Indonesia, prisoners are classified into Juveniles, young prisoners, female prisoners and adult male prisoners. In some institutions, all classes of prisoners are placed in the same institution but in different compounds. There are no separate institutions for females and juveniles. The general classification standards are based on sex, age, type of sentence, nature of offence and nationality. The classification committee consists of superintendent, medical officer, education officer and welfare officer. The committee classifies and allocates individualized treatment programmes for each prisoner.

The current classification system suffers from the following drawbacks:

(a) most of the prisons were built during the colonial days, and are now unsuitable for the allocation of treatment programmes for different categories of prisoners due to physical space constraint; and
(b) shortage of treatment specialists like psychologists and psychiatrists is another obstacle to the implementation of the classification system.

In Hungary, classification is the process by which prisoners are assigned to institutions with the appropriate security level i.e. maximum, medium and minimum security, by the courts at the time of commitment. Prisoners are classified into recidivists, habitual offenders and first time offenders. The current classification process assigns a prisoner to an institution based on the criteria i.e. previous convictions, length of sentence, physical and mental capacities and nature of the offence. Arrangements are always being made at all prison institutions to provide as far as practicable for effectively segregating the various classes of prisoners from each other at all times.

In Singapore, under the current classification system, all prisoners are classified and assigned according to:

(a) appropriate security level, i.e. maximum, medium or minimum security, at the reception centre; and
(b) suitable rehabilitative treatment needs of the prisoner in education, vocational training, work, counseling, etc., at the institution.

The classification criteria for assigning a

security level are based on 3 main criteria i.e. length of sentence, criminal antecedents and nature of the offence. Generally, the current system of classification of prisoners is largely a decentralized system performed mainly by the Institutional Classification Committee. This system has its shortcomings:

(a) Security classification is done first without sufficient regard for the rehabilitation aspect;
(b) The assessment of the rehabilitative needs of the prisoners is done without the benefit of professional advice from psychologists or psychiatrists because of the shortage of such specialists; and
(c) Lack of a team of qualified classification officers who should have the responsibility of exercising professional judgement in the classification process.

However, the Singapore prison service has decided to set up a Centralized Classification System with a view to implementing a more comprehensive assessment of the prisoners' needs in terms of treatment and rehabilitation and security level during incarceration.

In other countries like Malaysia, Brunei and Kenya, prisoners of different sexes are held separately and so are the young offenders and the adults. In order to facilitate the training of prisoners and minimize the danger of contamination, prisoners are also classified with regard to their age, character and previous history. The prisoners are divided into:

a) young prisoners sentenced to prison;
b) star class—This refers to prisoners who are first offenders or are well behaved prisoners;
c) ordinary prisoners—This refers to all recidivists; and
d) unconvicted prisoners—This refers to persons on remand, awaiting trial, etc.

Basically, all participants agreed that the separation and classification of prisoners are the important requirements for effective management of prison establishments. In most countries, classification is primarily used to divide the prisoners along such major differences as sex, first offenders, recidivists, local and foreign prisoners, and also to separate the young prisoners from the adult offenders. It is, therefore, evident that most of the represented countries have applied some kind of classification system which classifies and arranges individualized programmes and suitable rehabilitative training for different categories of prisoners.

(III) Rights and Obligations of Prisoners

(1) Discipline and Punishment/Instruments of Restraint

The SMRs 27–34 provide that a system of discipline and control along with reward and punishment is important to ensure that prisoners conform whilst under incarceration. Prisoners shall be punished within the institutions only when they commit breaches of discipline and punishment shall be carried out in accordance with the established prison rules and procedures. The rules outline a code of offences, adjudication procedures and penalties to which prison administration must adhere. The function of these institutional punishments is to maintain proper control and order in correctional institutions.

In most countries of Asia and the Pacific region, prison offences and punishments are contained in their law, rules and regulations.

In Japan, upon their admission, all prisoners are required to undergo an induction programme to give them a clear understanding of the institutional routine and regulations. The basic discipline and conduct for daily life, together with living guidance, are also given to them to increase their self-control and respect for the law. A prisoner

who commits a breach of discipline is liable for punishment according to the provision of the prison law. Under the Prison Law, article 60 provides that there are 12 kinds of disciplinary punishments, namely: reprimand; suspension of good treatment for reward for three months or less; discontinuation of good treatment for reward; prohibition of reading books and seeing pictures during three months or less; suspension of work for 10 days or less; suspension of using self-furnished clothing and bedding for 15 days or less, suspension of physical exercise for 5 days or less, etc. Although the prison law does not provide for the offending prisoner to be represented by a lawyer or legal counsel, he can seek legal and other advice from his officer before a hearing. During the adjudication, the offending prisoner is required to appear before the Disciplinary Committee which consists of at least five senior correctional officials. The committee will then mete out a disciplinary charge against the accused prisoner.

The use of instruments of restraint including strait jacket, gag, handcuffs and arresting rope are strictly limited only for the purposes of protection against infliction of self-injury and the safe custody of prisoners during their removal. The instruments of restraint are at no times to be used as punishment. These instruments can also be used only with the order of the warden.

In Korea, the Penal Administration Law lists the kinds of disciplinary punishment, period of disciplinary punishment and agency having the authority to decide disciplinary punishment. In addition, there is an institutional system which enables prisoners to file a petition in cases where disciplinary punishment is considered to have been abused. The punishments included are: disciplinary confinement, suspension from industrial work, suspension from physical exercise, suspension from reading, from work, and warning. During disciplinary confinement, the prisoner is locked up in a punishment cell for a period of up to a maximum of two months. All kinds of privileges like industrial work, physical exercise, book reading and correspondence will be prohibited.

The instruments of restraint which are in use are arresting rope, handcuffs, chain and voice prevention tools (gag). These instruments can be used only in cases like escape, violence, riots attempted suicide, etc. The handcuffs are used only when transferring prisoners to all authorized destinations outside the institution.

In Singapore, there are clear guidelines in the Prison Act and Prison Standing Orders governing the discipline and punishment of prisoners who commit institutional offences. There are 48 minor and 10 major offences. For minor offences the punishments are: confinement in a punishment cell for a term not exceeding 7 days; forfeiture of privileges and remission, and reduction in grade or postponement of promotion. For major offences offending prisoners can be given corporal punishment not exceeding 12 strokes of the cane by the superintendent with the concurrence of Director of Prisons. If the superintendent considers that the prisoner deserves more severe punishment, he may report the matter to the Visiting Justice who after due consideration, may order confinement in a punishment cell for up to 30 days or corporal punishment of up to 24 strokes of the cane.

Apart from stringent guidelines governing discipline and punishment, offending prisoners have recourse to a just hearing. During the adjudication by the superintendent the offending prisoners are given the opportunity to present their defense before the latter metes out any form of punishment. There is no appeal against punishment meted out by the superintendent. However, the Director of Prisons has the power to review all punishments imposed by the superintendent to prevent any violation of prison discipline.

Instruments of restraint such as handcuffs, flexi-cuffs and straitjackets are used

only in situations which warrant their use. For instance, prisoners are handcuffed during escorts to courts, hospitals, transfers and on compassionate leave. Even when in use, care is taken to ensure that a prisoner does not suffer any undue hardship when handcuffed. Also restraint instruments are not applied for a period of time longer than is strictly necessary.

In Sri Lanka, the superintendent is the competent authority to award punishment against the prisoners but major offences are referred to a prison tribunal which consists of the District Judge and two members of the Local Visiting Committee. The punishments are: forfeiture of privileges, reduction to a lower class and cellular confinement with dietary restrictions and forfeiture of remission. There is no legal process of appeal against punishments meted out by the superintendent or a tribunal.

The use of instruments of restraint are covered under the Prison Act which provides that "no prisoners shall be put under mechanical restraint as a punishment."

In other countries like Fiji, Hong Kong, Indonesia and Malaysia, all prisoners are briefed on the institutional regulations governing the treatment of prisoners and the disciplinary requirements on admission to enable them to understand their obligations and to adapt themselves to the institutional life. All prison offences and punishment are contained in their established law or regulations. The types of punishment and instruments of restraint are:

a) Fiji, Hong Kong and Malaysia: separate confinement, forfeiture of remission, forfeiture of privileges, deprivation of earnings, etc. Handcuffs and straitjacket are used as instruments of restraint during transit and to prevent violence.
b) Indonesia: warning, forfeiture of privileges, solitary confinement up to 1 month, deprivation of visit, etc. Instruments of restraint like handcuffs, straitjacket and shackle chains are used to ensure safe custody in transit and to prevent a prisoner from injuring himself or damaging property.

Briefly, the prison administrators must always prepare to enforce a system of discipline on prisoners objectively and fairly. Fairness is a fundamental element of a disciplinary system. Prison officers must project an image of toughness and firmness without sacrificing fairness. Being tough and firm has nothing to do with being cruel or inhumane in dealing with prisoners. A prisoner who breaches a discipline shall be punished according to the provisions of law or regulations. Any other form of personal punishment of prisoners by prison officers is unlawful, constituting a breach of discipline and shall not be condoned. This is because the abuse in the exercise of discipline and power can lead to unbearable tension providing all the ingredients for a prison disturbance.

(2) Information to and Complaints by Prisoners

The SMRs 35 and 36 provide that prisoners shall be provided with written information on admission with regard to the regulations governing treatment of prisoners. These regulations include: methods of seeking information and making complaints. These requirements are to help them to understand their rights and obligations.

In Japan, a five-week induction programme is arranged for newly admitted prisoners to provide them with general information in relation to imprisonment, daily routines, rules and regulations. In addition, a copy of this information is displayed at prominent places in the institution for prisoners to read. Also, there are two types of grievance mechanisms which a prisoner is allowed:

a) To make requests or complaints to the warden of the institution; and
b) To submit a petition to the Justice Min-

ister or an interview with an inspector who, under the order of the Justice Minister, visits the institution. The inspector is expected to conduct a thorough investigation of the actual situation related to the complaints, and the result is made known to the complainant.

If a prisoner is still dissatisfied with an action taken by the Justice Ministry, he may file his complaints with the legal affairs bureau and/or court.

In Singapore, upon their admission, all prisoners are briefed on the do's and don'ts during their detention. The orientation talk also highlights the sources of assistance available to them during their stay in prison. The programme officers provide prisoners with information on queries or doubts they may have. Apart from programme officers, notice boards and booklets in some institutions are located in the dormitories as information outlets for prisoners. In addition, prisoners also have the opportunity to make requests or complaints to the Superintendent during his daily rounds. The programme officers also maintain a request book to record all prisoners requests, and attend to prisoners problems and complaints. For prisoners who need specialized counselling, they are referred to the Rehabilitation Counselling Branch (RCB). Apart from the prison authorities, prisoners also have recourse in highlighting their problems to the Visiting Justice during the Justice's monthly visit to the institutions. Also, the Prison Act provides that Judges, Magistrates, or any member of the cabinet or of parliament can inspect prisons at any time to hear any complaints that prisoners may desire to make.

In Korea, all prisoners are allowed to purchase copies of prison laws and regulations at their own expense to enable them to know their rights and obligations. In various educational programmes, they are also briefed by the officers with regard to general information on the institutional treatment program, rules and regulations and prison routine so that they can adapt themselves quickly to prison life. If a prisoner has any complaints or grievances to make, he can seek an interview with the warden through a senior correctional officer. If he has an objection to the result of such interview, he may resort to a petition. Under these circumstances, he may appeal to a circuit inspector under the order of the Justice Minister during his inspection rounds to the prisons. If he is still dissatisfied with an action taken by a circuit inspector, he may file a petition to the Minister of Justice. A decision on such petition will be made known to a prisoner by the warden.

In other countries like Hong Kong, Brunei, Malaysia, Fiji and Indonesia, all prisoners are provided with general information on admission about prison offences and punishment, prison routine, the services and facilities available to them, e.g. requests, letter forms, visits, job training, religious services, medical and dental facilities, the procedures of making complaints and other related rules and regulations. All such information is necessary to enable them to understand and follow the requirements and procedures. In these countries, prison laws and regulations set out the standards to be adopted when inquiring into all complaints and requests made by the prisoners. It is the responsibility of the superintendent to receive requests and complaints of prisoners and grant them redress. In addition, all prisoners are allowed to make requests or complaints to the Visiting Justice during his visit to the prisons. Each correctional institution is required to maintain a "Visiting Justice Record Book" in which any member of the Visiting Justices may record the complaints made to him by prisoners and the proceedings taken upon such complaints.

The importance of the rules on "Information to and Complaints by Prisoners" were generally recognized by all the participants. It was noted that most countries' rules and

regulations provide certain rights and privileges for prisoners to express grievances and complaints.

(3) Contact with the Outside World

The SMRs 37 and 39 provide that prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits, and prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

In Japan, the Prison Law provides that all incoming and outgoing letters sent and received by the prisoners are subject for censorship. As for untried prisoners, they are allowed to apply for free legal aid and also permitted to send letters to and to receive visits from their legal advisor. However, the Prison Law allows prison authorities to examine the letters sent by the prisoners to their defense counsels. As for other prisoners, they are permitted to send letters, receive a reasonable number of letters and receive visits from family, relatives or reputable friends. But the frequency of sending letters and receiving visits is increased from once a month to any time in proportion to their progressive grade in the prison. Prisoners are also provided with daily newspapers, magazines and books for their reading needs. In addition, access to radio and television are important so that prisoners can be kept informed of the latest developments in the outside world.

In Korea, all prisoners are allowed to receive visits from all persons, including persons other than relatives. For those visitors who live quite a distance away from the correctional institutions or who are unable to visit the prisoners on weekdays due to work commitment, they are given alternatives to visit on holidays or on Saturday afternoons. Prisoners who are under trial are allowed to receive visits on every working day while convicted prisoners can receive four visits a month for a duration of 30 minutes per visit. The warden may authorize any prisoner who has maintained good conduct, to increase his frequency of visit. A prisoner is also encouraged and assisted to maintain or establish such relations with persons or agencies outside the prison for his social rehabilitation. All prisoners are given the opportunities to read or subscribe to newspapers or magazines. Also they are allowed to listen to the radio and watch television during their leisure time.

In Singapore, prisoners are allowed to communicate with their families via letters, issued to them on admission. Subsequently upon request, prisoners are permitted to write two letters per month. In the case of foreign prisoners, they are issued with air-mail forms upon requests which are subject to approval by the superintendent. For foreign prisoners having local relatives and friends, they are also allowed to write two letters per month. All prisoners are also allowed visits during their detention as another source of contact with their relatives and friends. For convicted prisoners, they receive two visits on a fortnightly basis. The duration of each visit is thirty minutes. Remand prisoners are allowed to receive visits on every working day for a duration of twenty minutes per visit. For security reasons, ex-prisoners are not allowed to visit prisoners. However, in exceptional cases based on careful prior screening, they may be allowed to visit prisoners subject to approval by the superintendent. All prisoners have access to reading materials such as books and newspapers subject to authorized censorship. All prisoners are also provided with radio through public address system, and television facilities. However, such facilities are available only during certain fixed hours of the day. In addition to these media facilities educational films and video tapes are

shown to the prisoners on a wide range of subjects on a regular basis. In terms of religious practices, prisoners are allowed to practice their respective faiths while in custody. Representatives of the respective faith are permitted into the institution to conduct religious classes and counselling with the prisoners. Religious materials such as Bibles and Korans are allowed upon request by prisoners.

In other countries like Brunei, Hong Kong, Indonesia, Kenya, Malaysia, Papua New Guinea and Sri Lanka, visits of family members and reputable friends are allowed at regular intervals. Visits are limited to either daily or up to twice a month depending on the situation and categories of prisoners. In addition, the officer in charge of correctional institution may permit a prisoner to receive additional visits or extension of visit time under special circumstances. Foreign prisoners are permitted to communicate with the diplomatic and consular representatives of their countries. All prisoners are also allowed to send and receive a reasonable number of letters from family members and friends. They are also kept informed regularly of the latest news by access to newspapers, periodicals or departmental newsletters, etc. During certain fixed hours of the day, they are provided with radio and television facilities. In addition to these media facilities, video tapes are shown to the prisoners on a regular basis. Lectures and educational talks on topics of interest and of educational value are also arranged to impart positive values on prisoners. It is hoped that through such programmes a prisoner may be transformed into a law-abiding and socially responsible citizen.

It is, therefore, essential that in order to alleviate the oppressive living conditions of prisons, prisoners' right to contact with the outside world must be enhanced. Prisoners' being detained in such enclosed living conditions for a long period can drive them towards insanity. In this regard, prisoners should be given adequate contact with the outside world to enable them to know what is happening outside their prison walls, especially the political, social, economic and other changes taking place in the society. If they are not provided with such rights during their incarceration they will feel a total stranger in the society upon their release and their re-entry into the society will be made very difficult. It is safe to say that contact with the outside world is not a privilege but a normal right and the only limitations might be for security reasons or the capability of the prison.

III. Conclusion

The United Nations "Standard Minimum Rules for the Treatment of Prisoners" were introduced over 38 years ago, but the principles of these rules are still serving as a guide for international standards to cover virtually all aspects of the treatment of prisoners in correctional institutions. Even in 1986, the correctional Services Department of Hong Kong had published its own "Hong Kong Standard Minimum Rules for the Treatment of Prisoners" to suit its operational needs. A copy of this publication is kept in UNAFEI library for easy reference.

The participants are in general consensus that basic supplies like food, clothing, bedding and other daily necessities should be given priority attention by prison authorities and every country, should, as much as possible endeavor to comply with the rules. The rules are to ensure the proper maintenance of personal health and hygiene of prisoners in every aspect to be compatible with self-respect.

In the matter of accommodation, there are three major obstacles for the implementation of the rules: financial constraints, overcrowding in prisons and non-purpose built facilities. Few countries reported that the individual cells were used only for the purposes of security or punishment or segregation on medical grounds rather than

for normal accommodation. In terms of space, in most countries, accommodation was found to be adequate, however, in order to minimize the dehumanizing aspect, it may be useful to conceal the existing open toilets which infringe on privacy, and having taken the security aspect into consideration, it is suggested a low wall be built as a partition for the toilets wherein the prisoners will still be within the sight of the staff. In addition, it is also suggested that a washing basin should be included in the existing cells for ablution purposes.

With regard to the work programme in terms of the guidelines stipulated under the UN minimum rules, it was found that the current work programme of the countries represented is congruent with principles in the minimum rules. In many Asian countries, prisoners sentenced to imprisonment with forced labour are obliged to work in prisons. However, prison industry is organized so as to serve constructive purposes in the treatment of prisoners. Its objective is not only to provide prisoners with vocational knowledge and skills, but also to strengthen their will-to-work, sense of self-help and spirit of cooperation through working together in well regulated circumstances. Thus, prison industry contributes to the correctional aims of resocializing prisoners.

In line with the UN SMRs, it was found that all countries' educational programmes for prisoners are integrated with their national education system. The aim of prison education programme is to help prisoners to acquire knowledge and skills so as to assist them in their rehabilitation. From a long-term point of view, a prisoner who receives a good education not only enhances his academic and intellectual abilities, but also strengthens his employment opportunities.

The principle of classification and individualization is to ensure that prisoners of different categories should not be indiscriminately mixed, preventing contamination and preserving institutional order and prisoner safety. In some countries, the classification is not done for purposes of rehabilitation but from a security point of view. As for others, classification is done in two stages first on admission, when all prisoners are classified and assigned to an institution with the appropriate security level as maximum, medium or minimum security. Second, further classification is done to select the best treatment method for different categories of prisoners based on education, vocational training, psychiatric treatment, psychological counseling and workshop programmes.

In many countries, the concern for the protection of human rights of prisoners is overwhelmingly manifested in their statutory laws or regulations which are to regulate the management of prisons and the proper treatment of offenders. Matters like discipline and punishment, information to and complaints by prisoners and contact with the outside world are also specially highlighted in their laws or rules, and prison administration procedures are also defined.

(a) In prisons, a system of discipline along with law and order should be maintained at all times to ensure that prisoners behave and also to provide lawful means for the resolution of frictions and disputes between the prisoners. The setting of these frictions must be seen to be done in an objective and fair manner in order to ensure that prisoners have confidence in the system and its workings. In the absence of such a system, prisoners will commit offences without any regard for the repercussions thus leading to more major offences. At the worst, they may contemplate escape, riots and other disturbances.

Instruments of restraint should not be applied as a sort of punishment but rather sparingly used only to prevent a prisoner from injuring himself or from damaging property. In most cases, the restraint becomes necessary only when

a prisoner becomes violent because of a mental health problem.

(b) The importance of the rules on "Information to and complaints by prisoners" was recognized by the participants as a fundamental human right. In some countries, prisoners were informed of the rules through their officers during induction courses. In several countries, a system of visiting justices obtains for redressing grievances. The visiting justices can also inspect prisons in terms of accommodation and health, the condition of the treatment facilities, look into prisoners problems and recommend necessary implementation under the circumstances.

(c) Contact with the outside world is generally allowed in most countries except when for security reasons, it is not. In most countries, the prison laws and regulations regulate visits and letters for prisoners. Access to radio, newspaper and periodicals are also permitted to keep prisoners informed of the latest changes in the outside world. It was the consensus of participants that this is a vital factor toward prisoners rehabilitation and re-socialization.

Topic 2: Issues on the United Nations Standard Minimum Rules for Non-Custodial Measures

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I. Introduction

Our group was tasked to discuss in the general discussion session the United Nations Standard Minimum Rules for Non-Custodial Measures known as the "Tokyo Rules."

This report encompasses the application of non-custodial measures in all the stages of Criminal Justice System Administration namely: at the Pre-Trial Stage, the Trial and Sentencing Stage, and at the Post Sentencing Stage. Furthermore, this report is the result of the limited discussion in the general discussion session as well as the individual experience that each member of the group has contributed. The group is made up of three police officers from India, the Philippines and Sri Lanka; one judge from Japan, one government advocate from Nepal; two probation officers from Japan; one public prosecutor from Japan; one correction officer from Papua New Guinea; and one immigration officer from Japan. Fortunately, our group has been unselfishly and invaluably assisted by a visiting expert from Australia in the person of Dr. S.K. Mukherjee who has not only shared his expert views and opinions on this subject matter but also enhanced our interest and understanding on the topic concerning the Tokyo Rules.

Although, we might have reflected in this report on some salient points of the non-custodial measures currently operational in each of our respective countries, we recognize the fact that there are some

points that might have been overlooked.

In many countries the entire criminal justice system is overloaded and it is most obvious in the overcrowding of prisons. The solution to prison overcrowding may have to take into account crowding at the court, prosecution, and law enforcement levels. It is important that prison management fully involve agencies outside the correctional system in solving prison problems. Building new prisons may appear to be the most effective solution to crowding; one needs, however, to ensure the effective use of bed space as well.

In a number of countries in the region a large proportion of prison population consists of remandees or undertrials; in some countries this proportion often reaches 60 per cent of the prison population or more. Evidence from some western countries indicates that the number of remandees in custody can be reduced simply by altering law enforcement practices concerning arrest. Also, even a slight change in bail setting practice may have significant impact on the number of remandees in prisons. Countries have also developed procedures to deal with alleged drunk and traffic offenders, instead of sending them to prisons while the trial continues. Diversionary programmes such as detoxification centres, drug treatment centres, family dispute resolution programmes, and mediation are widely used in many countries. However, such programmes need to be considered from the perspective of each country.

The Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) did not emerge mainly to solve the prison crowding problem; the writers of the Rules hoped to address the problem of crime and responses to it in a more humane, unbiased, and cost effective manner. Also, the Tokyo Rules recommend the participation of all parties, the accused, the victim, the community, and the formal criminal justice system in tackling the crime problem. In this context it is important to note that the Tokyo Rules cover all stages of the criminal justice system, from pre-trial to post execution of sentence. Some of the main reasons for the formulation of the Tokyo Rules are:

- —that there is increasing concern about the potential of custodial sentences in rehabilitating offenders. It is often suggested in knowledgeable circles that sending offenders to prisons can turn them into hardened criminals.
- —that crime and its effects are not only costly in monetary terms, they diminish the quality of life of the neighborhoods.
- —that custodial measures take away the liberty and the offender is removed from his/her family, friends, and he/she often loses employment. Non-custodial measures are less intrusive, however, should breaches of conditions occur, further action is taken.
- —that the Rules are formulated so as to be applicable in a wide range of legal systems.

The Tokyo Rules recommend that standards and criteria be laid down for the use of non-custodial measures, so that bias in the application of these Rules are eliminated and human rights and human dignity are preserved. The Tokyo Rules cover an area constantly influenced by the development of new ideas. These developments include the emergence of new measures as well as improvements in the existing ones. The Rules also encourage piloting and experimental measures. However, nations need to be careful that non-custodial measures are not misused. Especially, they should ensure that the measures are applied as intended and that their use should not result in net widening.

Finally, the Tokyo Rules envisage the possibilities of avoiding all stages of and consequences of trial, prosecution, correction, etc. This accords with the principle of minimum intervention. However, the Rules emphasize that diversions from the formal

process should be within the framework of due process.

The discussion on the Tokyo Rules took place in an atmosphere of openness. There was a genuine desire on the part of the participants to explore the various types of non-custodial measures and to share their experiences. This process was further assisted by an informal survey of the current situation concerning the application of non-custodial measures at pre-trial, trial and sentencing, and post-sentencing stages. With the help of a simple form the participants indicated the current state of non-custodial measures in their countries and the supervising authorities. It should be stressed, however, that this survey is a very preliminary method, and many participants did not have the statutes and documents to offer totally accurate and up to date information. The survey results should, therefore, be used solely as a guide for a more systematically approached analysis.

Consistent with the provisions of the Tokyo Rules, the report on the general discussion is organized in three parts including the application of these Rules at the pre-trial stage, trial and sentencing stage. Wherever possible, the results of the general discussion are supplemented by the findings of the preliminary survey of participants to the International Course. The final part deals with comments on the role of research and some suggestions for future plans.

II. Pre-Trial Stage

The United Nations Standard Minimum Rules for non-custodial measures at the Pre-Trial Stage emphasize and promote the wide application of such measures as an alternative to prosecution in order to avoid pre-trial detention. Considering the fact that the person being accused is always presumed innocent until proven otherwise, detention at the pre-trial stage must only be used under certain specific conditions that would warrant such detention.

Rule 5.1 suggests the empowerment of the police and the prosecution services including other law enforcement agencies where appropriate to discharge certain types of criminal offenders without going through formal prosecution in the proper courts provided that the protection of the society, crime prevention, respect for the law and the victim's rights are not overlooked or compromised.

The general discussion on the Tokyo Rules revealed that pre-trial detention is widely used in some countries of the region, indeed such detention often lasts for months and years. This state of affairs continues not because of deliberate policies of governments but because of the lack of any provision of non-custodial measures at the pre-trial stage in the legislation of respective countries. As can be seen from Table 1, at the pre-trial stage Malaysia only has the option of bail. The use of bail in some countries is often infrequent. At the group workshops it was reported that the amount for bail in some countries was excessively high, and as a result many accused who would otherwise have been released on bail, could not be released because they could not post such high amounts. It appears that a more liberal use of bail can reduce the overcrowding of prisons considerably.

The Tokyo Rules recommends that pre-trial detention be used as a means of last resort. Avoidance of pre-trial detention would, in the view of participants, minimize the stigmatization of the offender. The use of non-custodial alternative to pre-trial detention is widely practiced in many legal systems and has been found to be effective not only in reducing prison crowding, but also in enabling the offender to better prepare his/her defence; the offender continues to have the support of the family and friends.

The use of non-custodial measures should, however, be based on clearly defined and standard guidelines. These should be consistent with the existing legal system

and due process. Furthermore, the discretionary powers vested in the police and the prosecutor must be exercised through a conscientious study and balancing of evidence available during the investigative stage. The certain conditions for the release under non-custodial measures may, at times be onerous. It is desirable in such circumstances to offer the offender reasonable opportunity to explain his/her difficulties.

Application in Participating Countries

In the general discussion session, it was pointed out that one of the reasons for overcrowding in prisons is the large number of persons being detained or remanded pending investigation and awaiting trial. In that light a variety of non-custodial measures would seem appropriate and acceptable within the framework of the legal system. Various initiatives in the countries of the region in the form of speedy investigation, imposition of fines, cautioning, non-arrest, suspension of prosecution, village courts and many other pre-trial diversions have been effectively acclaimed in promoting non-custodial measures at the pre-trial stage.

Some of the non-custodial measures discussed were available in almost all participating countries. Non-arrest which basically involves the offender and the police for certain minor infractions mostly concerning traffic rules violations, no-littering, vagrancy and other minor city and/or municipal ordinances qualify for this type of non-custodial measure. Most often, it involves cautioning, admonishing and warning the offender by the police to avoid committing offenses in the future. This kind of measure is widely practiced by the police in most of the participating countries except Brunei, Malaysia and Thailand. Caution, admonishing and warning is available in Malaysia in relation to traffic offences. As for those countries, the offender is usually taken in for purposes of recording the offense but could be later released after documentation has been done. Discharge is also one non-custodial measure practiced by almost all countries wherein accurate documentation is legally emphasized before an offender is released due to insufficient evidence to warrant prosecution or may be submitted for trial but released for further investigation. Almost all countries adopt the system of bail although the application is somewhat variable in each country. In Japan and the Philippines, only the prosecutor is allowed to recommend bail for the offender to the judge while in almost all the other countries, the police may also do so.

One of the most common non-custodial measures being practiced to avoid pre-trial detention is release on recognizance. This measure allows the suspect to be released but only after he/she commits himself/herself in writing to appear in the court when formal litigation of the case commences.

This measure is almost identical to bail but the difference is the absence of money as security. This system is commonly practiced in Thailand, Sri Lanka, Papua New Guinea, Korea, Indonesia, India, Hong Kong and Fiji. In the Philippines release on recognizance allows the offender who cannot post the recommended bail to be released if any respected member of the community will guarantee the court that he/she will act as custodial officer of the offender. Countries such as India, Papua New Guinea, the Philippines, Kenya, Thailand, Nepal and Sri Lanka make use of village courts, conciliation boards, Panchayat and other similar groups mostly consisting of lay members of the community within a neighborhood who organize themselves into one small social unit for the purpose of settling disputes resulting from minor infraction of law, ordinances and neighborhood polices. In some countries, they are purposely established by law to settle land disputes and other forms of minor conflicts before going through a formal court process if no settlement is achieved. Suspension of prosecution is also widely

used as one non-custodial measure. Countries like Indonesia, Fiji, Hong Kong, Thailand, Nepal, Mongolia, the Philippines, Korea and Japan signified the current practice of this measure.

Other non-custodial measures such as restitution, probation, house arrest, electronic monitoring, etc. are also being adopted in a few countries whichever could best serve the purpose.

Table 1 also provides information on the agency which supervises these non-custodial measures. Certain measures do not require supervision — non-arrest and discharge are such measures. Even in case of admonition/warning and caution, countries which practice such measures require no supervision, except in Indonesia where the police supervise those released under these measures. Similarly, no supervision is required for those released on conditional basis, and those also released by village courts except in Nepal. In 10 of the 17 countries, the measure of "release on recognizance" is used. In the Philippines, Fiji and Thailand supervision is conducted by a responsible member of the community. If the offender takes the responsibility in the form of personal guarantee; in the remaining countries, no supervision is exercised.

The pre-trial option of "suspension of prosecution" is available in ten of the participating countries, only in Indonesia supervision is required and the prosecutor is responsible for it. As mentioned earlier, the option of bail is available in all countries, except Hungary. The responsibility of making sure that the bailee appears before the court on required dates rests with the police or the prosecutor; some countries do not require monitoring. The practice of pre-trial probation is available in Indonesia, Korea (only for juveniles), Mongolia and Sri Lanka; only in Mongolia supervision is conducted by the police, in the other three countries the probation officer supervises the probationers.

The preliminary survey of the participants did not try to seek information on conditions, duration, training of staff, etc. Such information can be included in a systematic and methodologically well designed survey. Furthermore, while some countries may provide in their legislation certain non-custodial measures, they may not be able to implement the legislation for a variety of reasons.

Implementation in Selected Countries

Although many countries have practically adopted non-custodial measures during pre-trial stage, our group only examined the implementation of such measures in three countries. The following summarized the situation in these countries:

1. Japan

Suspension of prosecution

The suspension of prosecution is considered one of the most important and most desired non-custodial measure at the pre-trial stage to eliminate the factors that affect the treatment and rehabilitation of offenders because such measure surely avoids the stigma caused by court hearings and eventual conviction. The public prosecutor is solely authorized by law to suspend the prosecution of an offender at his own personal discretion although the evidence to prove the guilt of the offender is strong enough to suffice prosecution. Statistics show that among all the cases disposed of by the public prosecutor's offices in 1991 excluding traffic law violation and physical injury resulting from professional negligence, 29.2% or 58,250 cases were disposed of through suspension of prosecution. And from the Penal Code offender of that same year, the rate of 37.1% or over 1/3 of the total Penal Code cases were given suspended prosecution. This system is almost always available in all types of offenses and it can even be granted in robbery and homicide and other serious types of offenses. This non-custodial measure follows strictly cer-

tain criteria before it is instituted. Considerations with regard to the character, age and position of the offender such as previous criminal record if any, family background, associates and others; the nature of the offense and circumstance under which it was committed including the motives and condition incidental to the crime committed, the willingness of the offender to repent and pay in the form of compensation for the damage inflicted and many other conditions must all be taken into account by the prosecutor himself to ensure a fair and honest disposal of cases in the pre-trial stage.

To determine whether the practice of suspension of prosecution in Japan is successful, we will examine this system from various perspectives. Firstly, under this system the prosecutor through his own discretion and sound judgement can decide not to proceed with the prosecution of the case. In this instance, the case load of the judicial courts will greatly be reduced thereby saving time and money in favor of the government. Secondly, in employing these measures, the public prosecutor places the right of the victim in the first line of consideration. If restitution to the victim, settlement and reconciliation between the offender and the victim can be achieved, suspension of prosecution may be instituted. In this process, the public prosecutor initiates efforts in order to achieve out-of-court-settlement of cases putting up-front the rights and protection of the victim. In Japan, this has been successfully achieved. Thirdly, this system does not cause any adverse effect on the maintenance of social order nor does it undermine the people's awareness or confidence in the criminal justice system of Japan. This is due to the fact that public prosecutors are required to have profound insight and appropriate judgement in the exercise of their inherent discretion in disposing of cases at the pre-trial stage. As one safeguard to this measure, the public prosecutor in charge of the case must have the approval of his superior before disposing of the said case. As for the system of appeal, inquest of prosecution and quasi prosecution procedures are provided by related laws. Fourthly, this system functions effectively in the treatment and rehabilitation of the offender. It enables the prosecutor to admonish, caution and warn the offender by either recommending him/her to a Rehabilitation Aid Hostel (Halfway House) or placing the offender under the supervision of a responsible guardian and require the latter to make a pledge on their duty. In doing so, stigmatization that usually goes along with conviction of offenders can surely be avoided.

Investigation on voluntary cooperation

The principle involved in this measure is the conducting of investigation without arrest or detention of a suspect by the principal investigating authority. One inherent characteristic of investigation in Japan under the code of criminal procedure is that investigative processes are on a voluntary basis (Article 197). In 1991, a total of 368,828 cases (excluding traffic law violation and physical injury resulting from professional negligence) were disposed of by the public prosecutors office. Of these, only 85,821 cases or 23.3% were either arrested or detained during the pre-trial while the remaining 76.7% of the total cases were investigated without arrest or detention. In cases involving grave offences such as murder, robbery, rape and also if there exists risk of destruction of evidence, this principle is not applicable. However, in minor cases such as shoplifting, simple assault, and slight bodily injury, these are investigated without arresting or detaining of the suspect. In this process, the prosecutor may apply non-custodial sanction such as suspension of prosecution and summary procedure for fine if a suspect admits the charge. All of these are handled in the method of investigation on voluntary cooperation.

In Japan, bail is allowed only after the case is submitted for trial. When a request

is made for release on bail, with the exception of certain serious offenses and risk that the accused may destroy the evidence or cause harm to the victim and also when the address of the defendant is not known, the law sufficiently provides for the effect of such measure.

2. India

The Constitution of India is the primary source of law in the country. It guarantees its citizens certain Fundamental Rights such as freedom of speech, and equality before the law to propagate any religion. The law confers the accused the right to information and access to legal assistance, the right not to be deprived of life or personal liberty except according to law. The basic criminal law is the Indian Penal Code and Cr PC. The IPC deals with offenses and various kinds of punishment. The Criminal Procedure Code has classified all offenses into two categories, namely: Cognizable offenses wherein the police has the power to investigate and arrest the offender without warrant, and Non-Cognizable offenses wherein the police has no power to investigate except with permission of the court and even after such investigation in such cases arrest without warrant from a competent court. In non-cognizable cases, the police make an entry of the complaint in the daily diary kept in the police station and advise the complainant to file a private complaint in the court. However, in practice, sometimes the complainant does not want to go to the court, and requests the police to take action. In that case, the police will summon both the suspect and victim and conduct on the spot inquiry and make efforts to effect compromise between the parties by admonishing the offender.

Section 320 of the CrPC provides the compounding of offenses to maintain good community relations based on the principle of forgive and forget. This provision is being used extensively by the courts to avoid unnecessary prosecution.

In India, the possession of narcotic drug or psychotropic substance is an offense under the NDPS Act 1985 but consumption of the same is no offense. In addition, certain acts such as the following do not constitute an offense as covered by General Exception in IPC, namely: An act done in discharge of judicial functions, an act done in good faith to prevent more harm, an act done by a child under 7 years of age, and also by a child above 7 years but under 12 years who has not attained sufficient maturity of understanding of what is right or wrong, an act done by a person of unsound mind, an act done by a person under intoxication and who was incapable of knowing the nature of his act provided the thing which intoxicated him was administered to him without his knowledge or will.

The Criminal Procedure Code has further classified offences into Bailable and Non-Bailable. In Bailable offences, the police shall release the offender on bail if such offender is prepared to give bail, and the police officer has very limited discretion in such cases. In case of non-release on bail, a valid and legitimate reason must be provided otherwise the courts take adverse view and considers it as illegal detention.

In Non-Bailable offences, the police officer has the discretion to grant bail except in cases where the offender is suspected to be involved in offence punishable with death, imprisonment for life or imprisonment for 7 years or more or he had been earlier convicted for Non-bailable and cognizable cases. In all such cases the police officer shall forward the arrested person to the court within 24 hours of his arrest, for further orders regarding his custody.

The Juvenile Justice Act of 1986 provides that if any juvenile (a boy under 16 years and a girl under 18 years of age) is arrested, he may be released on bail even in non-bailable offense, provided such a release will not defeat the ends of justice.

The village and panchayat act provides the head of a village elected by the people

to decide cases of minor nature and other petty crime offenses and most often offenders are made to provide just compensation to the victim without going through formal prosecution.

Anticipatory bail — Criminal Procedure Code provides that a person under expectation of arrest by the police can apply for anticipatory bail and the court may release him in non-bailable cases, and sometimes even without registration any criminal case with directions to the police that in case of arrest, he may be released on bail.

3. The Philippines

There are five vital components in the criminal justice system of the Philippines, namely: law enforcement, prosecution, courts, corrections and the community. The custodial correctional system operates at three levels namely: national, provincial and city/municipal. In addition, there are ten regional rehabilitation centers operated by the department of social welfare and development which house juvenile offenders.

Philippine laws do not impose criminal sanctions against the drug dependent unless apprehended for committing a felony while under the influence of drugs. There are clinic homes where drug dependents are normally received but only for purposes of rehabilitation and not for social segregation purposes.

We cannot deny the fact that imprisonment is viewed as a deterrent factor in criminality but non-institutional methods are however often utilized. As a consequence, methodologies have constantly changed and in the process has emerged the non-institutional scheme. Persistent moves have come from the other sectors of the Philippine criminal justice system for the enactment of legislation that will enhance and broaden the scope of non-custodial alternatives in dealing with criminal offenders both before and after trial. Several such pieces of legislation have been passed and a few others are pending in the Philippine legislative bodies.

In the Philippines, the following are some non-custodial measures available under existing laws for accused persons of criminal offenses before trial:

a. Amicable settlement of disputes at the Barangay level

The smallest political unit in the Philippines is called Barangay. These are groups of families living in one specific area headed by a Barangay captain duly elected by the Barangay members. Significant to this development, the Philippines has formalized and institutionalized a system of amicable settlements for the purpose of settling disputes at the Barangay level provided for under presidential decree No. 1508 known as "Katarungang Pambarangay Law" (Barangay Justice Law) which took effect on December 11, 1978. For this purpose, conciliation bodies known as "Lupong Tagapayapa" have been duly formed with ten to twenty members of the Barangay with the Barangay captain as the presiding chairman. The jurisdiction of this conciliation body extends to all forms of disputes except offenses punishable by imprisonment exceeding thirty (30) days or a fine exceeding two hundred pesos (200.00). No complaint involving any dispute within the jurisdiction of the Barangay conciliation body can be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties involved before the said body and no conciliation or settlement has been reached as certified by the said body. As of December 31, 1970, there were 858,354 disputes submitted to the Barangay courts. Out of this total, 759,911 or 89% were settled at the Barangay level, 61,244 or 7% were forwarded to the proper judicial courts and 37,199 or 4% were still being settled.

b. Release on bail

This is available in non-capital offenses or in capital offenses where evidence of guilt

is not strong.

c. Release on recognizance

The accused who is unable to post the recommended bail is allowed to be placed under the custody of a responsible citizen in the community who could willingly accept such responsibility. This measure is however limited to criminal offenses punishable by imprisonment of one month and one day to six months and/or a fine of not more than two thousand pesos or both.

d. Release of detention prisoners

This allows the accused to be released after having been detained for a period equal to or more than the maximum penalty to be imposed for the specific offence charged.

e. Non-arrest

This is the most practical approach in instituting non-custodial measures in the pre-trial stage. It allows the law enforcers or police to exercise his discretion or own judgement as to the culpability of a person being accused in the complaint. This approach might be too subjective as far as the police is concerned because it utilizes only his personal opinion with regards to the offense being charged or committed. In the light of this, it is necessary to establish certain criteria to clearly outline some procedures and conditions for the implementation of this method. In doing so, arbitrariness and discrimination can be avoided and the interest of justice is surely upheld.

As can be seen from the preceding, the Philippines has been using non-custodial approaches in dealing with criminal offenders but still the correctional institution particularly many local jails, continue to be generally overcrowded and characterized by poor and inadequate facilities. It can be said that the implementation of non-custodial measures is fairly successful, however, there still remains much room for improvement. To further improve the systems, officials and representatives of the different pillars conduct continuing evaluations to come up with solutions to existing problems. Philippine legislators have also been supportive in this regard by sponsoring appropriate legislation. It is hoped that the passage of the proposed bills now pending in congress will produce the desired improvement.

III. Non-Custodial Measures at Trial and Sentencing Stage

Before embarking on the discussion on the main theme it would be proper to describe the theoretical approaches envisaged in the Tokyo Rules. Rule 7.1 directs that "If the possibility of social inquiry reports exist, the judicial authority may avail itself of a report prepared by a competent, authorized official or agency. The report should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified."

With the emergence of non-custodial measures it has become necessary for the sentencing authority to consider some mitigating circumstances to select an appropriate non-custodial measure in order to restructure the broken relationship between the offender, the victim and the society in which he lives, without keeping him away from that environment. In this context social inquiry reports could be considered important and useful, as explained in the Tokyo Rules.

Social inquiry reports are prepared by members of the probation and social welfare agencies in a variety of situations about alleged offenders facing trial. These reports are commonly known as social inquiry reports.

Such reports are not only confined to the offender's penal history, but also, it sum-

marizes the educational and employment career, facts about the crime and mitigating factors, social and domestic background and so on. The quality of such reports largely depends on the communicativeness of the offender and the good will of the officer in charge of the case. Such type of social inquiry reports are widely used by the trial judges in western countries in order to discern the offender's likelihood of repeating the crime and also to dispose of the case as quickly as possible.

In Japan, Malaysia and Sri Lanka except in juvenile cases there is no such social inquiry report system handled by a probation officer. However such penal and non-penal information are made available to sentencing courts through the police or social welfare officers or village headman. It is therefore argued that the need of such social inquiry report system would not arise. Nevertheless sentencing courts in western countries have still maintained the fact that any sentencing judge must obtain and seriously consider information about the circumstances of the case, social and domestic background and mitigating factors and shall take into account any information before imposing the appropriate sentence. In such situation the social inquiry reports could play a very vital role in making the sentencing judge aware of those facts.

Alternatives to Imprisonment at Sentencing Stage

Sentencing dispositions, at the sentencing stage, have been envisaged in the Tokyo Rules 8.1 which states that "The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society, and the interests of the victim, who should be consulted whenever appropriate."

Rule 2.4 further states that "the development of new non-custodial measures should be encouraged and closely monitored and their use systematically evaluated."

Keynote speeches followed by general discussions have revealed that most of the non-custodial measures mentioned above have been operative in every participant country. It was also revealed that in some countries like Nepal and Kenya, only a very few non-custodial measures are made available to the sentencing judges.

Absolute and Conditional Discharge

The concept of the absolute and conditional discharge is a means by which first offenders charged with non-serious offenses (petty offenses) could be sentenced without experiencing the damaging consequences of a criminal record. The sanction of absolute and conditional discharge is used in Brunei, Fiji, Hong Kong, India, Indonesia, Korea, Mongolia, Papua New Guinea, Singapore, Sri Lanka and Thailand.

When the court thinks that the charge is proved but is of the opinion that having regard to the character, antecedents, age, health and mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment other than a nominal punishment or that it is expedient to discharge the offender conditionally, the court discharges accused conditionally or unconditionally on his/her executing a bond with or without sureties.

Suspension of Sentence or Suspension of Execution of Sentence

The sanction of suspension of sentence/ suspension of execution of sentence is used by the sentencing judges in a number of participant countries namely Japan, Sri Lanka, Hong Kong, Brunei, Hungary, Indonesia, Korea, Thailand, Nepal, Mongolia, Fiji, India, Papua New Guinea and the Philippines.

Basically the suspension of sentence as discussed, is the expectation that the offender would not commit the criminal of-

fence a second time. Suspension of execution of sentence is justified only with regard to the circumstances of the offence committed, the situation in which it was committed, or the family and social background of the offender.

In Japan the basic element of the suspension of sentence, as the Japanese keynote speaker explained, is that the execution of sentence of imprisonment with or without forced labour for not more than three years is suspended for a period of not less than one year or not more than five years in order to control behaviour of an offender and make him integrate into the society. During their operational period an accused should not commit a second offence.

Presenting his facts, the Japanese keynote speaker further asserted that according to the statistics of 1990, out of 49,123 persons convicted of various offences, in district courts in Japan 28,000 were given suspension of execution of sentence. In Japan suspension of sentence is sometimes accompanied by probation order. The keynote speaker further added that suspension of execution of sentence is reported to be very effective in reforming the behaviour of the criminals.

The question likely to arise is whether the criminal stigma attaches to an offender after completion of the operational period in which he has not committed a second offence. In Sri Lanka and Japan if an offender has not committed a second offence during the specified operational period, that expires after the specified period, the conviction and the suspended sentence imposed on the offender shall be deemed for all purposes never to have been entered or imposed.

Fines

Fines are the most common penal disposition being imposed on an offender in lieu of other punishment that are authorized in respect of offences such as disorderly conduct, motoring offence, excess gambling and other statutory offences except where a maximum term of imprisonment is specified.

Sanctions of fines are widely used by the sentencing judges in every participant country.

In some countries, such as Sri Lanka and Singapore, the payment of fines in installment may be permitted by the court. In respect of serious offences fines are imposed in combination with imprisonment.

In Japan, for the offenders who are found guilty through the summary process, the courts generally tend to impose fines. It was reported that almost 95% of the convicts are given such monetary sanction. If an offender defaults in paying the fine, he/she may be detained in work house. It is however reported that fine defaulters are few.

Community Service Order

The community service order emerged as a solution to the problem of jail overcrowding and a response to the concern that offenders should be subject to better reintegration into the community. In some countries the community service order is also used as an alternative disposition for fines. At the same time it is desirable to understand that the use of community service order in lieu of custodial sanction for some offence, largely influences an offender to achieve reconciliation with the community by repairing the harm done and by applying a positive form of censure to an offence.

The community service order is available to sentencing judges in several participant countries such as Hong Kong, India, Kenya, Korea, Mongolia, Papua New Guinea and Sri Lanka. In Singapore, there is a similar type of non-custodial measure called collective work order that is imposed by the Ministry of Environment on the law breakers convicted of offences under the Environment Act.

The provisions incorporated in the legis-

lation of respective countries have empowered the sentencing judicial authorities to order an offender convicted of an offence, to work at a place as named, for a certain number of hours during a specified time. If it is reported that an offender has failed to carry out those conditions, the respective court has jurisdiction to revoke the orders of community service and impose sentence of imprisonment. In such situation, in Sri Lanka the report of officers in charge of the place where he was ordered to work is deemed to be conclusive evidence against such offender. However, in Sri Lanka, the application of the community service order by the sentencing judge has been in abeyance due to inadequacies in administrative set-up.

In Japan it was reported that the sanction of the community service has not been made available to the sentencing judge as penal policy makers feel that the enforcement of community service sanction on an offender to work in public might have a humiliating effect on him.

At the general discussion all participants agreed that wider use of community service order could be an effective device in alleviating the problem of increasing fine defaulters in prisons.

Court Detention

In Sri Lanka, court detention is used by the sentencing judges as a non-custodial measure. That is, a sentencing magistrate or judge has been empowered by the code of criminal procedures to order a police officer to detain any offender convicted of trivial offences in the respective court till the day's work is over, in default of payment of fine or in lieu of imposing a sentence of imprisonment.

Restitution / Compensation

The order of restitution/compensation is generally meant for the dual purpose of the return of the property by the offender to the victim and the payment of money to the victim for actual loss or damage suffered as a result of the commission of the offence. This type of alternative sanction would not only help the victim but also restore the relationship between the victim and the society. The restitution/compensation has therefore gained wide acceptance both in the judicial circles as well as in the community in some participant countries such as the Philippines, Sri Lanka, Mongolia, Hungary and Papua New Guinea.

Probation

Probation, which is also one of the non-custodial measures incorporated in the Tokyo Rules, is widely used in most participant countries except Brunei and Nepal. In Japan adult probation is widely used by the sentencing courts as a complementary measure to the suspension of the execution of sentence. If the offender committed subsequent offences during the period of suspension of sentence, without probation, the probation order would invariably become mandatory when imposing penal sanction for a second time.

The court may generally include the following requirements in its probation order.

1) The accused shall be of good behaviour and lead an industrious life.
2) The accused shall inform the probation officer immediately of any change of home address or employment.
3) The accused shall comply with instructions of the probation officer and as to receiving visits from the volunteer probation officer at home.

If any of these conditions stated in probation order is violated, the probation order may be revoked by the respective court.

It was however stated that since very recently the number of adult probation orders have been decreasing and the reasons for such decrease are still not known. The recidivism rate in respect of probation, was reported to be 25–28%, comparably a very

high rate.

The use of non-custodial measures and their advantages were discussed from various points of view, society's point of view, offender's point of view and victim's point of view. These could be summarized as follows.

1) Reducing prison overcrowding.
2) Reducing the escalating heavy expenditure in building penal institutions.
3) The liberty of the offender is not as restricted as much as it would be if he were sentenced to prison.
4) Granting him an opportunity to be reintegrated into the society.
5) Giving him an opportunity to rectify the wrong he had done to the society and the victim by way of paying compensation to the victim.

In spite of those advantages, there are still some problems. Some participant countries such as Nepal, Sri Lanka, India and Kenya, noted problems of social stigmatization, vengeance and rejection of the offender by the society. These problems have to be overcome in order to enforce non-custodial measures in the entire range of the criminal justice system.

In this context the law enforcing agencies and other agencies of the criminal justice system must take initiatives to expand research, plan activities, and conduct public awareness programmes, training courses, seminars and other activities to enhance the knowledge of the officers engaged in the field of criminal justice and change the cynical attitude of the public toward such non-custodial measures. In this scenario international organizations like UNAFEI, Asia Crime Prevention Foundation, and JICA can play a significant role in organizing such dissemination programmes in every participant country in order to extend the use of non-custodial measures at the sentencing stage for all offenders except recidivists. Such extension could only be done within the limited compass of the political, social, economic and cultural situation existing in each participating country.

IV. Post Sentencing Stage

In many countries throughout the world criminal justice systems are ascending in their approaches from predominantly imprisonment to other forms of non-custodial sentencing options at the post sentencing stage.

Some general ideas about prisons, in today's contemporary approaches are:

— They should be strictly used for the purpose of incarcerating violent and serious crime offenders, who are considered society risks.
— The prisons are constrained by budget and are expensive to administer.
— Many prisons do not have the proper capacity and are forced into overcrowding and congestion, sometimes violating the perspectives of the United Nations Standard Minimum Rules and the Tokyo Rules on treatment of offenders.
— Undesirably, lack of adequate facilities many times prevent the jail administrators from effectively applying the routine procedure on classifying and segregating the prisoners into respectable categories. For instance separating the hard-cores or notorious murderers, rapists, or robbers who use violence, and stimulant drug offenders, from the traffic offenders, civil offenders, first timers, etc. Some common disorders are criminal literacy, where less serious crime breaches and first timers due to lack of adequate and proper facilities, are accommodated with the serious crime offenders and recidivists, and through social integration, there is a greater chance for the less offensive to learn the act of crime from the harden criminal and develop their criminal attitude. As is often paraphrased, prisons at times become a high learning

institution for criminals. Simultaneously, non-custodial schemes as an alternative to custodial sentencing must be able to initiate and forecast effective rehabilitation programmes to solve the problems of prisons in terms of:

a. Reducing recidivism trend.
b. Assisting prisons to manage within their budget appropriation.
c. Giving the offender the opportunity to grasp the non-custodial sentence as a *chance offered*, and direct his human nature to repent and to reform.
d. A prisoner coming out of a prison carries a permanent *STIGMA*, and due to society's negative attitude and responses, the tendency of the ex-prisoner to re-offend are usually greater. Through the process of post-sentencing perspectives there is a greater chance of the offender eventually recovering from society's attitudes and permanently settling as a law abiding citizen.

Regarding Parole or other release schemes on restricted or unrestricted conditions, the participating countries accepted some form of post sentencing stage as a promising method in our criminal justice system.

Our group has identified eleven (11) possible options available at the post sentencing stage. However, not all of them are utilized at the same time nor are the implementation procedures the same in each country, though in principle and scope they serve the same ultimate goal in the criminal justice process.

The eleven (11) non-custodial options available at the post sentencing stage which many countries utilize are:

— Conditional discharge;
— Pardon/amnesty;
— Home detention;
— Periodic/weekend detention;
— Home leave/furlough;
— Parole;
— Work release;
— Remission/Good conduct allowance;
— Commutation of sentence/early release;
— Open institution;
— Electronic monitoring.

There could be others which we overlooked. We will now in brief look at how they are disseminated and to what extent and how they are supervised in some countries.

Japan

1. Pardon/Amnesty

Two types — Regular individual pardon and Ordinance pardon. The former is awarded at all times. After receiving the application from the offender, or related agencies, the National Offenders Rehabilitation Commission presents its opinion to the Cabinet via the Minister of Justice after scrutinizing all circumstances relevant to the case and on the recommendation of the cabinet the Emperor attests it. The release is not tied to any supervisors.

2. Parole

Under the parole act, upon application from the head of a penal institution, the Regional Parole Board examines all applications and successful parolees are released to the probation office under general and special conditions to be supervised by probation officers and volunteer probation officers.

3. Probation

Probation officers under restrictive programmes supervise the parolee to the actual date of his discharge as instituted by the court. When there is a default and the parolee is found guilty he is sent back to prison and serves his portion of the sentence cumulative to the new sentence. The probationer is similar to a parolee and is supervised by probation officers and volunteer probation officers. Furlough and work

release programme are also used but are at present only restricted to some juvenile training schools as a source of treatment.

Singapore

1. Parole — Is offered to young offenders, preventive and collective detainees.

2. Remission — As elsewhere remission is automatically given on a 1/3 sentence reduction based on character and behaviour in the jails.

3. Electronic Monitoring — Is strictly used for drug addicts only and is supervised by the prisons.

4.Work-release Scheme — Is widely used.

Papua New Guinea

1. Pardon/Amnesty

Until 1991 the power of the release of inmates was transferred from the Ministry of Justice to the Ministry of Correctional services. The release is united to any condition and is used to release prisoners who have at least served two-thirds of their sentences or more. The releases are usually performed to commemorate important events such as the independence day.

2. Parole

Parole system was formerly enacted as a law in 1992, whereby, prisoners who have served one-third (1/3) of their sentence can be considered for supervisory release on parole.

Parole is supervised by the parole office through its parole and voluntary parole officers in various provinces. Under the act a parolee must serve a supervisory sentence, and must not breach his parole conditions. Those who default and are found guilty are sent back to prisons to serve the uncompleted portion of their actual sentence and where there is a new conviction the old sentence is automatically cumulative.

3. Community Work Order — Enacted in 1978

This is a non-custodial sentencing option. Although it was legislated due to certain administrative problems it is only used by the village courts and supervised in village settings by the village court magistrates and peace officials.

Other non-custodial or post sentencing options such as home detention, weekend detention, home leave, or work release have been submitted as a bill to the parliament together with a parole bill in 1986 and are sitting in parliament pending approval.

Sri Lanka

1. Pardon/Amnesty — General amnesty is granted by the President in view of the Independence Day, Wesak Full Moon Day and President's Birthday.

2. Parole — Supervised by prison officers.

3. Home Leave — Furlough — Supervised by prison officers.

4. Work Release — Supervised by prison officers.

5. Remission — One-third (1/3) of sentence rule applies and is subject to behavior and conduct and when there is violation of conduct, remission is up to 8 days forfeited and added to his discharge date.

6. Commutation of sentence/early release — on character and circumstances and released without supervision.

7. Open Institution — Certain prisoners of model character are selected to those institutions with minimal correctional officers' supervision.

Nepal

1. Pardon and Amnesty

Under the Constitution of Nepal, His Majesty the King at the recommendation of the cabinet grants amnesty or pardon to a prisoner.

2. Remission

It is not mandatory of prison authorities. Therefore, those the prison authorities con-

sider suitable are recommended to the government and His Majesty's government grants the authority for a prisoner's term of sentence to be remitted at one-fourth (1/4) of the actual sentence.

India

1. Pardon and Amnesty

Under the Constitution of India, the President of India and the Governor of the State, grant pardon or amnesty to a prisoner on the recommendation of the government.

2. Home Leave/Furlough

The system is practiced in India and is supervised by the Director or Inspector General of prisons.

3. Parole

Parole is also enacted and is supervised by the prison officers.

Philippines

1. Pardon/Amnesty

Granted by the President to mark a very important occasion; very restricted and its deposition is seldom.

2. Parole

Under the indeterminate sentence law or Act No. 4103 a prisoner may be granted parole after he had served the minimum period of sentence. The order for parolee is determined by the pardon and parole board administered under the justice department. Those released on pardon or parole are supervised by the parole and probation administration.

Due to lack of resource materials to adequately cover in detail the rest of the participating countries, non-custodial and post sentencing stage measures, we have decided to at least in brief highlight what exists in those countries based on the research sheet sent out and returned.

Hong Kong

1. Home Leave/Furlough — Supervised by correctional officers.
2. Parole — Supervised by correctional officers.
3. Remission/Good Conduct — No supervision after release.
4. Open Institution supervised by correctional officers.
5. Commutation of sentence, early release — No supervision.

Thailand

1. Conditional Discharge — No supervision.
2. Pardon/Amnesty — No Supervision.
3. Home Leave/Furlough — Parole & probation officers.
4. Parole — Parole & probation officers.
5. Open Institution — Correctional institutions.

Indonesia

1. Pardon/Amnesty — No supervision after release.
2. Home Detention — Supervised by police.
3. Periodic/Weekend Detention — Supervised by police.
4. Parole — Supervised by the parole and probation service.
5. Work Release — Supervised by parole and probation service.
6. Open Institution — Supervised by prison service.

Kenya

1. Pardon/Amnesty — Granted by the President. No supervision after release.
2. Parole/Release on License for Juvenile and supervised by probation officers only.
3. Remission/Good Conduct.

Hungary

1. Pardon/Amnesty.
2. Periodic/Weekend Detention — Supervised by prison officers.
3. Parole — Supervised by the parole

and probation officers.

4. Remission/Good conduct allowance.

Fiji

1. Pardon/Amnesty — Those released are under police supervision up to the duration of the actual discharge date of sentence.

2. Parole — Supervised by the prison officers.

3. Remission — Apply automatically on one-third sentence on admission. The prisoner can forfeit some days very much depending on behavior in prison.

Mongolia

1. Conditional Discharge — Supervised by the prosecutors.

2. Pardon/Amnesty.

3. Parole — Parole and probation officers.

4. Work Release — Parole and probation officers.

5. Remission — Offered on admittance on one-third sentence by the prison officers, and of course it is based on behaviour and conduct.

Malaysia

1. Pardon/Amnesty — Granted by the King or Ruler of each state on the recommendations of the Pardon Board and is not supervised after release.

2. Periodic/Weekend Detention — Supervised by the welfare officers.

3. Home Leave and Furlough — Supervised by the welfare officers (for juveniles only).

4. Parole — Supervised by the prison officers.

5. Remission — One-third deducted automatically on admittance and application of rule of forfeiture depends on behaviour in prison.

Brunei

1. Pardon and Amnesty — His Majesty the Sultan may decide on an act of grace or pardon for a prisoner with or without condition. No supervision after release.

2. Remission/Good Conduct — One-third deducted automatically on admission and subject to good conduct and industry in prison.

3. Commutation of Sentence/Early release — No supervision.

In general there seems to be greater consciousness and conformity by all countries in applying the non-custodial sentence in the post sentencing stage which gives rise to the systems development and honoring the preambles of the Tokyo Rules on SMR for treatment of offenders and the United Nations Decree.

V. Conclusion

The Role of Research

The Tokyo Rules recognize the importance of research in planning, promoting, and implementing non-custodial measures. Often measures are abandoned or considered difficult, primarily because of lack of adequate and systematic information. Non-custodial measures are sometimes labeled as "soft" measures. This partly reflects the misunderstanding about such measures. Research can very adequately fill this gap in knowledge. In this context, research can play a significant role in planning and implementing non-custodial measures in the following ways:

— by surveying literature and legislation, research can inform the policy makers on the extent of use of any particular measure, the impact of the use of such a measure, the attitudes of criminal justice administrators to the use of such measures, the comparative costs of such measures, etc.

— by evaluating particular measures in specific areas, research can inform the policy maker of the advantages and drawbacks of the application of such a measure, and offer suggestions for improve-

ment.

— by comparing application of such measures, research can offer valuable insights into suitability of such measures in particular legal systems, specific areas, particular population groups, etc.
— by conducting periodic review, research can assist the legislators in reforming laws to make the application of non-custodial measures effective.

Future Plans

The standard minimum rules for non-custodial measures (the Tokyo Rules) is a relatively new instrument of the United Nations. These Rules therefore, need time before wide discussion, debate and application take place. While it is relatively easy to show that non-custodial measures cost far less than custodial measures, the community needs to be assured that non-custodial measures do not compromise the safety of the community. Implementation of these measures therefore should follow a systematic community education programme on non-custodial measures.

The preliminary survey of participants to the international program shows that various non-custodial measures are in operation in most countries. However, actual implementation of these measures may not have taken place in some countries. As was reported during this course, a number of countries had adopted the UN SMR for prisoners, yet some countries found it difficult to implement. Most frequently, lack of funds was given as the main reason for non-implementation. Public support for the introduction and implementation of any penal measure, particularly non-custodial measures, is essential. While financial resources are very important, the community must be satisfied that dangerous offenders are not prematurely released. The criminal justice administrators need to convince the population that the use of non-custodial measures have benefits other than cost as well. Quite often certain measures could not be implemented because these were not told to the public properly. Many countries of the region face the problem of prison crowding because of a large number of remandees, a large portion of whom are later acquitted and a majority of whom are detained for petty offences. A properly organized community education programme may be able to address the problem. Therefore, it is hoped that intergovernmental and non-governmental organizations and other entities concerned play a very important role in this initiative.

Finally, a systematic periodic survey of the application and implementation of non-custodial measures is necessary. In order to be useful, such surveys should also include statistical data on the number of offenders placed under various measures. Parallel with prison statistics, data on the use of non-custodial measures may be of significant assistance to policy makers.

Table 1: Non-custodial Measures Currently Available and Supervising Authority (Pre-trial Detention)

Country	Measures and Level of Supervision													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Brunei		H	H	H	H				H					
Fiji	H	H	H	H		F		H	A					
Japan	H	H	H	H				H	H					
Hong Kong	H	H	H	H	H	H		H	A	H				
Hungary			H		H									
India	H	H	H	H	H	H	H		A					
Indonesia	H	A	A		H	H		C	C	H	D	A		
Kenya							H		H					
Korea		H	H	H	H	H	H	H	A	H	D[x]			
Malaysia									A					
Mongolia	H	H	H	H	H			H	C	H	A			
Nepal	H	H					H	H	A					
Papua New Guinea	H	H	H	H	H	H	H		H	H				
Philippines	H	H	H	H	H	F	H	H	C	H		A		
Singapore	H	H	H						A					
Sri Lanka	H	H	H	H	H	H	H		H	H	D	A		
Tailand						F	H	H	A	H				

Legend:

Non-custodial Measures

1. Non-Arrest
2. Admonition/Warning
3. Caution
4. Discharge
5. Personal Guarantee/Conditional Release
6. Release on Recognizance
7. Village Court (Panchayat, Conciliation Board, etc.)
8. Suspension of Prosecution
9. Bail
10. Restitution
11. Probation
12. House Arrest
13. Electronic Monitoring
14. Others (Please Specify)

Type of Supervision

A: Police
B: Judge
C: Prosecutor
D: Probation/Parole Officer
E: Social Welfare Officer
F: Any Responsible Member of the Community
G: Others (Please Specify)
H: None

x: For Juveniles Only

Table 2: Non-custodial Measures Currently Available and Supervising Authority (Trial and Sentencing Stage)

Country	Measures and Level of Supervision												
	1	2	3	4	5	6	7	8	9	10	11	12	13
Brunei	H	A	H	H	H								
Fiji	H	H	H	H	H	D		G	D	H			
Japan				H		D	H		D[x]				
Hong Kong	H	B	B	H	H	D		E	D	H			
Hungary					D	D			D				
India	H	H	H	H	H	D	H	H	D				
Indonesia	A	A	A	H	C	C	C		D	H	A		B*
Kenya				H					D				G–
Korea	H	H	H[x]	H		D[x]	H	D[x]	D[x]	H			
Malaysia		E[x]	H	H					E[x]				
Mongolia	H	H	C	H	C	C		A	A	H			
Nepal				H	H								
Papua New Guinea	H	H	D	H	H			F	D	H			
Philippines				H		D			D	H			
Singapore		A[x]	H	H				G+	D				
Sri Lanka	H	H	H	H	H			D	D	H			
Thailand	H	A	B	H	H	D			D				

Legend:

Non-custodial Measures
1. Warning and Discharge
2. Good Behavior Bond
3. Conditional Sentence
4. Fine/Penalties
5. Suspended Sentence
6. Suspended Execution of Sentence with Probation
7. Suspended Execution of Sentence without Probation
8. Community Service Order
9. Probation
10. Compensation/Indemnification
11. Home Detention
12. Electronic Monitoring
13. Others (Please Specify)

Type of Supervision
A: Police
B: Judge
C: Prosecutor
D: Probation/Parole Officer
E: Social Welfare Officer
F: Any Responsible Member of the Community
G: Others (Please Specify)
H: None

x: For Juveniles Only
*: City Arrest
–: Extramural Penal Employment
+: Restricted to Littlebugs

Table 3: Non-custodial Measures Currently Available and Supervising Authority (Post Sentencing Stage)

Country	Measures and Level of Supervision											
	1	2	3	4	5	6	7	8	9	10	11	12
Brunei		G						H	H			
Fiji	A	A				A*	G*	H	H			
Japan		H				D						
Hong Kong					G#	G#		H	H	G#		
Hungary				G*		D						G##
India		H			G**	A	G**	G**		G**		
Indonesia		H	A"	A"	D	D	D			G*		
Kenya						Dx		H				
Korea	Hx	H			G*	A	G*		Hx	G*		
Malaysia	H	G	H	H	G**	H	H	G**			H	
Mongolia	C	H				A"	C	H	H			
Nepal		G						G				
Papua New Guinea	H	H				D		G#				
Philippines		H				D		H	H	G***		
Singapore						E	G°	G°			GΔ	
Sri Lanka		H			G*	G*	G*	H	H	G*		
Thailand	H	H			D	D						

Legend:

Non-custodial Measures
1. Conditional Discharge
2. Pardon/Amnesty
3. Home Detention
4. Periodic/Weekend Detention
5. Home Leave/Furlough
6. Parole
7. Work Release
8. Remission/Good Conduct Allowance
9. Commutation of Sentence/Early Release
10. Open Institution
11. Electronic Monitoring
12. Others (Please Specify)

Type of Supervision
A: Police
B: Judge
C: Prosecutor
D: Probation/Parole Officer
E: Social Welfare Officer
F: Any Responsible Member of the Community
G: Others (Please Specify)
H: None

*: Prison Officers
**: Prison Authority
***: Bureau of Prisons
#: Correctional Service
##: Correctional Officers
": Also a Prosecutor
x: For Juveniles Only
°: Ministry of Home Affairs
Δ: For Drug Cases Only

Topic 3: Protection of the Rights of Persons under Detention

Chairman: *Mr. Waisake Talakuli Saukawa (Fiji)*
Rapporteur: *Mr. Mohamad Fozi bin Md. Zain (Malaysia)*
Keynote Speakers: *Mr. Boldbaatar Jigjidsuren (Mongolia)*
Mr. Mookjang (Thailand)
Mr. Shigehiro Tomimatsu (Japan)
Mr. Kotatsu Uchibori (Japan)
Mr. Masanobu Tanimoto (Japan)

I. Introduction

Justice is for all, rich and poor, strong and weak. This phrase is often quoted everywhere. Despite this ideal, we should always remind ourselves that the law could be abused by the rich and powerful against the ordinary person in the street.

Everyday, there are people arrested by the authorities due to all sorts of reasons. These people are subject to detention under various laws and are also subject to degrading treatment which puts a halt to their freedom to exercise their basic rights as a human being.

The United Nations and its organs have promulgated various instruments for the protection of human rights of those people under detention throughout the world and the Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment (hereinafter referred to as the Body of Principles) is one of them.

In the general discussion sessions, several important provisions of the Body of Principles were chosen by our group to be discussed by all the participants. Main principles pertaining to the right of an accused person during arrest, interrogation, rights to bail and release at the pre-trial stage were selected to enable the participants to share their experience and knowledge in relation to the implementation of the Body of Principles promulgated by the United Nations in their respective countries.

The 7th General Discussion Session

During the seventh session of the general discussion the protection of the right of an arrested person at the stage of arrest and detention was chosen as the main topic for discussion. This topic is in relation to Principles 10, 11, 13 and 14 of the Body of Principles. For the purpose of the general discussion three keynote speakers were appointed by the group members.

Keynote Speakers

Mr. Tomimatsu from Japan was the first keynote speaker. In his address he explained that, as a general principle, no person shall be arrested or detained without being informed of the reasons or charges against him. Since there are three forms of arrest in Japan, namely, flagrant arrest, emergency arrest and the arrest with warrant (normal arrest). In flagrant arrest, due to the nature of the crime, the Code of Criminal Procedure does not require the notification of arrest to the arrested person. During emergency arrest, due to the urgency of the situation, arrest warrant can be obtained from the court after the arrest but the police shall inform the arrested person of the charges against him and the reason therefore.

An arrested person must also be notified of his right to appoint his counsel and the counsel shall also be informed of the arrest and the reasons of such arrest.

The requirement in Principles 10 and 11 are fully adhered to.

With regard to further detention for the purpose of the investigation, the Public Prosecutor must apply to the court, and the judge may order the detention of the suspect for 10 days and if the investigation

is not completed, further detention can be allowed. The maximum duration for the detention of a suspect before indictment is 23 days. Opportunity must be given to the suspect to give his explanation and the reason for the detention must be forwarded to him.

For foreigners detained by the authorities, interpreters will be provided although there are some problems in providing adequate and qualified interpreters for certain languages.

To protect the detained person from any form of violation of his rights, the Code of Criminal Procedure provides that his counsel can file a complaint to the court. Habeas Corpus application is another remedy to secure the release of any suspect who has been illegally arrested and detained. Statement given during violation of the above mentioned rights is also inadmissible. Suspect can also file an action against the government for damages due to the violation of his rights.

Mr. Jigjidsuren from Mongolia as the second keynote speaker presented a case study during his speech. He described a murder case involving a student, as the victim and his lover, the assailant. In Mongolia a detective can detain the suspect for a period not exceeding 72 hours. For further detention, the order from the Public Prosecutor must be obtained up to the maximum of 14 days. The preliminary investigation should be completed during this period and the case will then be transferred to an investigator who will make a formal accusation against the suspect. The suspect after being formally accused of the offence will then be subject for further detention up to three months by the District Prosecutor. If the investigation cannot be completed within this period, the city or town prosecutor can further detain the suspect for up to six months. The Prosecutor General is provided with the power to grant detention up to nine months. As a general rule, investigation should be completed within two months with the exception of serious or heinous crime where a longer period of detention can be granted by the prosecutor.

Mr. Mookjang from Thailand was the last keynote speaker during the 7th session of the general discussion. In Thailand, the police is responsible for the investigation of criminal cases and the Public Prosecutor will conduct the prosecution. In general, a police officer should not arrest any suspect without a warrant except in flagrant cases and in those cases where the suspect is attempting to commit an offence or is reasonably suspected of having committed a crime.

The period of detention varies depending on the nature of the crime. For certain offences, the suspect can be detained up to 48 hours and in certain serious offences the detention can be extended up to seven days in total. A court order is necessary for a longer period of detention depending on the gravity of the offence and the maximum period that can be granted by the court is 84 days.

Every suspect must be informed of the offence alleged against him and also be warned that his words may be used as evidence during the trial. The law specifically forbids any threat, promise or deception to the suspect to secure his confession. Any maltreatment towards the suspect can be referred to the Head of the police station or to the Central Investigation Bureau which is empowered to initiate investigations and inquiries throughout the country. Section 90 of the CPC provides that in the case of the detained person, his spouse, relatives or any interested person, the Public Prosecutor or correction officer may apply to the court to secure the release of any person illegally detained by the authorities.

Right to Be Informed of the Reasons of Arrest

Throughout the discussion, it can be observed that in the Commonwealth countries, the police as the sole investigative

body has the power to arrest and detain a suspect for not more than 24 hours. Normally in cognizable offences, the police can arrest the offender without warrant. For further detention, the suspect must be referred to the court, which then will decide accordingly. In most countries, the maximum of another 14 days will be allowed with the exception of Nepal where a maximum of 25 days in total is provided.

The situation in Japan is the opposite. Every arrest made by the police or Public Prosecutor must be accompanied by warrant, issued by the court with the exception of flagrant arrest. The suspect can be detained by the police up to 48 hours and then, the suspect must be referred to the Public Prosecutor who will have the power to detain the suspect for another 24 hours. The Public Prosecutor then will have to apply to the judge for further detention not exceeding 20 days, if the investigation is still not completed.

As required by Principle 10 of the Body of Principles in almost all countries, the suspect will be informed of the reason of his arrest, i.e. what offence he is alleged to have committed. This information is vital in order to enable the suspect to prepare for his defence and to secure his release if the reason did not warrant such a detention. In Sri Lanka, as highlighted during the discussion, there are occasions where the police need not necessarily inform the suspect of the reason of the arrest if he is arrested during the commission of the crime, resisted arrest or tried to escape from the scene of the crime. In Malaysia, decided cases provide the same in such instances as referred to above.

It could be noted that most countries have statutory provisions limiting the period of detention by the authorities, i.e. the police or Public Prosecutor, before the suspect is properly charged in the court of law or is further remanded in custody or offered bail.

The situation in Mongolia is rather different. A detective after arresting any suspect may apply to the Public Prosecutor for further detention up to 14 days. This is the preliminary stage of the investigation. The case then will be transferred to an investigator. The Public Prosecutor in certain exceptional cases may exercise his power in granting further detention within the period of three months to nine months in total. The power to grant further detention rests with the Public Prosecutor not the court.

Right to Be Produced before the Court for Further Detention

Another aspect that was discussed is the right to be produced before the court within a specific time. In India and Japan, there is a "judge on duty" system during weekly holidays or public holidays to facilitate the authorities to produce the suspect for further detention. In Sri Lanka, an arrested person would normally be brought to the residence of the magistrate to get the order for further detention. In countries such as Fiji, Nepal, Malaysia and several others, the 24-hour detention is exclusive of the time necessary for the journey to the court and also excluding weekly holidays or public holidays.

Every suspect shall be presumed innocent until proven guilty. Judges and Prosecutors empowered to grant further detention for the purpose of investigation should scrutinize every application thoroughly before allowing any further detention. Such detention should only be awarded if there is reasonable suspicion based on available evidence at the time of the application that the suspect has committed the alleged offence. Reliable information should be forwarded and mere accusation must be rejected and the suspect should be released. The reasons for further detention must be recorded and explained to the accused in order for the police to complete the investigation satisfactorily and to prevent abuse of their powers.

It is pertinent to note that the system, rules and procedures vary from country to country, even though most Commonwealth countries adopted rather similar laws and procedures regarding arrest and detention of suspects.

Right to Remain Silent and to Make Statement

Principle 13 of the Body of Principles provides that an arrested person should be informed of his rights and how to avail himself of such rights. Therefore, the right to remain silent as one of the fundamental rights of an arrested person, was chosen by the group for discussion. Furthermore, this right is enacted in various forms of laws as can be observed in many countries.

With regard to statements given by an arrested person during investigation, in Japan such statement can be admitted as evidence subject to certain conditions, i.e. with the consent by the defence counsel, or confession being made voluntarily. In the Commonwealth countries statement from an accused person is generally inadmissible during the trial. But in countries such as Brunei, Fiji, Malaysia and Singapore, statement made voluntarily by an accused person after being cautioned of his right to remain silent, can be admitted as evidence. In India, under the Terrorists Disruptive Activities Prevention Act 1985, statement of an accused person taken after caution has been given to him of his right to remain silent, can be admitted by the court if made to any police officer of or above the rank of superintendent of police. To safeguard the interest and right of every suspect during interrogation, it is often argued that counsel should be allowed to be present during interrogation or alternatively the suspect should be given access to counsel for advice before making any statement.

In all countries, the right of an accused person to abstain from making any statement or comment when interrogated by the investigating authorities will be granted and in some jurisdictions no adverse inference will be drawn against him at his trial for such refusal. Since an accused person is expected to answer questions put to him during interrogation, he should be informed of his right to refuse to answer any question which would have a tendency to expose him to a criminal charge. The investigators should not resort to unfair tactics or rough methods to secure the confession of the accused in order to make him admit the crime.

The Judges' Rules in Fiji provide the procedures of recording statements from a suspect or an accused person, and non-compliance with the rules would render the statement inadmissible as evidence.

Right to the Service of an Interpreter

Because of the limited time available, the right to the service of an interpreter and the remedy for the violation of rights during detention were not discussed. It is understood that in most countries suspects not fluent or not able to communicate in the language of the country will be assisted by interpreters or translators available to assist him. In some countries, Embassy officials will assist in the interpretation and at the same time enable the accused to make a request and to get whatever information is needed by him.

Remedy for the Violation of Rights

It is believed that in most countries the writ of habeas corpus is the most common application to secure the release of detainees arrested without proper justification or illegally detained by the authorities. In order to facilitate those who cannot afford to engage a counsel for such application, those involved in the legal field should provide the necessary assistance to any detained person to seek the proper judicial redress.

As can be observed and often discussed in international conventions and seminars, some countries lack the mechanism to protect a person under detention. Another

glaring point which creates a lot of debate and controversy is the fact that the problem is not in the system itself, but in the government authority's lack of respect for it.

The 8th Session of the General Discussion

During the eighth session of the general discussion the group had chosen two sub-topics for discussion. The first sub-topic was the right to counsel and communication with the outside world and the second sub-topic was the right to be released within a reasonable time.

Keynote Speakers

Three keynote speakers were selected among our group members. Mr. Mohamad Fozi from Malaysia, Mr. Tomimatsu from Japan and the last speaker, Mr. Uchibori also from Japan.

The first sub-topic was mainly referring to Principles 15 to 19 of the Body of Principles. Mr. Mohamad Fozi from Malaysia as the first keynote speaker gave an overview of the situation in Malaysia regarding the right to counsel and communication with the outside world among detainees in police custody. In his speech, he mentioned that, although the right to counsel is guaranteed under Article 5 (3) of the Malaysian Federal Constitution, it cannot be exercised immediately after arrest if it impedes police investigation in the administration of justice. He cited two decisions of the then Federal Court of Malaysia pertaining to this issue, where it was held that the right of a suspect to be legally represented is subservient to the conduct of police inquiries.

Rule 14 of the Malaysian Lockup Rules 1953 provides that notices in English, Romanised Malay, Chinese and Tamil shall be displayed at the entrance of each lockup, setting forth the facilities to which detainees are entitled as regards to communication with legal advisers, the granting of bail and the provision of medical assistance. The interview between the detainee and his counsel shall take place in the sight but not in the hearing of the supervising officer or constable. This is provided under Rule 22 (8). Rule 23 states that the visits by counsel or his representatives may be allowed as such counsel consider necessary for the preparation of the case and shall take place during normal working hours of any weekdays.

Mr. Tomimatsu as the second keynote speaker in our group gave a detailed explanation about the situation in Japan. A detained suspect is guaranteed of his rights from the moment of arrest, Principle 17 (2) of the Body of Principles provides that a detained person shall be entitled to have a legal counsel assigned to him by the authorities without payment if he does not have sufficient means to pay. However in Japan, only after indictment, assigned counsel with be provided to an accused who cannot afford to have one but not at the investigation stage.

However, there is a "lawyer on duty system" established by the Bar Association nationwide to provide legal services to an arrested person. Under this system, legal service will be provided upon request by the accused or his family but only the first visit and advice fee will be borne by the legal Aid Association. This limit is mainly due to insufficient funds and a limited number of lawyers available.

All the necessary facilities for the consultation will be provided and confidentiality is assured. All letters will be censored and interview over the phone is prohibited. Under the Code of Criminal Procedure, the Public Prosecutor can specify the date, time and venue of the interview of counsel but this is only done in relation to complicated cases and multiple offenders cases. This interview will normally last for 30 minutes. Excluding interview with counsel, it can be prohibited if there is ground to believe that it could lead to escape or destroying of evidence. There is no restriction for visits by family members and friends and a foreign-

er can be allowed visit from the consul or diplomatic officials from his country.

Mr. Uchibori as the 3rd speaker touched on Principles 38 and 39 concerning the right to a speedy trial and the right to be released within a reasonable time. He explained that in Japan, based on the balance with the detention system and practice in which very rigid substantial and procedural requirements are needed to detain a person, an accused person can only be released on bail after he is formally charged in court. The opinion of the Public Prosecutor and the accused's counsel will be heard by the judge before deciding whether to allow the bail or not. Normally a reasonable amount of bail will be imposed on the accused together with certain conditions or restrictions such as restriction on dwelling and communication with the victims.

In order to facilitate the court to ensure a speedy trial, the Rule of Criminal Procedure outlines the duties of parties involved in the litigation including disclosure of evidence to the opposite party, clarification of the issues of the case and pre-trial conference between the court and both parties. In 1991, 90% of the cases in Japan were disposed of within six months.

Article 91 (1) of the Code of Criminal Procedure provides that the accused shall be released by the court if he is detained for an unreasonably long period and under Article 38 of the Constitution it is stated that "confession made after prolonged detention shall not be admitted as evidence."

At the end of the speech, the speaker commended the system in some countries which provides for a limit or time bar of detention during the pre-trial and/or trial stage.

Right to Counsel

The right to counsel is a topic of vital importance relating to civil liberties. It has always been jealously guarded by legal practitioners all over the world and is considered as one of the basic rights of an arrested person. So important it is, that in many countries it has been incorporated either in the constitution or other statutory provisions.

The Body of Principles recognizes the importance of this right and as stated in Principle 17 (2), a detained person is "entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay."

During the discussion, it was observed that in some countries, assigned counsel will be provided to the accused at the trial stage. It was also noted that the right to assigned counsel is not a matter of right to every accused. In Korea, for example, a minor, an accused person of 70 years of age or over, an accused who is deaf or mute, mentally unsound or poor is entitled to state assigned counsel. In countries such as Fiji, Hong Kong, India, Thailand and Papua New Guinea, those applying for assigned counsel must satisfy the relevant authority such as the Legal Aid Agency of his inability to engage a counsel. In Malaysia, Government Legal Aid will only be provided to those who wish to plead guilty in order to assist them during their plea in mitigation before the court. But in a more serious case such as murder and drug trafficking case, assigned counsel will be provided by the court to the accused. It is interesting to note that Nepal has a system in which every court has a lawyer on duty to provide the necessary assistance to unrepresented accused.

Right to Counsel during Investigation

Another important point discussed was the right to counsel during investigation, especially during interrogation. Quite interestingly, Principles 17 and 18 of the Body of Principles do not say when this right is to be exercised. Principle 17 (1) quite specifically provides that a detained person "... shall be informed of his right by

the competent authority promptly after arrest" and Principle 18 (2) states that "a detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel."

It can be seen that in Principle 17 (1) a detained person shall be provided with all the necessary information about his right as an arrested person immediately after arrest but this requirement is not extended or even mentioned as to the right on access to counsel. Even though the right to counsel is guaranteed in the constitution of several countries such as Malaysia, India and Singapore (just to name a few) and in specific statutory provisions in other countries, nevertheless, there were arguments on what stage should the right be implemented. In some of these countries it was decided by the court, that the right to consultation with a counsel is subject to reasonable restrictions as to time and convenience. In other words, in some countries, this right is to be treated as subservient to the power of the police to carry out and complete the investigation. This trend can be observed mainly in the Commonwealth countries. Whilst it is clear that an arrested person has the right provided by the constitution of these countries, the constitution does not say the time when and the manner in which this right is required by law to be granted. Neither does the constitution give an arrested person or his counsel the right to determine the time and manner of the consultation, nor does it operate to compel the authorities concerned to allow such visit or consultation at an inconvenient time particularly while investigation is still pending. Therefore, in order to facilitate speedy investigation, the police in most of these countries may reasonably refuse a visit at a time inconvenient or when it is likely to hamper the investigation or in such a situation that is considered to be prejudicial to the completion of the investigation.

Another point worth mentioning is the "lawyer on duty" system in Japan. This system which was established by the Bar Association provides legal services to an arrested person while in custody and the first visit will be paid by the Legal Aid Association. But this system has its own problems such as inadequate number of lawyers available and insufficient funds provided by the Legal Aid Association.

In the Philippines, a suspect under detention will be granted access to his counsel at any convenient time for both parties. In Fiji, even during interrogation, the presence of counsel could be allowed. In Japan, the interview will take place for 30 minutes but lately, longer time and more frequent visits are allowed.

While there may be disagreements and arguments between the parties involved regarding the access to counsel during the interrogation, nevertheless, it can be concluded during the discussion that the right to counsel during the detention is available and provided soon after detention or as soon as may be, subject to the condition that no unreasonable delay or hindrance is caused to the investigation.

It is also commendable that in most countries free legal assistance is provided to indigent defendants especially to those charge with serious offences. With regard to time and facilities for the consultation between the detainee and his counsel in almost all the countries, it was noted that there are not many restrictions imposed. Consultation whenever allowed should take place anytime during weekdays. Confidentiality is assured, a separate room is provided and it will be conducted within sight but not within the hearing of the law enforcement officers as stipulated in Principle 18 (4). In Mongolia, the meeting or visit by a counsel is not subject to any form of control or restriction. Absolute confidentiality is assured. In Indonesia, Article 17 (2) of the CPC provides an exception to the rule. In the event of a crime against state security, the officers may listen to the contents of the discussion. Otherwise, they shall re-

frain from listening to the contents of the discussion.

Right to Communicate with Family Members, Friends and Others

In relation to Principles 15, 16 and 19 with regard to communication with the outside world, i.e. with family members, friends and consul or diplomatic mission, the conclusion that can be drawn from the discussion is that all the standards or guidelines set out in the Body of Principles are adhered to quite successfully. It can be safely said that member states of the United Nations respectfully acknowledge the right of detainees to have contact with the outside world. In some countries there is no limitation as to letters received or sent by detainees, for example in Kenya, the Philippines and Singapore. In most countries for security reasons, letters will be normally censored, though Fiji is an exception. In Mongolia, letters to judicial officers will not be censored. In Japan letters to counsel will be subject to censorship. The situation in Indonesia is rather different. Article 62 of the CPC provides that the correspondence between the suspect or the accused and his legal counsel or relatives shall not be examined by the authorities except where there is sufficient reason to presume that the correspondence is being abused. If the document is scrutinized or examined, the suspect shall be informed about it and the document be returned to the sender after being stamped "scrutinized." In Malaysia the officer in charge of a lockup shall read every letter written by or addressed to any prisoner and if he considers it to contain any objectionable matter, such letter may be detained.

In some countries, it was noted during the discussion that a time limit will be imposed on visits by family members or friends in relation to those remanded in prisons. In Hong Kong, Kenya, Indonesia and Malaysia, 15 minutes will be allowed and in Hong Kong extension of time can be requested from the superintendent of prison. In Singapore, 20 minutes. There is no time limit imposed in the Philippines and even conjugal visits will be allowed sometimes. In Mongolia and Singapore, magazines, books and journals are also allowed to remand prisoners.

It was also pointed out during the discussion, that restriction or prohibition can be imposed if such interview could lead to escape or if it could impede or hamper investigations, as explained by the participants from Japan and Sri Lanka.

Right to a Speedy Trial and Release on Bail

Due to limited time available, discussion on the second sub-topic was quite limited. Principles 38 and 39 of the Body of Principles were chosen for discussion.

In most Commonwealth countries it is observed that the police can release the suspect on police bail as stipulated in the Criminal Procedure Code of each country. In Japan, the situation is the opposite. The police and public prosecutor do not have the power to grant bail.

With regard to the power of the court to grant bail, in most countries, the court has the power to release the accused on bail after taking into consideration the nature and gravity of the offence, the risk if any of the offence being repeated, the danger of the prosecution witnesses being tampered with, etc. In practice, however, the power of granting bail is rarely exercised in favour of an accused charged with an offence punishable with death or life imprisonment.

In Korea, the Criminal Procedure Code provides that when a request for release on bail is made, it must be allowed except in cases punishable with death penalty or imprisonment exceeding 10 years, when the accused is an old offender or habitual offender, in cases where there is reasonable ground to suspect that the accused has destroyed or may destroy evidence, or has the tendency to escape and in cases where the dwelling of the accused is unknown.

In Japan, only after indictment, the accused can be released on bail by the court. Before the court decides whether to grant bail or not, the law provides that the opinion of the public prosecutor is required and in practice, the defence counsel is also normally required to give the same. In India and Sri Lanka, there are specific laws or statutory provisions governing the detention of the accused during the pre-trial stage. In India, after a specific time has lapsed, the failure of the prosecutors to file a proper charge would render the accused to be released on bail by the court. In Sri Lanka, the Release of the Remand Prisoners Act 1990 provies that the remand prisoners who could not afford bail offered to them must be released by the court after one month in detention. There is also a provision which stipulates that if no prosecution is conducted within a 3-month period, the accused shall be released on bail, and if after one year no trial has commenced, he shall also be released upon his entering a bond for his appearance in court on a particular date set for trial, if he is not considered dangerous.

As a presumably innocent person, an accused is entitled to be at liberty to prepare his defence, the approach should be to grant bail on adequate security unless there are specific and good grounds for refusing it. In other words, bail should be the rule and its refusal the exception.

To grant or refuse bail is a matter of foremost importance to both parties, the accused and the prosecutors. An accused person who is denied bail is clearly at a disadvantage when preparing his defence or in raising the adequate funds to engage counsel. In contrast, it is in the interest of the public to ensure that the accused released on bail does not tamper with witnesses and attends his trial. Therefore, there must be a balance between the interest of the public and the accused.

Throughout the limited discussion on this issue, it could be noted that efforts are being made by certain countries to ensure that the right to a speedy trial is protected and implemented. As the maxim, "justice delayed is justice denied," is often quoted, efforts and cooperation by all parties are needed to ensure that each accused is given a speedy trail within a reasonable time without undue delay or postponement. It is strongly recommended that each state should establish a maximum period of time during which a person may be detained without trial and the maximum length of pre-trial detention should be proportionate to the maximum sentence.

II. Conclusion

It is indeed interesting to note that most countries have specific laws and regulations protecting the right of an arrested person or those under detention. It can be seen that efforts are being made to conform and adhere to the guidelines and standards promulgated by the United Nations through the Body of Principles. While the rules and procedures may vary from country to country, it is greatly appreciated that in general, most countries realize the importance of safeguarding the interest and rights of those under detention at the pre-trial stage, and this could be seen through various forms of legislation. To guide ourselves on the right track, we must stress more initiative and efforts in implementation of the rules and procedures. It is not enough by showing to the world that we have all the necessary laws to protect the society from any form of violation of their rights; we must also respect it by fully observing and implementing the laws in our respective countries.

Group Workshop

Group 1: Practical Measures to Alleviate the Problem of Overcrowding

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I. Introduction

The group was assigned to discuss the practical measures to alleviate the problem of overcrowding in penal institutions. All the members of the group are aware that prison overcrowding plays a big part in hindering the implementation of the U.N. Standard Minimum Rules for the Treatment of Prisoners, and that it is a problem faced by the criminal justice administration in many countries. Therefore, it is important to look into the problems cause overcrowding in the penal institutions, and at the same time look for practicable solutions to those problems.

In preparation of this paper, we have tried to analyse the actual situation of countries represented and have gathered as much information as we could, from the participants themselves, their individual papers and other resource materials. However, due to lack of statistics and detailed information in some countries, we found it difficult to give the actual picture of every country (although some countries gave the total number of prisoners, the breakdown of convicted and unconvicted prisoners was not given). But we made every effort to give the causes of overcrowding, and to look for the solutions.

II. Actual Situation of Overcrowding

According to our survey, 11 countries were found to have a problem of overcrowding. On the other hand, 6 countries did not have a problem of overcrowding. The following is the actual situation of countries represented.[1] You will note that the situation in Korea has been described in more detail. This is because Korea, having overcome the problem of overcrowding, seems to be one of the models to which we can refer.

A. The Countries Which Have a Problem of Overcrowding

1. Brunei Darussalam[2]

Brunei had a population of 270,000 as of 1990. It has only one prison, named Jerdong Prison, with a capacity of 116 inmates (100 male prisoners and 16 female prisoners) as of 30 March 1993, and it has a prison population of 173 inmates (But the breakdown of convicted and unconvicted is not clear). The percentage of overcrowding is 49.14%. The prisoners per 100,000 population were 64.07.

Brunei had a low prison population for many years with an average daily rate of 50 prisoners. However, the prison population has recently increased. Prison buildings have not been able to accommodate the additional committals and as a result, the prison now holds more than 49% of its capacity.

This recent overcrowding has been precipitated mainly due to immigration related offences and by the amendment of certain law which provides tougher penalties.

In 1992, out of the total number of prisoners, 33.47% were imprisoned for immigration offences.

Another reason of overcrowding is the

small capacity of the prison. The ratio of the capacity to the population of the country is only 0.043%, which is far less than that of Singapore (0.36%) and Malaysia (0.115%).

In addition, Brunei does not have any non-custodial measures which are practiced as alternatives to imprisonment, such as supervised probation, parole, etc. This is one of the factors which causes the overcrowding problem.

2. Fiji[3]

Fiji as a whole had a total population of 750,000 people in 1990. There are twelve prison institutions in Fiji which include one women's prison. In 1992 the daily average number of convicted prisoners was 1,004 (the number of unconvicted prisoners is not clarified). There has been a problem of overcrowding in Fiji, and the number of prisoners in 1992 is still more than the capacity. However, the overcrowding has been fairly alleviated because several new prisons were constructed a few years ago and the number of the convicted prisoners has also decreased.

In previous years overcrowding in Fiji might have been attributed to the following factors:

1) Limited number of institutions to allow even distribution of inmates.
2) Lack of alternative sentences to imprisonment imposed by the courts.
3) There are only two means of parole available within the system. One is the extra mural punishment which releases a prisoner to complete his term of sentence in a public institution. The second is the compulsory supervision order which allows the Minister for Home Affairs to grant early release to a prisoner.
4) There were increasing numbers of offenders sent to prison in Fiji who could have been given other alternatives, such as fine, suspended sentence, absolute and conditional discharge, bonding to keep peace, and community service order, which are seldom used by the courts.

3. Hong Kong

Hong Kong had a population of 5,912,000 people as of 1991[4]. There are 19 correctional institutions capable of accommodating 9,170 inmates[5]. As of 27 March 1993 it had a population of 10,983, among which the convicted prisoners were 9,744 and unconvicted prisoners were 1,239. This situation shows there is a problem of overcrowding in prisons. Other than the prisoners, there were also 31,662 Vietnamese migrants detained in the Centers for Vietnamese migrants under the custody of the Department of Correctional Services[6].

In Hong Kong overcrowding is caused by the following factors:

1) The period of trial takes a long time to come to a conclusion.
2) The judges and the defense attorneys usually have a heavy workload.
3) The other reason is the imprisonment of fine defaulters.

4. India[7]

There are 1,054 prisons and 22 open air camps[8] all over India. As of 30 June 1986 the authorized capacity of all prisons was 183,616 against which there were 165,930. Among them, 105,832 were remand prisoners. The latest figures are not with use at present. As such by taking above figures into consideration, it can be seen that if we take India's situation as of 30 June 1986, there is no overcrowding. However, in some of the states and union territories like Bihar, Punjab, Haryana and Delhi, the problem of overcrowding in jails is fairly acute. As seen from above the remand prisoners who constitute more than two-thirds of inmates cause the problem of overcrowding in the prisons.

The reasons of overcrowding may be enumerated as follows:

1) Delay in completion of investigation.
2) Delay in disposal of cases by the courts.
   a) The courts are overworked. In 1984 a total of 8,138,656 criminal cases was pending in all the courts of India[9].
   b) Rise in crime.
   c) Frequent adjournment by the courts. This may be due to the overworked courts, request by public prosecutors and sometimes the private lawyers going on strike.
3) Insufficient use of community service order.
4) Inadequate use of probation even though the Probation of Offenders Act 1958 is applicable all over India. This is because there are not enough probation officers. Only one probation officer is posted in each district and in some states the districts are very large.

Measures already taken to reduce overcrowding are: (i) bail; (ii) compromise; (iii) Lok Adalats (people's courts); (iv) suspension of prosecution; (v) probation; (vi) remission; (vii) parole; (viii) furlough.

The measures to be suggested are:

1) More effective use of community service order;
2) Adequate use of probation;
3) Early completion of investigations;
4) Number of courts should be increased to reduce workload.

5. Kenya

Kenya has been affected by the problem of overcrowding in its penal institutions. Most of the present penal institutions were built long before the country became independent. The initial capacity was meant to hold 13,500 prisoners, but by 1988 the population varied between 28,000 and 31,000 prisoners[10] (the proportion of unconvicted prisoners is not clear).

Some of the reasons that contribute to the problem of overcrowding are:

1) Large number of remands;
2) Limited or lack of use of alternatives to imprisonment;
3) Old and inadequate penal institutions.

6. Malaysia

Malaysia had a population of 17,860,000 people in 1990. The prison capacity was 20,555 inmates in the year 1990. As of 31 December 1991 the prison population was 21,500 inmates. Of these, 13,281 were convicted prisoners and 8,219 were unconvicted prisoners[11]. The percentage of overcrowding was 4% and the rate of prisoners per 100,000 population was 120.38.

Presently annual admission is increasing. Especially the difference between 1990 and 1991 is a staggering increase of 12,062 that is from 51,179 to 63,241. In 1991 the main cause for the population increase was offenders being charged under the Dangerous Drug Act and the Immigration Act which accounted for 22.62% and 39.99% respectively. In a recent study done by the National Research Centre, the prevalence rate of drug abusers rose from 6.8/100,000 persons in 1970 to 841.4/100.000 persons in 1990[12].

In addition, the increasing number of unconvicted prisoners also makes the situation of overcrowding more severe.

In Malaysia the shortage of judges causes delay in trial and makes period for remands longer. The stress on custodial punishment both as a general deterrence and as an individual deterrence is so high that the use of alternatives to imprisonment has not been given much attention. Probation and parole do not exist in Malaysia. Moreover, the imprisonment of fine defaulters seems to accelerate the overcrowding.

7. Nepal[13]

The population of Nepal was 18,920,000 in 1990. In Nepal, there are 72 prisons in the whole Kingdom with a capacity of 4,000 inmates. As of 15 January 1993, the rate of overcrowding was about 48%. The convicted

prisoners were 2,748 and unconvicted prisoners were 3,155. In 6 prisons, Central jail, Birgung jail, Morang jail, Rupandehi jail, Banke jail and Thapa jail, there is problem of overcrowding.

The causes of overcrowding are presumably as follows.

1) Old buildings with inadequate capacity

Most of the prisons in Nepal are old without adequate facilities and accommodations. Due to substantial increase in the average population of offenders, overcrowding problems actually exists in these prisons having insufficient capacity to accommodate the increase in prison population. Building new penal institutions can certainly alleviate the increasing burden on the prison administrators temporarily.

2) Non-payment of fine

One of the reasons for overcrowding of prison population is the non-payment of fine by the offender. There are a significant number of prisoners who are in prison merely because of their incapacity to pay fine.

3) Non-effective use of suspended sentence

There is a statutory provision of suspending sentence in the criminal procedure code. In case of a crime having punishment not exceeding 3 years, the court can suspend the offender's sentence considering his age, circumstances of the crime, economic background and his assurance of good behaviour. But the judges are reluctant to suspend the sentence as the society is not prepared to see the offender go free and the judges are in fear of unnecessary blame from the society.

4) Slow disposal of cases

Though the statutory provision in the code of criminal procedure requires the speedy disposal of cases, there are cases pending longer than the prescribed time. It is not always possible to dispose of cases expeditiously because of the increasing number of civil litigations and criminal prosecutions. In many criminal cases which are already in the trial process, the unavailability of witnesses in time attributes to the slow disposal of cases.

5) Non-prompt application of criminal procedures by the investigating agency

In most of the prosecution cases, police arrests the suspect first and investigates later. However, the prosecutor must prosecute the suspect within 25 days only from the time of arrest, and the commencement of investigation after the arrest always results in hurried collection of the evidence, etc. In such a situation, the investigating agency very often has to depend on the confessions of the suspect. Many difficulties such as production of witnesses, production of the report of physical evidence, and the production of the forensic report in court, etc. are faced by the prosecution. Thus, non-prompt collection of evidence on the prosecution side always results in the lengthening of the disposal of cases.

8. Philippines

The population of the Philippines in 1990 was 61,480,000. As of 30 June 1991, the number of convicted prisoners was 17,577, and unconvicted was 20,079[14]. It is pointed out that the prisons are not enough and the conditions of the facilities are not enough to accommodate all the inmates (in our survey, the capacity of facilities has not been clarified). As a result, this country has been faced with the problem of overcrowding, and the situations in the city and municipal jails are said to be serious.

Overcrowding in prisons is also a result of the increasing number of inmates due to the rise of the crime rate.

In addition, comparing the ratio of unconvicted prisoners to that of convicted ones, we can find that the delay in trial and increase of remandees under trial is one of the serious problems. The law (The Batas

Pambansa Blg. 129) was enforced in 1982 with the aim of building up the court system through the reorganization of courts and recruitment of judges, etc. The prompt application of judicial procedure is one of the important points to reduce the number of unconvicted prisoners and to alleviate the overcrowding in prisons.

On the other hand, a probation system for adults was implemented by the Adult Probation Law in 1976, as a non-custodial measure for the purpose of reducing the number of convicted inmates, with the use of parole that had already been implemented.

9. Singapore

In 1990 Singapore's population was 3,000,000.

The crime tendency has risen mainly due to periodic changes in government policy and sudden increase in the drug abuse trend. In that situation the law enforcement agencies are expected to take more detentions and make more arrests in order to keep that situation under control, resulting in more prisoners coming into penal institutions. Penal institutions and drug rehabilitation centers which were basically meant for 10,749, held 11,847 prisoners and drug addicts in February 1993[15].

Another factor which has contributed to the problem of overcrowding in prisons was the introduction of the new law related to petty offences, enhancing financial penalties on those convicted under this law.

10. Sri Lanka

The population of Sri Lanka in 1990 was 16,990,000. Presently there are 26 penal institutions of which authorized capacity is 6,307 (5,298 for convicted prisoners and 1,009 for unconvicted prisoners). The daily average number of convicted prisoners was 3,871 and that of unconvicted was 6,222 in 1990. This country is faced with the problem of overcrowding.[16]

Since 1986, the drug abuse problem has been recognized as a national problem in Sri Lanka. The government has, therefore, introduced a new law relating to dangerous drugs which made it mandatory for the courts to impose heavy fines or long-term sentences. Because of this heavy monetary penalty system, there are many fine defaulters who are imprisoned. In 1990, among those convicted prisoners, 47.1% were offenders who had committed narcotic drug offences and 15.9% were excise offenders (illegal production and sale of alcohol).

One of the main factors contributing to the problem of overcrowding in prisons in Sri Lanka is the rapid increase in crime rate. This has occurred due to various reasons such as poverty, domestic or social or political disputes, and personality conflicts.

Lack of facilities: In Sri Lanka, the capacity of prisons is not enough to hold all the prisoners and most of the prisons are very old.

The increase of unconvicted prisoners: The increase in remandees commonly occurs due to various factors. In Sri Lanka, the police are responsible not only for investigation of crime but also filling and conducting prosecutions in the courts in addition to other routine and statutory work within the limited personnel resources available at their police stations. This type of workload of police causes unnecessary delay in early completion of investigation, thus causing further detention of prisoners.

Moreover, if often happens that main witnesses are absent, medical reports and experts' reports are not provided on time, and cases fixed for trials are frequently postponed owing to the requests made either by defence lawyers or police officers. The courts have also a heavy workload.

Another leading factor is imposition of heavy monetary bail by courts. In Sri Lanka, the courts have a tendency to order heavy bail by looking at the crimes committed but not at the offender's ability to furnish such bail.

Fine defaulters: The problem of fine de-

faulters in Sri Lanka is also one of the major contributory factors in the increase in prison population. In 1990, 11,504 prisoners were reported to be fine defaulters out of 14,128 convicted prisoners[17]. Out of them, 9,493 were imprisoned for drug abuse and excise offences because those defaulters did not want to pay the fine, for the reason that either they could not afford to pay such a large monetary penalty or they wanted to save what they earned from such illicit sale.

11. Thailand[18]

The population of Thailand in 1990 was 57,000,000. Like many other countries, Thailand is confronted with the problem of overcrowding in prison. Since the last decade prison population has increased from 73,464 to 83,947, while the full capacity of all prisons is 75,000. On one hand, some prisons are suffering from heavy overcrowding, while others have a small number of prisoners.

The number of convicted prisoners in 1990 was not clearly identified but it was estimated at about 62,000. It is not clear whether there is overcrowding of unconvicted prisoners, but it is pointed out that in some institutions, unconvicted prisoners are accommodated with convicted prisoners in the same areas or cells, and engaged in work in the same factories because of the problem of overcrowding. Fundamentally, unconvicted prisoners should be treated separate from convicted prisoners in accordance with the legal reasons for detention and the objectives, which are different from those of convicted prisoners. We can say that the intermingling of both types of prisoners is one of the bad effects brought about by overcrowding.

The increase of drug abusers is a serious problem. In 1984, the number of drug related prisoners was 10,142 and it increased to 14,432 in 1990. In 1992, there were 1,193 foreign prisoners. Out of them, 64% were imprisoned for narcotic offences.

The main causes of overcrowding, like those of several other countries, are said to be as follows:

1) The crime rate has been increasing every year.
2) Although Thailand has bail system, it is said that bail is not utilized sufficiently. For instance, as for bail given by the judges, they are reluctant to relax the requirements or conditions of bail in fear of the difficulty of making defendants appear in court.
3) In the past years, they had a problem of delay in trial. But some new courts were established and the criminal procedural law was amended to alleviate the overloads and delay in trial.
4) Imprisonment sanction is seemed to be the most effective protection for the public.

To alleviate the overcrowding in prison, several measures have been taken. These are, Penal Settlement, Good-Time Allowance System, Parole, Public Work Allowance, Prisoners Transfer, Pardon, etc. Penal Settlement is a programme which allows the participating prisoners to have 8 acres of land and to stay with their family. Good-Time Allowance System is a kind of sentence remission under which prisoners who have good conduct are released under supervision. And Public Work Allowance is a programme which employs prisoners for work outside prison.

However, the problem of overcrowding has not been solved.

B. The Countries Which Do Not Have a Problem of Overcrowding

1. Hungary[19]

In 1990 Hungary had a population of 10,550,000 people. The prison capacity is about 17,000 inmates. As of 1 October 1992, the prison population was 15,672 inmates which is about 7.8% below the capacity of

the prison. Of these, convicted prisoners were 11,434 and unconvicted prisoners were 4,238.

In 1991, out of 61,557 accused adults, 11,721 were sentenced to imprisonment[20].

Hungary does not have a problem with overcrowding at present.

2. Indonesia[21]

Indonesia was reported to have a population of 187,000,000 people in 1993. The prison capacity is 69,488 inmates. As of October 1992, the prison population was 40,419 inmates which is 41.17% below the capacity of prison (the convicted prisoners were 29,217 and the unconvicted prisoners were 11,202). As Indonesia is an island country with more than 12,000 islands, it is difficult to transfer prisoners. As a result, there are some prisons accommodating prisoners beyond the capacity. But it is only some institutions that are faced with the problem of overcrowding. The rate of prisoners per 100,000 population was 21.61.

3. Korea

The population of Korea was well over 43,663,000 in 1992, and the daily average prison population was 55,159. The capacity of prisons is 55,300. This means that out of every 777 citizens, one offender is in prison[22].

The correctional institutions in Korea are not sufficient enough, but Korea does not experience overcrowding at present.

Twenty-five years ago, in 1967, the prison population in Korea stood at a daily average of 31,698, and after that in 1976, it reached the highest overcrowding with 59,379 prisoners. Their number has since gradually decreased each year. In recent years, the daily average prison population has shown a relatively stabilized level of some 52,000 prisoners[23].

It is generally analyzed that this trend is due to the relative decrease in the population of offenders resulting from the improvement of the average living standards of the general public keeping pace with the rapid growth of the national economy.

Moreover, it should be noted that the construction of facilities, the prompt application of judicial procedure, and wide use of non-custodial measures for unconvicted prisoners have contributed not only to alleviating the prison overcrowding but also to overcoming it.

The construction and renewal of facilities

In Korea, the Judicial Facilities Provision Law and the Judicial Facilities Special Account Law were enacted and put into force in 1967. In addition, existing correctional facilities have been replaced with new ones or expanded and relocated each year, thanks to the rapid economic growth which Korea has achieved. This has naturally resulted in alleviating overcrowding in the correctional institutions. In the past 5 years from 1987 to 1992 the capacity of prisons increased from 53,000 to 55,300, and out of the total of 38 correctional institutions, more than 90% have been changed into new facilities[24]. A large part of the money received by selling the old premises of prisons and the fines levied from the offenders was allotted for the construction and equipment of those new facilities.

Non-custodial measures for unconvicted prisoners

In several countries, it often happens that suspects are arrested and detained before collecting evidence, and that they might be prosecuted while being detained. But in Korea, just like Japan, there are many cases in which the investigations are completed without arrest or detention.

Suspension of prosecution and prosecution for a summary order: Suspension of prosecution and a summary order are non-custodial measures for offenders at the stage of prosecution. The former diverts the accused from the formal criminal justice process, and the latter, by imposing a fine, reduces the applicable scope of imprisonment.

In Korea, the public prosecutor may initiate prosecution upon determining after an investigation that an accused committed a crime. However, the public prosecutor may choose not to initiate prosecution after considering certain factors regarding the accused such as age, character and conduct, intellect and environment, relationship with the victim, motive, method and result of the crime and circumstances following the commission of the crime.

If the public prosecutor chooses not to prosecute offenders, this would constitute a suspension of prosecution. In 1991, 12.1% of all the penal offenders were given suspension of prosecution by the prosecutors[25]. On the other hand, in initiating the prosecution, the public prosecutor can demand summary procedures which would result in a summary order, without asking for formal procedures.

Upon the public prosecutor's demand, the court may impose a fine, minor fine or confiscation upon the accused through a summary order without conducting formal trial proceedings. In 1991, among the cases which were prosecuted in court, 82.6% were summary order cases[26].

Suspension of execution of sentence and monetary punishment: Non-custodial measures in sentencing include monetary punishment such as fines and minor fines as well as suspension of sentence or suspension of execution.

In 1991[27], the total number of the offenders who were sentenced to imprisonment with or without forced labour was 112,691 in the first instance, and 76,241 (67.7%) were given suspension of execution of sentence. In the same year, 24,650 offenders were sentenced to fine among all the cases which were formally filed in court.

The prompt application of judicial procedure, etc.: (1) In 1991, more than 95% of all the cases were disposed of by the court within 6 months after the prosecution[28]. The period in which suspects can be detained is strictly restricted by law. The detention period before the prosecution is limited within 30 days (10 days at the investigating stage by police, and 20 days by the prosecutor), and the total period for the first instance is limited within 6 months including above-mentioned 30 days, the maximum detention period for the second instance (court of first appeals) and that for the appeals to the Supreme Court is 4 months respectively.

(2) Out of all the unconvicted detainees, 22.7% had been allowed bail until the time of the sentence in 1991. Moreover, the cases in which the judgement of not guilty had been rendered were 634, that is 0.004% of all the cases filed in the first instance. We can see from this fact that the sufficient and effective investigations and screening of the cases are carried out before the prosecution.[29]

It follows that the prompt judicial process, utilization of bail and sufficient investigation are the factors which have been contributing to alleviating the overcrowding of unconvicted prisoners.

4. Mongolia[30]

Mongolia has been changing its political and economic system from socialism to democracy with a free market economy.

In the new democratic society, the Mongolian justice system was facing many problems. For example, the increase in the total number of crimes, shortage of treatment specialists, etc.

The total number of admissions of prisoners in 1990 was 6,120. However, owing to the new regional prisons which were built a few years ago, there is no problem of overcrowding in prisons.

5. Papua New Guinea[31]

In recent years, the daily prison population has stood at approximately 3,000[32], and usually the prison population is well below the capacity. The capacity of the prisons is more than 6,000[33].

Overcrowding is experienced when there

is tribal warfare. The offenders against Tribal Warfare Act are usually sentenced to 1 year imprisonment, and accommodated in each prison or transferred to the prisons which have small numbers of prisoners.

On the other hand, the situation of overcrowding of remand prisoners is common in many penal institutions. However, the prison commander has authority to temporarily accommodate the excess number of remandees in vacant buildings.

No prison experiences permanent overcrowding.

6. Japan

Japan had a population of 124,043,000 people in 1991[34]. As of 31 December 1992 there were 59 prisons, 8 juvenile prisons and 7 detention houses. The authorized accommodation capacity of total facilities is 63,833, while total population of inmates was 45,082 with an accommodation rate of 70.6%[35]. Therefore, Japan does not have a problem of overcrowding.

The number of prisoners who were newly admitted to penal institutions reached a peak in 1948 with 70,727 inmates after World War II. The cause was a sudden increase of theft due to economic poverty. Thereafter, it showed a decreasing trend, with a number of 25,728 inmates in 1974. Although it had been gradually increasing again up until 1985, a downward trend has been observed since then recording the lowest level of prison population after World War II, with 21,083 inmates in 1991[36].

The number increased again after 1975 due to the increase in the number of stimulant drug offenders.

One of the reasons of decrease of inmates is decreasing of crime rate excluding bodily injury through negligence in traffic cases, and this is thought to be due to stability of society and development of the economy.

Other contributory factors for reduction of prisoners were the application of formal methods of voluntary-based investigation, suspension of prosecution and summary order procedure. These are much conducive to overcoming the delay in completion of investigation or judicial disposal of cases. Moreover, at sentencing stage, the suspension of execution of sentence is widely used by the court.

III. Causes of Overcrowding

As mentioned earlier, of the seventeen countries represented in this Course, 11 have a problem of overcrowding. Overcrowding is caused by the numbers of both convicted and unconvicted prisoners (remand or those awaiting trial). In an overcrowded situation, classification and segregation of inmates becomes very difficult or almost impossible, so we find prisoners of different age groups, hardened criminals, first offenders, long- and short-term offenders are all put together. This not only affects the prisoners but also affects the prison officers as the control and rehabilitation of inmates becomes almost impossible.

Based on the results of the analysis as stated above, some of the common and more serious causes of overcrowding in several countries which were cited by the participants include the following.

A. Increase of Criminality

With the rapidly changing economic and social conditions and the ever increasing population, crimes have increased in many developing countries. At the same time, better and widespread policing facilities have increased the rate of crime detection resulting in more offenders being sent to prison. Drug related offences are on the increase. For example, as previously mentioned, in Thailand the number of drug related prisoners in 1984 was 10,142 and it increased to 14,432 in 1990. This indicates there is a tendency towards an increase in the future. Foreign prisoners in different countries are also on the increase. Again in Thailand in 1992 there were 1,193 foreign prisoners out of whom 64% committed nar-

cotics crimes.

In Malaysia in 1991 offenders being charged under the Dangerous Drug Act and Immigration Act was cited as the main cause in population increase. They accounted for 22.62% and 39.99% respectively while those charged under the Penal Code were 20.16%. In Brunei in 1988 immigration offenders accounted for 70.46% of the inmates which was very high as compared to other categories of offences[37].

B. Age of the Penal Institutions

Many countries represented in this Course are short of penal institutions. Furthermore, the institutions are very old and out-of-date. These date back to the colonial days and were meant to hold far fewer numbers than they do now. The available facilities are not sufficient to cater for the basic needs of the rapidly growing population. In Nepal, with most of the prisons being over one hundred years old, certainly the prison system cannot meet the demands of the present day. As mentioned earlier, Kenya is also faced with a similar problem. The prisons were built over 30 years ago before the country got her independence from the British. Since then the population of the country has increased. In Malaysia the same problem exists. Many of the prisons were built by the British during the last century. Many of them are nearly one hundred years old. In Sri Lanka as well almost all the closed prisons are over a hundred years old, having been built in the latter part of the 19th century when the population was much less than it is now. Certainly with the above situation it is very difficult to give the inmates appropriate treatment.

C. Delay in Judicial Disposition of Cases

Overcrowding of unconvicted prisoners is also a common problem in many countries. Participants cited various reasons. For example, in Malaysia, there is a shortage of Judges, Magistrates, Police, Prosecuting Officers, and even court officials to deal with the increasing workload. Other than the shortage of personnel, other reasons for postponing of cases are: witnesses not available due to all sorts of reasons; lawyers engaged in another court; non availability of interpreters; incomplete investigation; the judges being overloaded with cases. For these reasons, many cases are postponed. Sri Lanka also cited problems of police officers not being prepared on time with the necessary evidence to proceed with the cases. Lawyers also for personal reasons want cases to be postponed. This is usually due to clients not having paid their fees.

Although unconvicted prisoners are eligible to obtain release on bail, excessive bail or inadequate use of bail provisions have also contributed to the increase in remand population in some countries such as Sri Lanka (as for the bail, we will give further explanations later).

D. Lack or Limited Use of Alternative to Imprisonment

Most participants also expressed the problem of overcrowding being brought about by lack or limited use of non-custodial measures. This could be as a result of the belief that custodial measures are the best deterrent. The legal system and law enforcement authorities overemphasise imprisonment as the most powerful weapon against crime. For example, though Sri Lanka has introduced many alternatives to imprisonment such as probation, community service order, etc. These alternatives have been sparingly used by the courts. Kenya has the extramural penal employment scheme, which is a programme in which petty offenders with short sentences can serve their sentences, from their homes. The work done is mainly in government areas. This programme has many advantages. It prevents the prisoner from being contaminated by other prisoners in the prison. It helps to reduce the population in the prison and also saves the government a lot of money that would have been spent on

food, clothing, etc. This programme, however, is rarely used by the courts.

Though fine is recommended as a means of reducing prison population, we also find that the number of fine defaulters who are serving prison sentences is also large. The Philippines, Nepal, Malaysia, Kenya, Indonesia and Sri Lanka are countries faced with such a problem[38].

IV. Solution

A. Introduction

In view of the above situation or causes of overcrowding, it is pertinent to look for effective methods to overcome the factors we have already discussed. However, each country will have to look for practical solutions to prison overcrowding with regard to the social, cultural, political and economic circumstances particular to it. It should also be noted that prison administration alone should not be held responsible for prison overcrowding. It is a problem that is rooted in government policy, in other sections of criminal justice, the police, the prosecution and the courts. It is therefore relevant that solutions to the problem have to be sought through an integrated approach involving all parts of the criminal justice administration. It is also advisable that the above-mentioned police, prosecutors, judges, etc. should visit prisons regularly so that they have the actual picture of the situation. This way it will make them realise the importance of using alternatives to imprisonment. For example, in Kenya and Sri Lanka, the law has made provision for magistrates and judges to visit prisons. We realise that usually many of the crimes committed are crimes for which offenders could serve non-custodial sentences.

When we discuss the solutions to overcome the problem of overcrowding, it will be helpful to categorize the prisoners into two groups: (1) unconvicted prisoners; and (2) convicted prisoners.

The members of the group, therefore, discussed some solutions on how to alleviate the problem among both categories of prisoners.

B. Unconvicted Prisoners

1. Prompt Investigation and Diversion from Formal Procedure

a) Application of voluntary investigation

Investigation without arrest or detention of suspects should be widely utilized so as to avoid unnecessary arrests and detentions at the investigating stage. Suspects should not be arrested or detained especially in minor cases unless the possibilities of deserting or destroying evidence are high or the courts pose a particular reason to detain them.

A look at the situation on the application of this measure shows that in Korea in 1991, 87.2% of all the cases committed against the penal code were completed without arrest or detention[39], and that in Japan in 1991, 76.7% of all the cases (excluding traffic related crimes) were also completed with this measure[40].

In several countries, it often happens that investigation of a case is launched after the suspect is arrested and detained, and that, because the term of the arrest and detention at the investigation stage is limited by law, suspects are prosecuted before the completion of the investigation or without screening the case.

Such procedure not only leads to insufficiency and ineffectiveness of the investigation but also increases the number of trial cases.

It is, therefore, necessary to complete sufficient investigation before arrest and detention for the purpose of avoiding unnecessary prosecutions.

b) Suspension of prosecution

This system is practiced both in Korea and in Japan. In Japan, 29.2% of the total cases were disposed of with suspension of

prosecution in 1991[41]. Of the 17 countries represented in this Course, 9 countries have adopted this system or a similar one[42].

It is, therefore, true to say that this kind of system is useful to alleviate overcrowding in prisons. Moreover, this system is utilized as one of the rehabilitative measures which gives an offender a deep impression about both the generosity or leniency of the authorities and the threat or danger of prosecution he may face if he commits another offence. Also it gives him an early chance to reintegrate into society without being labeled as a criminal.

2. Expeditious Judicial Disposal

a) Application of summary order procedure

This is one of the summary proceedings which imposes a certain amount of fine on the defendant without the usual trial upon the request of the public prosecutor. It is useful for speedy trial and for reducing the number of criminal cases. This procedure is utilized in Japan and Korea, and for example, about 95% of all indicted cases are disposed of through this procedure in both countries[43]. In these countries, most minor cases in which the criminal acts are clear, based on the evidence, are disposed of through this procedure.

b) Limitation of detention period

As a measure to expedite trial procedure and shorten the period of detention of the defendants, it is advisable to consider providing limitation of detention period at the trial stage. It is already stated above that this system has functioned effectively in Korea. It is also adopted in Indonesia, where the detention period is limited to 30 days initially at the trial of the district court and the high court, and when extension is permitted, it is extended to a total period of 90 days. In the Supreme Court, original detention period is 50 days and extension period is 60 days, therefore, the total period is limited to 110 days. If the trial does not finish within these detention periods, the defendant must be released immediately.

3. Bail

Basically the grant of bail is a judicial discretion. The bail is not intended to be punitive, but is ordered merely for the purpose of securing that the accused will attend the trial and come up for judgement. In that context, consideration of circumstances such as risk of non-appearance before the court of law, is uppermost in the minds of judges who are called upon to examine the application for bail.

Our survey carried out among the participants from 17 countries shows that all the countries represented in this Course except Hungary and Mongolia have the bail system.

In Sri Lanka, in 1990, among the daily average of all prisoners, about 60% were remandees awaiting trial or completion of criminal investigation[44]. This aggravated the problem of overcrowding. This occurred due to various reasons, for example, magistrates or judges sometimes not granting bail because they are afraid that the offender will not appear at trial or will interfere with the evidence or commit another offence. In such situations judges or magistrates sometimes tend to order heavy monetary bail by looking at the crime committed rather than the offender's ability to furnish such heavy bail, thus causing them to be in remand for longer periods, even though most of the offences appear to be bailabial.

The amount of bail compared to the monthly income of an offender in Sri Lanka is almost three-month income, and in Japan, it is three to ten-month income in many cases. But in the Philippines and Thailand, it is reported to be almost one month income.

In 1990, as the annual remand prisoners rate rose up to 57,095 against 38,559 in 1989 in Sri Lanka[45], the government introduced the "Release of Remand Prisoners Act" relaxing the stringent rules being

practiced by judges in respect of bailable offences. Accordingly, judges have the power to grant such offender bail on their entering into personal bonds.

In view of the above circumstances it is correct to conclude that such relaxed laws should be introduced to alleviate the problem of the overcrowding situation in those countries where it has been encountered.

C. Convicted Prisoners

1. Fine

Generally we can say that sentence of fine would contribute to alleviating the problem of prison overcrowding. For example, out of a total of 1,208,878 offenders in Japan, 1,148,789 offenders were fined in 1991[46]. In Korea, 663,096 out of a total of 793,275 offenders convicted in the first instance courts were fined in 1991[47]. If 10% of these offenders had been imprisoned instead of being fined, these two countries undoubtedly would have suffered heavily from prison overcrowding. Therefore, fine is effective in decreasing the number of prisoners in these countries.

However, the belief that practical use of fine contributes to alleviating prison overcrowding is not applicable to the countries whose economic conditions are poor, because many offenders with sentence of fine cannot afford to pay it due to their poor financial situation. These fine defaulters are imprisoned due to their inability to pay the fines and this contributes to prison overcrowding in these countries. For instance, in Sri Lanka, 11,504 fine defaulters accounted for 81.43% of all convicted prisoners admitted to prison (14,128) in 1990. Further to this according to the answers to our questionnaire by the participants of 17 countries represented in this Course, 10 countries are found to have a problem of overcrowding due to fine defaulters in varying degrees.

The members discussed measures on how to maintain the fine system to decrease overcrowding in these countries where the economic situation is poor, and the following were suggested:

1) Offenders who are sentenced to fines and have a job should be allowed to pay fine by installments. Though this method might be cumbersome, it is cheaper and more simple than putting these offenders in prison. In Singapore, this method is effectively being used.
2) Fine will naturally not be a fair punishment, depending on the financial background of the offender. Therefore, the amount of fine should be fixed according to the financial capability of each offender, such as day fine. In addition, suspension of fine may be adoptable for minor offences.
3) In imposing of the punishment of fine, the court decides not to send the offender to prison, but non-payment of the results in the imprisonment of the offenders. In such situations, community service order may be the alternative penal sanction for such offenders whom the court thinks should not be imprisoned. It would help to reduce the population in prisons and also to reduce the prison cost. The offender would be protected from the company of bad habitual criminals in the prison, stigmatization and dehumanization.

Again there may arise another question, whether offenders' exposure to the public during the performance of the work assigned could constitute an unbearable humiliation for the offender which would undermine the rehabilitative effort of the offender. The group members discussed the problem and found the danger of the bad effects of imprisonment was higher than that humiliation due to the community work. The community service order has been considered to be effective in many aspects irrespective of any adverse effect to the offender. It would be helpful in noticeably reducing the prison population.

2. Probation

Out of 17 counties represented in this Course, 14 countries have probation measure except Brunei, Malaysia and Nepal (Malaysia has probation for juveniles operated by the Department of Social Welfare, but it is different from the probation for adults as stated above). In Korea, probation is only applied to juveniles. Regarding probation officers, in the Philippines, Singapore and Japan, volunteer groups are organized and engaged in supervision of probationers as Volunteer Probation Officers.[48]

In many countries probation is used in practice. It is not denied, however, that the use of the probation has been limited to juveniles and younger adults in many countries. We may say that there is much room for the wider use of probation.

All the members of the group agreed that sufficient and wide use of probation or a similar system is one of the effective measures to alleviate the problem of overcrowding in prisons.

In some countries, execution of sentence could be suspended without probationary supervision, and in other countries, judges have the power to suspend the sentence with or without supervision. In respect of non-custodial measures at sentencing stage, we can say that the functions of these systems are almost the same. The suspension of execution of sentence seems to have been fairly utilized in many countries.

As for the implementation and wide use of probation, fulfillment of several preconditions are necessary, for instance, the recruitment and training of probation officers, provision of sufficient funds, effective programmes, etc. It is clear that the total cost of operating the probation system would be fairly cheaper than that of imprisonment.

We may, therefore, reasonably conclude that we should make good use of the probation system or a similar system as widely as possible depending on the situation of each country.

3. Parole

Parole is the conditional release of an offender from a penal institution after he has served a portion of his sentence. It is in use in most of the countries represented in this Course. However in Brunei and Nepal it is not in use[49].

1) Fiji

In Fiji there are two types of parole available. One is the extramural punishment which releases a prisoner to complete his term of sentence in a public institution. The other is the compulsory supervision order which allows the Minister for Home Affairs to grant early release of a prisoner.

2) Indonesia

In Indonesia when a prisoner has served two-thirds of his sentence and if according to a team of supervisors he is ready to return to the community, the convict can get parole under supervision. However, due to the stiff requirements of parole and the long process, only a few prisoners end up being granted parole, or in some cases, before the application is approved and served on the applicant, his term of sentence will have expired. The normal process, which can take a long time, is that the application will be filed by a prisoner. It then goes from the prison to the Regional Office of the Ministry Justice, then to the Director General of Correction and finally to the Minister of Justice.

3) Korea

In Korea parole is the most utilized non-custodial measure. An inmate serving a sentence, who has behaved well and has shown sincere repentance may be paroled through the decision of the administrative authorities. He should serve 10 years in case of life sentence or one-third of his sentence. At present, parole in Korea is unique in that the parolee is not subject to supervi-

sion. However, with the current project of amending the criminal code, supervision of parolees is under consideration.

4) Papua New Guinea

In Papua New Guinea parole has been one of the five aftercare pre-release concepts that were endorsed on 1 November 1992[50]. The first group of parolees is expected in June 1993.

5) Philippines

In the Philippines parole is granted to a prisoner after he has served a part of his sentence. The prisoner must have been sentenced to imprisonment of more than one year. On completion of the parole period the parolee may be given a certificate of final release if the recommendation is favourable, otherwise if the parolee has an unfavourable report the board will order his arrest and recommit him to prison to serve the unexpired portion of sentence.

6) Sri Lanka

In Sri Lanka release of prisoners on parole (or on licence) has been successfully implemented since 1970. The prisoners are released under supervision of welfare officers. Those considered for parole are: (a) all prisoners who have served 6 years of their term of imprisonment; (b) all prisoners who have served 5 years of their term of imprisonment provided they have served at least 12 months at an open prison camp; (c) all prisoners sentenced for 4 years or more who have completed half of their term of imprisonment or 6 years, whichever is less.

7) Thailand

In Thailand those prisoners who have maintained good behaviour are eligible for parole. The parolee is conditionally released and placed under supervision of a parole officer.

8) Singapore

In Singapore, parole applies to preventive detainees, corrective detainees and young offenders who have been committed to the approved home or school, and to offenders aged 16 to 21 years who have been convicted of an offence punishable with imprisonment and ordered to undergo training in the reformative training center. The parolee is subject to supervision for the unexpired period of his original term of imprisonment.

9) Hong Kong

In Hong Kong, two rehabilitative schemes were introduced in 1988 to prisoners other than those sentenced to life imprisonment. They are the Release Under Supervision Scheme, and the Pre-Release Employment Scheme (Parole).

The Release Under Supervision Scheme allows prisoners sentenced to three years or more, who have served not less than half or 20 months of their sentence, whichever is the longer, to be released under supervision earlier than the date of discharge. They will be subject to aftercare supervision for the remaining balance of the sentence. Support and counselling are provided by this Department's aftercare staff.

The Pre-Release Employment Scheme allows a prisoner sentenced to two years or more to spend the last six months of his imprisonment (taking into account remission under Prison Rules) undertaking a normal job in the community while returning to reside at a half-way house at night. During this period, he will be subject to aftercare supervision.

10) Japan

Parole is also in use in Japan. The superintendent of the prison submits an application for parole for an inmate to the parole board: this is done in consideration of the progress which the inmate has achieved in the institution. The parolee on release is under the supervision of a probation officer. The parolee has to comply with the following conditions: (a) he is required to live at a

specified residence and to engage in a lawful occupation; (b) he is restricted from bad conduct; (c) he is restricted from criminogenic companionship; (d) he is required to get approval for move from residence or when traveling on a long journey. Other special conditions vary widely as they are designed to meet individual needs. In Japan in 1991, 57.5% was the rate of those released on parole, and out of this only 6.9% had the parole revoked[51]. The parole period of 6 months or less accounted for 75%[52]. As for the other 25% the parole period was longer.

In terms of rehabilitation, among all the newly admitted prisoners who had been imprisoned before, the rates of recidivism for those who got parole was 46.7% compared to 53.3% for those who were not on parole[53].

Parole has also been considered to cost less than imprisonment, especially due to the use of volunteer probation officers in countries like the Philippines, Singapore, etc.

The members of the group felt that as long as the parolee does not pose a threat to the society, the parole system should be used, though again its application will depend on each country. The parole system will alleviate the problem of overcrowding.

The members also felt that the community is often indifferent to the parolees, due to the stigma attached to their conviction and incarceration. The general public is not aware of the importance of its involvement in assisting the parolee, by accepting him. This will even enable him to get employment, if he is unemployed or if he has lost his job due to imprisonment, and this will play a great role in deterring him from committing crime in future. Members felt: that (a) prison officers or parole officers should inform the public of the importance of parole; (b) that parole period should be long enough to achieve the goal, for usually the parole period is too short; and (c) that the process of granting parole should not be unnecessarily long.

V. Conclusion

In conclusion, the members felt that to alleviate the problem of the overcrowding in the penal institutions, there is need to enhance the wider use of non-custodial measures in every stage of the criminal justice system.

The members also realised the importance of statistics in analysing the actual situation in each country. It is, therefore, stressed that statistics should always be made available.

It is recommendable that each country reveals the criteria for determining the prison capacity as each country is different from the others.

Countries where prison buildings are very old and do not have adequate facilities to cope with the number of prisoners should endeavour to secure attention from their respective governments to accord higher priority in improving prison facilities. This could be done by renovating or building new facilities as the case may be in each particular country.

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Group 2: Police-Community Relations in Crime Prevention

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I. Introduction

The overriding social trends nowadays which include among others, rapid urbanization, industrialization and migration of people towards urbanized areas, have adversely affected social order and led to pro-

liferation of crimes. The very nature of city life has isolated families from each other, thereby weakening the sense of community that is quite natural in the rural areas. Collectively, these developments have caused significant setbacks to the law enforcement agencies, particularly the police, in their efforts to prevent crime.

Law enforcement is not the sole prerogative or responsibility of the police. Crime prevention is everybody's business and spans the gamut of the entire criminal justice system, thereby including prosecution, courts, corrections, and the mobilized community.

Undoubtedly, it is essential to have a better working relationship between the police and the community in order to prevent crimes—for without the community, the police would be like fish trying to swim without water. This applies to all countries, through all the ages.

In many countries the relationship between the police and the community has not been going on well. Therefore, this group, consisting of participants from the countries of Fiji, India, Malaysia, the Philippines, Thailand, and Japan has discussed both causative and predispositive factors that lead to deterioration in police-community relations. We have come up with certain relevant norms and guidelines. Within these parameters we believe we can create a dramatic change in our respective countries.

Among the elements we identified as harmful to police-community relations are: the inefficiency and ineffectiveness of the police organization, abuse of power and lack of awareness on the part of the community vis-a-vis its role in crime prevention.

All the participants were actively involved in the discussion, expressing their views on various police deficiencies and the apathy of the community in crime prevention. We came to the consensus of adopting the Japanese police-community relations system as our model, with additional concepts from other countries. We decided to adopt the Japanese system because it would defy logic to look for a new system when we already have a system that has been proven to be successful not only in Japan, but also in other foreign areas that have adopted it, such as Houston (Texas) and Singapore. As the saying goes "You cannot argue against facts."

II. Issues

1. Inefficiency and Ineffectiveness of Police

The public loses its trust and confidence in the police organization which is unable to efficiently and effectively deliver basic police service. Some inabilities are as follows:

1) Police sometimes display negative responses to the complaints being filed causing a very low clearance rate.
2) The response time to most of the complaints is very slow.
3) The police are seemingly incapable of preventing crimes.

This group identified the following factors affecting the efficiency and effectiveness of the police.

Insufficient Training and Investigative Expertise

In some countries particularly in the third world countries, police personnel are recruited not on the basis of educational background but through some influential references. Little weight is put on the personal background of the person regarding his moral behavior and basic attitude toward the police service. There are no programs enhancing the training aspect of police services. Training institutions are most often inconvenient for trainees and teaching staffs as far as accommodation facilities are concerned. Most training centers are not furnished with enough training equipment, materials and other resources suited

for police training.

In some countries, the idea of being put to training is equal to being given a punishment post due to the inconveniences it brings. Training schools do not actually provide an atmosphere for professional advancement, neither do they offer intensive and extensive programs and curricula suitable to police service.

Our group realized the importance of training and proper recruitment schemes as elements in promoting efficiency and effectiveness in the police organization. The improved capability of the police depends on the improved quality of its service. This is derived from well trained personnel, better intra-and inter-agency human relations and proressionalized police service. The following recommendations are viewed as countermeasures to these problems.

a) A more rigid scheme in the recruitment process giving more priority for those police aspirants who possess better educational qualifications. A standardized educational qualification must be required as well as highly comprehensive qualifying examinations, oral interviews, physical and medical examinations, neuro-psychiatric tests and intensive background investigations which must be conducted to ensure a highly selective recruitment system.

b) In-service training must be provided to all police personnel without exception. The trainees must be provided with an atmosphere of high-calibre training through new and modern training facilities, updated theoretical and practical training programs in police science, public safety and investigation. Trainees must properly be given adequate training allowance and incentives to include convenient accommodation and other facilities to avoid the thought of being on a punishment post but rather more on the idea of being given a reward through professional advancement. Another point to consider training as an incentive is to make it a prerequisite for promotion. Specified training may be designed for a police officer and linked with his promotion to next higher rank or maybe with some form of increase in salary scale. Training for specialization purposes such as specialized courses in investigation, intelligence, administration and other specific police functions may also be made available to police officers of appropriate ranks. Those who have undergone specialized training may be allowed a form of specialist pay for possessing extra skill/qualification.

c) More dedicated and experienced teaching staffs may be posted in training institutions, who are dedicated and will take more interest in the proper training of police personnel. They should possess the theoretical and practical expertise in the various subjects related to police work. They also must be provided with adequate teaching allowances and incentives such as housing, transportation, and other teaching amenities. Police personnel trained abroad should be made available to training centers to teach and impart the higher knowledge for a minimum of one year.

d) Training programs should include all aspects of technical and scientific investigation, more so on the institutional identification of evidence and on-the-job training. Social science subjects like criminal psychology, sociology, communication skills, public relations, and other related social and humanity subjects must form part of the curriculum. Legal subjects such as criminal law, procedures, Evidence Act and other penal provisions, latest case law studies through the methods of mock trial and group practical exercise should be given extensive emphasis in the training program especially in basic and advanced police courses. Management and leadership courses may also be provided to police officers occupying managerial and command posts to ensure proper and appropriate dispositive functions in their respective positions. Training must also include subjects on Human Rights to inculcate in the

minds of the police personnel not only sensitivity for the fundamental rights of a person, such as freedom of movement, freedom of speech, religion, association and all other basic rights how to safeguard those basic rights of the people.

Inadequate Manpower and Resources

The police manpower and other resources are inadequately provided in almost all the countries. Our group accepts the fact that the police organization is tasked with many roles including not only crime prevention but almost all aspects of the community services. In other words, the police are oftentimes confronted with being given so many things to do but few hands to perform the given tasks. In most of the third world countries, the police to citizens ratio varies from 1:1,000 to 1:1,500. In some countries the police not only handle crime prevention and maintenance of peace and order, but also must perform counter-insurgency operations, anti-terrorism, anti-secessionist and other armed rebel uprisings within the country. Aside from these duties, the police also deal with the problem of illegal immigrants, smuggling activities, proliferation of illegal drugs and other related criminal activities. With this gigantic workload, the present strength of police in many countries cannot in any way cope with the given situation.

To tackle this problem, the group would like to suggest: (1) the government of each country should adequately provide financial and other forms of resources especially manpower to cope up with the demands of the responsibilities the police has been tasked. (2) that operational cooperation among other law enforcement agencies such as the immigration, customs, narcotics board and other related law enforcement agencies and when appropriate the military organizations dealing with crime problems may be intensified to enhance overall effectiveness in each field mentioned above. In cases of insurgency, secessionist and other armed political unrest, the appropriate organizations of the country concerned should share the responsibility with the police. In so doing, the workload of the police shall be reduced and more time would become available to them for being more responsive to the concerns of the community.

Inability to Deliver Basic Services

The police in most countries particularly in South East Asia are sometimes confronted with the inability to provide basic police services such as the safety of the people and property in the community they serve.

The group recommends that the police should enhance their operational efficiency by increasing police visibility through the conduct of foot and mobile patrols equipped with modern equipment, scientific technology and communication systems in crime prone areas and the introduction of the KOBAN or the Japanese Police Box system in local districts which would provide a safer atmosphere for the residents. In the KOBAN system, the aged, the people under distress and lost children are taken care of.

Lack of Motivation

We have chosen this factor as one element in measuring the standards of performance of police personnel because it has a very significant influence on the morale aspect of each individual. We have discussed the lack of motivation in certain areas of the police organization that results from sub-standard recruitment, unattractive service conditions, low salary, inadequate system of rewards, awards and recognition, and improper posting or placement policies. In other words, the problem of personnel satisfaction in the police organization is not very well addressed in order to create and sustain a more conducive atmosphere of police efficiency and effectiveness.

We have considered that a carefully developed procedure of recruitment, selection, placement, and training should be oriented towards one fundamental purpose: person-

nel satisfaction. Any enlightened police organization has to be fully aware that efficiency, effectiveness, and successful crime prevention are similarly dependent on the level of morale of an individual police officer. Morale may simply be defined as a quality of the individual police officer that greatly influences and virtually determines his level of efficiency, his reactions toward himself, to the community and his job, and the degree of satisfaction with which he carries out his daily police routines.

This quality is principally dependent and intrinsically bound with motivation and attitudes and this has been essentially a problem in human dynamics of many police organizations of Asia and other regions of the world. For example, where conditions of the police service are wholesome and favorable, morale is likely to be high. On the contrary, unfavorable conditions are likely to lead to a breakdown in individual as well as organizational morale.

In like manner, morale varies with the satisfaction or frustration of basic needs and goals of the individual police officer. In any public service particularly in the police, the needs for security, status, recognition, expression, and achievement are of vital importance, needs that can be achieved through a realization of the aims and goals that the individual personnel has set for himself. Continued frustration in fulfilling these needs can certainly affect the personality and professionalism of each individual and lead to the state of low morale.

We, therefore, consider that the police organization can only serve the community well if its personnel are enabled to secure their needs, aims and goals in a way that promotes healthy attitudes, personal satisfaction, and high morale.

This can be attained through more practical and innovative approaches including adequate pay and allowances, bonuses, improved working conditions, paid vacations, housing, and recreational facilities, lucrative pension plans, health and insurance provisions, qualified system of promotion, rewards, awards and recognition, and credible system of recruitment, selection and placement of personnel. The efficacy of these approaches shall greatly influence the attitudes, motivation, and morale of each individual police officer. It cannot be denied that such factors as good pay or attractive working conditions are of basic importance. But recognition or security may be more significant as a single motivating factor.

2. Abuse of Power

The police organization is all the time open to public scrutiny. Justice is not well served by corrupt personnel in the criminal justice system particularly the police. The public loses faith in a system that is unable to deliver basic services to its clientele credibly and creditably. Abuse of power can be taken in so many ways such as graft and corruption, improper handling of complaints and investigation, unlawful arrest and involvement of some police personnel in criminal activities.

Graft practice is characterized by the acquisition of money or any other personal advantage for profit by dishonest and unfair means especially through the abuse of power. In the police organization, one particular common practice exemplifying this is the indiscriminate misappropriation of funds and other resources intended for police maintenance and operations, by ranking personnel occupying sensitive positions in the police hierarchy.

Police corruption is simply characterized by exacting and receiving financial and any other favorable considerations in order to achieve unscrupulous compromise. We take for example a very common practice prevalent in some countries particularly in South East Asia: a search warrant being served by a team of police personnel on a certain person for illegal possession of firearms. Considering the potentially positive result of the operation, the policemen demand a certain amount of money to make a com-

promise with the subject person and eventually render a negative result in their report to the police headquarters.

It is undoubtedly true that in some countries, complaints filed by the people to the police are improperly handled. Complaints are sometimes not recorded and in some areas they may be recorded but no police action is taken. There are instances where complainants are required to spend money just to have the complaint investigated properly. The police sometimes demand financial rewards and other favors for either taking action or not on a particular complaint. At other times, they may do so by delaying the investigation process.

Unlawful arrest is one action that is derived from the misuse of police discretion. Frequent abuse of discretion on the part of the police can make them incapable of doing what is lawfully right. A very concrete example for this is a simple case of accosting a person walking down the street by a police mobile patrol. In an effort to effect an arrest on the said person the police frisk him. After finding nothing from the person, the police may frame him up by planting evidence such as drugs or any concealable weapons to warrant his arrest.

Undeniably, in many countries, a certain degree of police involvement in some criminal activities is perceivable. It could be for the purpose of gathering vital information with regard to activities of certain criminal syndicates and organized crime groups for their eventual arrest. These are through the use of "Deep Penetration Agents" (DPA) who are actually police officers. This is on the lighter side of it but on the other hand, this practice has often been misused and abused by some police officers who just wanted to involve themselves in organized crime group for personal gains and enriching themselves. The lucrative business of being involved in the easy money of organized crime groups has included a number of police officers in making links with the underworld either by giving police protection or being the masterminds themselves.

The foregoing paragraphs are just a few of the many unlawful practices evident in most police organizations in many countries. These practices are mainly due to abuse of discretionary police powers. There are many areas of police work that are not subjected to specific rules and regulations. These areas are called the "policy-vacuums." Rules may be available but they tend to be general in character and usually carry the problems of ambiguity and uncertainty of meaning. These rules can sometimes be accidentally or even deliberately vague. These areas cause problems in exercising police discretion, diverting perceptions of the proper police work and most likely, the relationship of the police and the community. Operational decisions in this kind of police work are rarely clear-cut and often require the exercise of personal judgment of the police concerned. The police officer has at his disposal the ability to embarrass, humiliate and even harm the citizens. The risks to the police-community relations from the above mentioned views have been simply demonstrated through the diminishing state of public cooperation in crime prevention. Our group has pointed out some pragmatic approaches to alleviate if not eliminate the issues relating to abuse of power.

The paramount consideration with regard to this issue is to upgrade the salary compensation, fringe benefits and other gratuities of the police. It is evident that a person meagerly paid cannot be sufficiently motivated to perform his job well and in fact, he becomes vulnerable to the vicious temptation of corruption. A lowly paid police officer distorts his sense of effectiveness and efficiency resulting in his being corrupted.

It is fair to say that an upgraded system of service of personnel in the police organization means cultivating a higher level of competence, ethical standards and the promotion of genuine service of commitment to

public accountability.

The second important consideration is to institutionalize a well defined accountability mechanism within the police organization. This mechanism must be designed to investigate and prevent misconduct and other factors relating to abuse of power in the police organization. Traditionally, citizens' complaints about police conduct have been treated by the police in an ad-hoc and usually disciplinary manner. However, the capacity of a complaints mechanism serving as the bureaucratic monitoring system or negative feedback system has not been sufficiently considered by the police organization. The police is exhibiting a certain degree of laxity towards processing citizen's complaints regarding police lawlessness and abuse of power. So, the external police accountability mechanism must provide an effective system of citizen's complaints about police conduct, lawlessness and abuse of power. The system will include provisions wherein citizens are encouraged to report complaints about the police and appropriate action is taken at once. In this respect, it is appropriate to organize special investigation and prosecution bodies independent from the police organization such as ombudsmen, anti-graft and corruption boards, and other commissions to effectively carry out external police accountability mechanisms.

Those who may be found guilty of charges relating to abuse of power particularly graft and corruption must be severely punished under revised penal provisions. Rules and regulations must be made clear to avoid disparity in the exercise of discretion. Policies must be geared strongly towards the specific areas of police ethical standards, rules and regulations.

An effective monitoring system different from the traditional means must be adopted. This can go well with a good system of citizen's complaints through the use of modern investigative techniques and equipment.

Existence of an internal system of disseminating effectively vital information purposely intended to educate police personnel about the evils of graft and corruption and other malpractice related to the abuse of power is also important. It may be through the conducting of seminars and workshops to be mandatorily attended at all police levels.

The police officials should be made aware of the U.N. Code of Conduct for Law Enforcement Officials through proper education. This code provides that police officials will perform their duties in accordance with law and serve the persons in need due to personal, economic, social, or other emergent reasons. However, in performing duties, the dignity of the individual shall be maintained and any information received by such officials about the private lives of the individuals shall be kept confidential unless otherwise required. The police officials shall not commit any act of corruption and shall also rigorously oppose and combat all such acts. They shall respect the law and this code whenever it has been incorporated into National legislation or practice. If the legislation or practice contain stricter provisions than the U.N. Code, the stricter provisions shall be observed.

3. Lack of Awareness on the Part of the Community in Its Role in Crime Prevention

The success of the criminal justice system in the prevention of crime is directly dependent on the encompassingly diversified roles of the community. Well informed citizenry can greatly influence decisively in the successful pursuit of prevention, detection and prosecution of criminal offenders. Thus most countries must realign crime prevention programs and strategies towards facilitating active community involvement in the prevention of crime.

In most countries today, the prevalent police community relations are characterized by seemingly reluctant attitudes of the citizens in providing cooperation with the

police organization in crime prevention. We have already discussed two enduring issues that have generated irate attitudes of the people towards the police. In this regard, we would try to highlight certain significant factors in the light of the community's failure to become aware of its role in crime prevention. As we have considered so far, crime prevention is not the sole responsibility of the police organization, but rather, it is distinctively a partnership with the community.

We pointed out some legitimate reasons why the issue of unawareness among the citizens has persistently prevailed, thus creating space vacuums in the efforts of the police to control and prevent crimes. The people seemingly lack legal consciousness. In this aspect, a person who is not aware of the basic legal provisions of the law cannot in any way be expected to cooperate with the law enforcement agency particularly the police. Such virtual ignorance of law has in one way or the other influenced citizens in not coming out and actively participating in crime prevention. We also blame the lack of proper communication channels in both the police and the community in the dissemination of information and feedback system. It is pertinent to say that an enlightened citizenry must know the duties of the police, its organization, characteristics and limitations. Another factor that has predominantly given the police organization setbacks in acquiring cooperation from the public is the lack of community-oriented programs wherein the police organization itself has to spearhead a program purposely to reach out for the people's active participation in community activities. And lastly, the citizens have seemingly lost their sense of responsibility towards community welfare activities and crime prevention. The people must be made to realize that crime should be construed as one community problem rather than a police problem. In this respect, citizens must also be made responsible for the solution of such a problem.

We agreed that the police organization must initiate measures and programs in order to bring about effective community involvement. A great deal of effort must be undertaken by the police organization in providing the citizenry the relevant education on basic legal provisions of the constitution, crime prevention and other legal consciousness that would enhance people's awareness and confidence towards the police system. A very practical way of educating the people is through the massive use of print and electronic media which can effectively penetrate the community's bottom lines. Another way is through the effort of the police themselves by conducting continuous dialogues, police forums, and information drives in various public places. Along this line, we also consider the implementation of crime prevention organization, peace and order councils, police-citizen liaisons and other related police-community relation organizations in every station like the KOBAN system of Japan.

The essence of the KOBAN revolves around the making of the neighborhood policeman into a "counselor," a veritable father of the neighborhood who looks to the needs of his people.

Naturally, human nature being what it is, the citizens reciprocate by enthusiastically helping the policeman in his work, especially by acting as his eyes and ears, reporting to him everything they see or hear or know. With this neighborhood-wide flow of information, it would often be impossible for a new face to remain undetected in the neighborhood, or for a crime to remain unknown.

This interesting role of the neighborhood is very crucial, because most crimes are solved, not through modern criminalistic and investigative gadgets, but through plain and simple information from the people to the police, such as the location of hideouts, description of suspects, etc.

Another scheme we have considered to enhance community awareness is the adop-

tion of police-school programs wherein the police shall be provided with considerable school hours to conduct lectures in schools and colleges regarding crime prevention, consequences of crime, traffic rules and regulations, drug abuse and the importance of citizen cooperation in preventing crime.

Another police information system is the printing of a regular police newsletter or handouts on police activities, guidelines on crime prevention and other pertinent information relative to police work and community concerns.

The Asia Crime Prevention Foundation, an NGO, is one important vehicle of ensuring a total participation of the citizens in crime prevention. In Japan, the ACPF organization has been actively supporting crime prevention programs so it is desired that each country particularly in the Asian region must have its own respective ACPF branch organization. The membership of this organization may include among others the representatives from the business sector, religious sector, education and other government service practitioners like judges, prosecutors and legislators including the government leadership itself. ACPF and other related organizations may undertake projects that would promote awareness and understanding of the present crime prevention strategy by sponsoring international and local seminars and workshops, and practical training programs applicable to all citizens of the community. In Fiji and some countries, oratory talent programs are frequently conducted to encourage the youth to participate on the theme of crime prevention. These organizations also sponsor research and study programs to all qualified citizens concerning crime prevention.

Another concept we have considered in enhancing police-community relations is community policing. The concept of community policing is not new. This idea is the same idea which Sir Robert Peel in 1829 had perceived towards police community relations. The police should at all times maintain a relationship with the public that gives reality to the historical tradition that the police are the public and the public are the police. The police are only members of the community which are given just compensation to give full time attention to duties which are incumbent on every citizen in the interest of the community. Along this idea, the police himself should avoid thinking whatever wrong notions of public participation he may have. The police must start looking at the community not just as an agency for the implementation of preset rules and policies, but must also be considered as a basic component in a partnership for the formulation and implementation of policies. The community, in line with its being the first defense line in crime prevention strategy, has to have its input at the policy level. It would be easier for a single citizen in the community to accept, adopt and implement programs and conditions which he may feel to be his own and adapted to his basic needs. So community policing is synonymous to partnership and must take its roots from all levels of the community. On the other side of community policing, the police organization must also serve as one essential service agency of the community wherein services other than law and order are also being undertaken by them. In the process, a more cordial and frank relationship is established between the police and the community.

Another aspect of community policing is that the police themselves should be involved in certain problem-solving processes in the community, particularly domestic and personal problems of the people.

Another approach to enhance community awareness is the adoption of audible survey and feedback mechanisms. Periodic conducting of surveys like opinion polls and other forms of feedback must be institutionalized in the police organization for the purpose of enhancing and measuring the community participation. In the conducting of surveys and other feedback systems,

items such as police policies, attitudes, efficiency, activities, police complaints and public opinions must be of paramount consideration and the result of which must be included in the context of improving the framework of policing.

III. Conclusion

The police organization itself needs to become more effective and efficient in order to cope with the rising crime. In reality, however, one factor which blocks the progressive state of crime prevention activities is the diminishing police community relations. The police in some countries have unfortunately been losing public trust and respect because of their attitude and lack of professional capabilities, efficiency and integrity, which inevitably bring about people's apathy towards the police and indifference to their activities. This has virtually hindered the public to willingly extend and provide the necessary cooperation which is of paramount consideration for successful crime prevention. Therefore, various means must be undertaken to enhance organizational effectiveness and efficiency and to resolve existing organizational deficiencies in order to promote cooperation in the community.

This report does not intend to be conclusive in the courses of action discussed. The group still believes that each country hold its own views in crime prevention which are different from other countries. But the common underlying factor is the socio-economic condition of each country and that every attempt to overcome financial obstacles in maintaining an effective and efficient police organization is difficult.

The general view stressed the importance of a more rigid scheme of recruitment in the police putting emphasis on the personal and educational background of any prospective member. And for those who are already in the service, specified and specialized training programs must strictly be required. Such programs must include all aspects of educating the police to be equipped with the fundamental knowledge of dealing with the people. Moral recovery and change of existing attitudes of the police are essential. To achieve those goals, a resolute need to professionally advance the police service career must be conceived.

Largely, as a result of our limited discussions, we have concluded, since the police are much more than crime fighters, it is necessary to marshall all their available resources to support the myriad concerns of the police role. In the practical realms, our group has found that regardless of whether the police are preventing crimes, maintaining peace and order, or providing any other public services, success can only be achieved through the cooperation of the citizens. To obtain this cooperation, the police organization must become efficient and effective, conscientious, prompt in the delivery of basic services, everyone's friend, professional, unabusive and communicative.

To effect such radical changes will necessarily require the police organization to evaluate and overhaul the entire police perspective, improved systems in police administrative and operational capabilities, firm and strict guidelines for abusive and corrupt personnel and adopting programs to promote community participation and involvement. If the police officer is expected to become more innovative, effective and efficient, and responsive to the basic needs of the community he serves, adequate salary compensation and benefits must be provided alongside his moral enhancement and professional advancement. The police organization on the other hand, must continue to develop methods of evaluating personnel in accordance with the community oriented standards in order to maintain a high level of performance.

To be able to work openly with a majority of the citizens in the community, the police organization must demonstrate a certain amount of consideration in formu-

lating policies. Therefore, the policy making must be more open and sensitive to local concerns of the people.

Lastly, our group recognized the limitations of the police organization in crime prevention. We realized that the police alone cannot prevent crime, neither could they maintain order without the community involvement. The original principle of policing formulated for the Metropolitan Police of London in 1829 provides that the "Police must be in tune with the people, understanding the people, belonging to the people, and drawing its strength from the people." With this as the guiding principle in any police organization of the world and putting this principle into action, a just and effective policing and crime prevention system can very well be attained in the future.

Group 3: Current Trends of Prisoners and Appropriate Treatment

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Introduction

During the first workshop, the group considered the relevant topics, and the total number of group workshop sessions which amounted to 5 sessions. The group unanimously agreed on the following approach.

1. In view of the limited number of sessions, only the situation of the participants' countries would be discussed.
2. Since the summary report and statistics for the year 1992 had not yet been prepared for the majority of the participants' countries, reference will be made to 1991 when necessary.

After each participant had given a brief introduction of the actual situation concerning the problems in their respective countries, the group concentrated its discussion on the following topics.

1) Treatment of drug-related prisoners.
2) Situation of foreign prisoners.
3) Countermeasures against drug-related prisoners.
4) Conclusion.

Treatment of Drug-Related Prisoners

Brunei

Drug-related prisoners who have been sent to prison are convicted by the Courts. The treatment programme for drug addict/abusers consists of 5 stages. This programme is very similar to that being carried out in Singapore, with few modifications to suit Brunei's local conditions. The 5 stages are:

Stage 1

One week of detoxification or "cold turkey" treatment. During this first week, they are not allowed to receive any visitors. Detoxification without supportive medication is mandatory for all abusers who are under 55 years of age and who are certified medically fit by a medical officer. The prisoners at this stage are segregated from the others in self-contained wards. If the withdrawal effect is found to be too much and that it might endanger his health, then, he will be

sent to hospital for treatment after which he will be brought back to the prison.

Stage 2

One week for recuperation and reorientation. The reorientation will be conducted by the staff to condition the inmates to be more receptive to the subsequent treatment. The staff will explain to them the code of discipline, rules and regulations of the Prison.

Stage 3

One week of intensive indoctrination. This is to drive home to them the evils of the drug habit, the responsibilities of life and the social obligations of every citizen. This will be conducted by the Prison Officers.

Stage 4

From the fourth week to the third month, the inmates will be given a military form of physical training to inculcate in them discipline and to promote their physical well-being.

During the first week of this stage, training will consist of calisthenics, and maintenance of precision drill. Thereafter, and until the end of this stage, exercises such as running, jogging and obstacle-course will be given. Time limits will be set for completion of these exercises.

At this stage, dormitory and kit inspections will be conducted every morning. In the case of untidy kits, the defaulters will be penalized.

Stage 5

During this stage, inculcation of work discipline is the main feature of treatment. At this stage, inmates will be assigned to various jobs. Flag raising ceremony, singing of the National Anthem, and physical exercise will be carried out before commencement of work. Evenings will be set aside for games and other recreational activities. Inmates who have basic qualifications and are keen in pursuing their education, may join education classes carried out in the prison.

Prisoners are assisted to find suitable jobs outside upon their release if they require. Upon discharge, a drug offender will be placed on 2 years compulsory supervision by the Narcotic Control Bureau of the Prime Minister's Office.

Hong Kong

In Hong Kong, not all offenders who are

Type of Offences in Brunei (1988–1992)

Types of Offences	1988	1989	1990	1991	1992	Total
Immigration Offenders	613	465	322	225	234	1,859
Theft/House Breaking/Trespass/Retaining Stolen Property	81	124	139	146	170	660
Islamic Religious Offenders	28	35	21	51	40	175
Cheating/Criminal Breach of Trust/Forgery/ Corruption	14	14	9	8	10	55
Rape/Outraging Modesty/Unlawful Carnal Knowledge/Women and Girls Protections	8	9	8	7	10	42
Drugs	5	41	62	50	75	233
Voluntarily Causing Hurt/Grievous Hurt	5	2	9	8	6	30
Abduction/Kidnapping/Robbery/Extortion	6	3	7	1	2	19
Murder/Culpable Homicide	3	2	–	–	1	6
Others	14	31	58	38	76	217
Total	777	726	635	534	624	3,296

Source: Annual Statistics of Correction in Brunei.

drug addicts are sentenced to undergo compulsory treatment in a Drug Addiction Treatment Centre. The court will consider several factors such as the nature and severity of the offence, the background of the offender before passing a custodial or non-custodial sentence, or request for a suitability report for the offender, before undergoing treatment in a Drug Addiction Treatment Centre. The appendix table illustrates sentencing patterns for drug-related prisoners in the year 1991. Prisoners who are drug addicts will receive treatment in accordance with the degree of withdrawal symptoms when admitted to a penal institution. When they are fit for discharge from an institutional hospital after treatment, they will participate in the prison programme designed for male/female (young or adult) prisoners.

Drug Addiction Centre

The Drug Addiction Treatment Centres Ordinance (Cap. 244) provides the courts with the power to sentence a drug addict found guilty of an offence punishable by imprisonment to detention in a drug addiction treatment centre.

Hei Ling Chau Addiction Treatment Centre with a capacity of 784, provides facilities to accommodate male addicts. A section of the Tai Lam Centre for Women is set aside for female adult addicts, while young female addicts under the age of 21 years are housed in Tai Tam Gap Correctional Institution.

The aims of the compulsory drug treatment programme are threefold:

1. detoxification and restoration of physical health;
2. uprooting of psychological and emotional dependence on drugs; and
3. preparation for the inmate's reintegration into the society.

The period of treatment ranges from a minimum of two months to a maximum of 12 months, followed by compulsory 12 months of statutory aftercare supervision. The actual length of treatment is determined by the inmate's health and progress and the likelihood of his remaining completely drug free after release.

The work programme in a treatment center is aimed at improving the inmate's health, developing good work habits and establishing self-confidence and a sense of responsibility. Inmates are assigned work commensurate with their capabilities, skills and fitness. Those who are found to be medically unfit for work programmes will attend occupational therapy classes.

Most inmates are engaged in carpentry, metal work, tailoring, laundry and rattan work. Others are employed in outdoor work such as gardening, construction and maintenance projects. Female inmates at Tai Lam Center for Women are employed in gardening, tailoring and various domestic services whereas those at Tai Tam Gap Correctional Institution are employed in laundry service. Inmates released from addiction treatment centers are subjected to 12 months of supervision which aims at assisting the released inmates to reintegrate into the community. During the supervision period the supervisee can be recalled for a further period of detention if any of the supervision conditions has been breached. Recalled inmates are placed under a programme specially designed for them. They are given counselling concentrating on examining the reasons leading to their motivation towards drug abstinence. The recallees may be detained until the expiry of 12 months from the date of the detention order or four months from the date of his being arrested under the recall order, whichever is the later. Any unexplored portion of that supervision order is suspended and will continue after he or she has been released from recall.

In 1991, a total of 2,850 persons were admitted on remand for assessment and placement in a treatment center. The num-

ber of admissions was 1,635, which included 1,531 males and 104 females, and was the same in the pervious year. However, the admission of young addicts under the age of 21 had increased by 20.8% to 116 during the year, resulting in a relative growth in the proportion of young addicts among the main population, from 5.9% in 1990 to 7.1% in 1991. With regard to addict prisoners, the number had also increased from 1,748 in 1990 to 1,931 in 1991.

During the year, a total of 361 males and 17 females were recalled for further treatment for breach of supervision conditions. A total of 23 inmates were granted leave of absence and all returned before the expiry of their leave passes.

Since the commencement of the programme in 1969 and up to the end of 1991, 40,290 persons have been treated and discharged and 39,001 have completed the 12 months' statutory supervision period. Of these, 70.4% have remained drug free and were not reconvicted of any criminal offence during their supervision periods.

Japan

There was an increase in stimulant drug-related prisoners, both male and female. However, according to a breakdown of prisoners by offenders as of December 31, 1992, those convicted of larceny were 10,307 or 27.7% of the total prison population. Stimulant drug-related offenders totaled 9,950 or 26.7%. In 1991 narcotic offenses constituted 0.3% of the prison population while stimulant drugs made up 26.7%.

The situation of treatment in prison is organized for groups in three poi ıts in time: upon entry, at the mid-point of their custody and at the time of discharge.

Every prison has its own approach or original treatment programme according to the special quality of the prisoners.

A general treatment programme is followed.

1) Fact Finding Survey

A survey is done to find out how drug abusers become addicted to drugs. In this connection, prisoners are made to answer a questionnaire which can be completed in about 20 minutes. The method used is based on questionnaires.

2) Stimulants' Effects on the Mental and Physical Aspects of Abusers

Then the prisoners are made to consider the effects of drugs on their body and mind. In this, prisoners make record of their abnormal experiences, such as illusions and delusions. The consequences of such phenomena based on the knowledge of medical science and psychology are explained to them by means of lectures, movies, and group discussions.

3) Social Effects of Drug Abuse

Prisoners are made to record their own experiences and discuss the negative effects of drug use on their families. Group discussions and writing of essays are often the methods used.

4) Legal Restriction

In this particular step, prisoners are made to understand the significance of legal restrictions and the actual system of court trials. The strict implementation of trial sentences and imposition of punishment are explained to them. Here the use of lectures is very useful.

5) Methods and Determination on the Abandonment of Stimulant Abuse

Prisoners are told to make a commitment to completely give up stimulant drugs. Prisoners prepare the methods for abandoning stimulant drugs, and consider how to resist temptations from their companions. Writing of essays and playing out psychodramas are suggested ways.

6) After Receiving Stimulant-Drug-Free Education

Lastly, after receiving stimulant-free education, the level of comprehension of the course content is checked. In doing this, the use of questionnaire sheets can be used to check the level of comprehension and confirm the prisoner's determination. Lectures are also utilized.

In addition, female prisoners are taught to understand that stimulant drug abuse affects not only themselves, but also their fetus and newborns. Other prisons have unique programmes such as family counselling aimed to involve members of the family to help the prisoner, the production of posters to create an atmosphere of treatment, and physical training.

Korea

At present, drug problems are not serious in the correctional institution in Korea. Drug related prisoners are mostly stimulant drug users such as Methamphetamine (MAP) abusers. Methamphetamine abuse has been recognized as the most serious drug problem in Korea since the beginning of the 1980s.

The rate of the MAP offenders among total narcotic offenders was not higher than 10.5% in 1980. Since 1981, however, the rate has abruptly increased up to 63.9% in 1986 and to 85.5% in 1988. The yearly average increase rate of MAP offenders through the 1980s was calculated at 76.8%.

The majority of the MAP abusers were males, and the young adults aged from twenties to the mid-thirties were identified as the most vulnerable group to MAP abuse.

As shown in the table below, drug addicts among convicted prisoners in 1988 were 1,519. Since then the numbers have maintained the level of 1,000 up to now.

And in case of Methamphetamine abusers, the number has decreased since 1989 due to the strict control of investigation authorities. However, prisoners of narcotic addicts such as opium, heroine, and cocaine addicts have shown an increased trend.

To solve MAP problems, criminal justice agencies give special attention to the connection of the MAP traffickers with criminal organizations.

One of the comprehensive strategies to minimize the drug abuse population in Korea is the construction of a detoxification and treatment facility under the auspices of the government.

Malaysia

With drug addiction and abuse reaching epidemic proportions, especially among the nation's youth, the number of offenders under the dangerous drug ordinance for possession of drugs, illegal trafficking of drugs and other related crimes is increas-

Number of Drug Addicts (1987–1991)

	Year				
	1987	1988	1989	1990	1991
Total Population	52,622	50,569	50,864	53,169	55,123
Drug Addicts					
Total	763	1,519	1,081	1,145	895
Opium	–	1	3	2	6
Narcotics	39	40	56	78	146
MAP	578	1,355	911	866	743
Marijuana	146	123	111	199	–
%	1.4	3.0	2.1	2.2	1.6

Source: Correction Bureau, Ministry of Justice in Korea.

ing. The prison population is increasing and immediate solutions have to be found. The Prisons Department have three penal institutions with specific modalities to treat and rehabilitate these offenders. Known as "drug prisoners" they are given the best of the available treatment and rehabilitative programme.

Generally the rehabilitative process for drug offenders is divided into two: the integrated approach and the community based programme also known as the Therapeutic Community Project.

Integrated Approach

The principle aim and objectives of the Malaysian Prisons Department focuses the rehabilitation of offenders on the belief that persons deprived of liberty should enjoy basic human requirements as far as possible, with the conditions of life in accordance with the dignity of a free man in a democratic country, as summarized in the general principle in administration of prisoners.

At all times, the treatment of inmates shall be such as to encourage their self respect and sense of personal responsibility so as to be build their morals to inculcate in them a habit 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.

Tough and Rugged

Offenders who are sentenced for drug cases are physically weak due to the prolonged abuse of drugs. Detoxification usually for heroin abusers is done through the cold turkey treatment process either in the police lock-ups or in prisons. The number of offenders going through detoxification in penal institutions is very minimal.

To be strengthened physically, everyone has to go through an induction period of two months which consists of conditioning them back through calisthenics and army type drill. The army type hand drill not only instills discipline but also enhances togetherness, that is, working in groups to maintain harmony. Consideration must be given to the fact that in Malaysia there are various races with different values and belief systems and their admission into a penal institution makes it tough to interact with one another.

During the induction period inmates are also exposed to the rules and regulations, the do's and do nots and also they are trained to respect correctional officers.

Physical fitness gained through this period also enables them to be absorbed into the vocational training programmes and various other programmes.

Vocational Training

Introduced in the early 1950's to cater for all prisoners, vocational training programmes were also introduced to drug offenders to provide inmates with marketable skills and to be utilized upon their release from prison. The programmes include auto mechanics, auto welding/spray painting, welding, furniture repair, carpentry, drafting, vegetable farming, plumbing, tailoring, wood carving and laundry, to mention a few.

The following tenets of vocational training programmes in correctional institutions category for drug offenders has been identified as:

1. Successful social living requires a secure economic base;
2. Most sentenced offenders do not have a skill or trade by which to earn a living;
3. Training offenders in a skill increases their opportunities for employment; and
4. Rehabilitation can be provided through a correctional programme that includes vocational training.

Joint Venture Scheme

Traditional industries as mentioned above are not very effective towards the promotion of vocational capabilities, therefore, a more effective measure was taken to

improve according to the rapid industrialization process of the nation. A joint venture project with public companies was introduced with a view to:

(1) Familiarize inmates with modern sophisticated machines, and supply them with the skills to operate machines of higher technology; and
(2) To be easily absorbed by firms upon their release.

Working Out

Currently a group of 60 prisoners from the Kajang drug treatment and rehabilitation prison are sent daily to work in a plastic products manufacturing plant at Kepong, Kuala Lumpur. Working out from normal workshops gives prisoners a chance to mingle with other workers which increases the acceptance of recovering drug addicts in a working environment, increases self-esteem in an inmate, and "boosts the chance of employment in the same factory upon release from the prison.

Education

Education is recognized as a valuable component of the reformation process. In Malaysia even though illiteracy is very low, the quest for learning the national language is high. Inmates from the Chinese and Indian ethnic groups have shown keen interest. The language teacher organizes classes for the inmates throughout the year according to the needs. Language classes have a positive impact on post-release behaviour, that is enabling illiterate inmates to read and write in Bahasa Malaysia, the national language.

Religious Instruction

In Malaysia as well as in other Asian countries, religion is valued highly. Religious instructions are given daily by religious teachers or through voluntary bodies strong believers in God and adherence to this value, as proclaimed in the "RUKUNEGARA," Trust in God and the nation.

Religious instructors are helping out of deep love of humanity focussed on particular moral values. This motive reflects a strong theological overtone and a profound commitment that contributes in a solid way of helping, sharing and caring.

Counselling

The Prisons Departments Counselling Section was formed in 1980 especially to cater for offenders sentenced under the Dangerous Drug Ordinance. With education, through religious and vocational training programmes the development of specific treatment modalities had to be introduced. This was by the introduction of professional treatment staff who introduced the new modalities. Amongst the modalities or treatment, strategies included individual counselling, group counselling, and religious counselling. These directly manipulated and modified the nature of the offenders' group relations, social roles and group identifications in such a manner that law abiding attitudes and values squeezed out drug abuse attitudes and values.

Drug addicts are considered to be "sick" persons and not criminals and thus the "sick" persons underlying the behavioral theories assume that drug abusing behaviour is a symptom of some underlying psychopathological problems. Individual counselling alleviates the underlying conditions and helps offenders gain insight into their problems and learn how to deal with them effectively.

There are now 159 trained para-counsellors throughout the penal institutions in Malaysia. Some of them have furthered their studies such as in Diploma of Psychology (Counselling) and a few others have graduated majoring in Psychology.

Therapeutic Community

The Therapeutic Community project was introduced in September 1992 as a pilot

project at the drug treatment and rehabilitation prison a Kajang. This program bridges the communication gap between staff and inmates typically found in correctional institutions and also utilizes inmate peer influence, the self-help concept. Inmates who live and work together meet with the staff regularly with a desired goal of improving post-release performance. By employing, under staff direction, open communication, confrontation, as well as other treatment methods, inmates participating can model and adjust their behaviour through learning testing and projecting themselves as effective models and relating to others.

Foreign Prisoners

Brunei

From 1988 to 1992, foreign prisoners constituted more than 50% of the total admission but the actual population as of March 30, 1993 constitutes only 42.77%. This shows that the majority of the foreign prisoners sent to prison were short-sentenced prisoners and most of them came from neighboring countries. Statistics of foreign prisoners are explained as follows.

The treatment, rehabilitation and medical care for foreign prisoners are no different from what is afforded to the locals. Similarly their privileges such as visits and letters are the same.

This table shows the number of local and foreign prisoners from 1988 to 1992 and March 30, 1993. It is notable that the total number of foreign prisoners was 2,521.

Hong Kong

Currently there are some 600 foreigners, or other nationals in custody in Hong Kong. The largest ethnic groups are Vietnamese followed by Filipino's and Pakistani's. In all 22 nationalities are represented crimes ranging from murder to escape from a Vietnamese migrant detention camp. Westerners or prisoners from Africa or the Middle East have usually committed drug or immigration offences.

Foreigners are held in various institutions together with local prisoners and they follow exactly the same programmes. Concessions are made on diet and bedding depending on life style before admission. On first admission to prison standing arrangements are in force to make both telephone and written reports to the prisoners' Consulates.

Special arrangements are made for extended visits if the prisoner's family do not live in Hong Kong. The frequency of visits is increased beyond twice a month for local prisoners when the family is in Hong Kong for a short stay. In addition those with families living abroad are encouraged to write more letters both at Government's and their own expense.

Welfare officers have been briefed to pay particular attention to this group of prison-

Year	Local Prisoners	%	Foreign Prisoners	%	Total
1988	126	14.48	744	85.52	870
1989	224	25.78	645	74.22	869
1990	279	40.14	416	59.86	695
1991	283	47.64	311	52.36	594
1992	345	46.00	405	54.00	750
Total	1,257	33.27	2,521	66.73	3,778
March 30, 1993	99	57.23	74	42.77	173

Source: Annual Statistics of Correction in Brunei.

ers from a humanitarian point of view bearing in mind language, culture and isolation difficulties. Attempts are made to ensure that either staff or other prisoners are at hand who can speak the prisoners' own or a common language. We do not however locate them together in one institution, as past experience has proved that when they are together with their peers in large groups there is sometimes a tendency to try to undermine authority. For instance they may refuse to cooperate, or conspire together to make false allegations against the junior staff. A basic problem that can never be resolved is the fact that often westerners are resentful and complain about being held in Asian prisons together with local prisoners. Specially selected and briefed staff to supervise them can be a great help, but as mentioned earlier, allowing them to group together is not in the interests of management.

Hong Kong is not a signatory in its own right to any extradition treaties or arrangements for the transfer of prisoners to other countries. However, by virtue of the United Kingdom's ratification of international conventions, authority is extended to Hong Kong to participate in these arrangements. The United Kingdom has arrangements for extradition with 25 countries which enables wanted persons, after a court hearing, to be removed to and from Hong Kong.

The Colonial Prisoners Removal Act allows for the removal of service personnel in civil prisons to be returned to the United Kingdom. This procedure has been used on several occasions but not in recent years.

The Council of Europe Convention on the Transfer of Sentenced Persons was extended to Hong Kong by the Repatriation of Prisoners (Overseas Territories) Order 1987. However foreigners may only be transferred to their countries of origin if Britain has an agreement with that country. So far 16 countries have ratified transfer arrangements including Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Greece, Luxembourg, the Netherlands, Turkey, the United Kingdom and the United States of America. In addition a separate bilateral agreement has been signed between Thailand and the United Kingdom to allow for the transfer of their nationals who are in prison.

A prisoner may not be transferred under these schemes without his consent. The consent of the sentencing and the receiving states is also mandatory. In addition, the prisoner must be a national of the receiving state with at least 6 months of his sentence remaining to be served. The offence for which he was sentenced must be a criminal offence in both countries and the judgements must bear the cost of his transfer to his home country. Other costs such as for the escort staff are met by the receiving country.

The reasons for transferring foreign prisoners to their home country are obvious, but foremost is the fact that most foreigners can be dealt with more effectively and successfully in their home environment. Both families and prisoners suffer less as imprisonment in an alien environment places stress upon a prisoner that would not normally be encountered, thereby increasing the severity of the punishment.

Under an agreement with China, Chinese illegal immigrants are repatriated to China after completing their sentences in Hong Kong. This is a continuing process and has been in place for many years. Illegal immigrants who have not been charged with an offence may also be returned to China under this agreement.

Japan

As in other countries, there are foreign prisoners in Japan. Foreign prisoners are classified as "Class F" and are under custody in Fuchu Prison (male prisoners only; female prisoners are in Tochigi prison). In 1990, there were 252 foreign prisoners which was about 0.6% of the total prison population in Japan. Japan virtually is surrounded

by sea and illegal entry into Japan by land is impossible. Illegal immigrants come to Japan from several countries, especially those in the Asian region. Those foreign prisoners are located in single cells and they are provided with a different diet. The main difference is that they are given bread in lieu of rice and Muslim prisoners are provided with a pork-free diet. The main problem arising from this group of prisoners is the communication problem as the majority of them do not understand Japanese or speak Japanese and the prison staff has limited knowledge of other foreign languages. Misunderstanding often arises as a result of cultural difference and the language barrier. At present there is no bilateral transfer arrangement of foreign prisoners between Japan and other countries.

According to the statistics maintained by the Ministry of Justice, in 1991, there were about 35,000 cases of violation of the Immigration Control Act. Cases of overstay amounted to 32,820 (90.2%). The foreigners who violate the Immigration Control Act, for example, illegal entry, illegal work, or overstay, shall be punished with penal servitude or imprisonment or fine. But if there is no indication that they have committed any other criminal offense during their stay in Japan, a Judicial Police Officer may deliver them not to a public prosecutor but to an Immigration Control Officer for deportation procedures. There are many overstayers who are deported without punishment every year.

The expenses on deportation will be paid by the Government if the deportees have no resources to pay the fee.

As of Nov. 1, 1992, there were about 290,000 foreigner illegally staying in Japan pending investigation, prosecution or deportation procedures.

Korea

The strong economy of this nation has been like a magnetic pull for illegal immigrants from Asian countries, especially from Indonesia, the Philippines, India, Bangladesh and Pakistan. With illegal immigrants, the number of criminal offences is soaring.

As for foreign prisoners, their number showed a gradual increasing trend and stood at 142 in 1992.

This trend might have been caused by the increase of the residents who are not merely tourists but permanent settlers. That can be verified by the increase in the number of traffic accidents caused by foreigners.

In the case of the Immigration Law violators, most of them are dealt with by Banishment Exhortation of departure and fine. Only 0.1% of them are sentenced to imprisonment.

In Korea, there is no special treatment or special prison for foreign prisoners. They are given western style meals, and beds are provided in their cells. The Korean prisoners do not use beds. The main problem of handling foreign prisoners is lack of communication. Most of Korean prison staffs do not understand foreign languages.

The table (see Appendix 3) shows the number of foreign prisoners from different countries in the years from 1983 to 1992.

Malaysia

Initially illegal immigrants who are caught for over-staying are sent to prisons and upon their release they are placed in pre-release camps for the sorting out of various technicalities by the Immigration Department before being deported back to their own countries. This is a prolonged activity because 80% of them do not have the financial capabilities to buy air tickets home. Embassy officials are allowed to visit their nationals and sort out means to help them.

Malaysia being adjacent to the Golden Triangle of opium producing nations, has become a gateway for international smugglers of drugs. Many have been caught and have been sentenced to death under section 39 (B) of the Dangerous Drugs Act which carries the Mandatory Sentence of death by

hanging.

Amongst the problems faced by the influx of foreigners and especially those under immigration detention is their unwillingness to return to their home land. Even though embassy officials of the said nations visit them at interval periods, the rapport or relationship amongst them is at times so bad that there have been a number of hunger strikes by the foreign prisoners to seek attention of their immediate problems. This is more of a technical problem that only can be solved by the embassies concerned. As said some are not willing to be deported whilst a host of others do not have enough cash to cover air fare back.

The Prison Department at Kajang came up with a unique way of overcoming this. Foreigners waiting to be deported are allowed to work in a joint venture workshop, doing manual jobs like peeling onions and garlic. This enables them to save the money necessary to buy air fare home.

Treatment of convicted foreign nationals has no biases when compared to Malaysians. They too have to undergo same rehabilitation programmes whilst adhering to the prison rules and regulations that govern them.

There is also no special diet for the foreign prisoners. They are required to take the same food as local prisoners.

Countermeasure against Drug-Related Prisoners

After presenting the actual situation and treatment of drug-related prisoners by participants' countries, the group discussed countermeasures against drug related prisoners. All members agreed that institutions must be drug-free in order to provide a therapeutic environment for drug-related prisoners before treatment and countermeasures can be implemented successfully. The areas of concern are mainly:

1. on admission;
2. during induction period;
3. during treatment period;
4. prior to release.

Brunei

All prisoners are screened for drugs and HIV on admission. Due to the low percentage of drug-related prisoners, there are no specific countermeasures against this group of offenders. However, the management is aware of the need to devise measures to tackle this problem and selected staff are sent to Malaysia, Singapore, Hong Kong, U.K. and Japan for training on drug treatment measures. In institutions random urine checks are carried out on inmates and staff whom the authorities suspect of having been involved in drug-related activities.

Hong Kong

Great emphasis is placed on admission to prison custody. The orifices of each new admission are searched thoroughly to ensure that each prisoner/remand does not possess any dangerous drugs. Needless to say, their clothes and personal properties are also searched for contraband goods.

During the induction period, special attention is paid to drug addicts and whether there is any likelihood that they wish to retrieve any smuggled drugs in their stool, as it is virtually impossible to detect possession of dangerous drugs on admission if a prisoner/remand has swallowed a certain quantity of dangerous drugs prior to admission. Suspected cases are isolated and their stools inspected for any suspected dangerous drugs. The presence of confirmed dangerous drugs will result in additional charges by the police.

During their treatment period in custody, they are gainfully employed in work and receive regular counselling by qualified staff on the ill effects of drugs. The following additional countermeasures are taken:

1. Visitors are made aware through promi-

nent notice displayed outside the main gate of each institution and inside the visiting room that introduction of unauthorized articles into prison is an offense and shall be liable on conviction to a fine of $2,000 and to imprisonment for 3 years.
2. Stringent search is conducted on prisoners before and after each visit.
3. Prisoners who receive open visits will be required to submit a urine specimen for morphine test within 48 hours.
4. Routine and surprise urine tests are conducted on prisoners to ensure that the institution remains drug-free.
5. The vicinity of an institution, which includes the area outside and inside the fence/perimeter wall, is searched by staff before the unlocking hour every morning to ensure that no unauthorized articles have been thrown in or deposited elsewhere with the intention that they will come into possession of any prisoner.
6. Inward parcels are checked for any suspicious contraband.
7. No prisoner who is convicted of a serious drug related offense or who is a confirmed drug addict is assigned to outside parties.

In addition, sound intelligence is maintained by the security section to collect information and monitor the activities of prisoners who are prone to be involved in organizing dangerous drugs to be smuggled into any institution. Staff being suspected will be singled out for very close monitoring.

Inmates released from the drug addiction treatment center will be explained the conditions laid down in the supervision order which lasts for 12 months. Failing to comply with any condition of the supervision order may result in recalling back to a drug addiction treatment center to undergo further treatment.

Prior to discharge, prisoners are again well briefed on the adverse effect of taking dangerous drugs and the various agencies and organizations they can call upon for help in case of need.

Japan

On admission to penal institutions prisoners are classified into class A (those who do not have an advanced criminal tendency) or class B (those who have an advanced criminal tendency), and they are further assigned to an institution according to their length of sentences. Drug-related prisoners are treated in the same manner. Smoking is strictly forbidden inside penal institutions. It is believed that prisoners who are smokers prior to imprisonment will be keen to obtain cigarettes from whatever source they can instead of obtaining dangerous drugs, which is very difficult. Japanese penal institutions can be confidently described as drug-free and no staff is a drug abuser. Urine tests for drugs are not conducted on prisoners. Prisoners are well aware that smuggling of dangerous drugs into prison will result in prosecution in court, while smuggling of cigarettes will only be dealt with by internal disciplinary procedures. The staff patrol the inside compound enclosed by the prison walls more frequently to detect unauthorized articles including cigarettes thrown in from outside. Moreover unconvicted prisoners can only receive private food through an authorized reputable caterer and the chance of introducing contraband into prison is greatly reduced. Drug-addicted prisoners usually have little willpower and are prone to adopt a frivolous attitude even while under custody. Much effort is required on the fostering of good working habits with this category of prisoners. No extra time is spent on teaching them the bad effect of dangerous drug consumption and counseling sessions as this will reduce their overall working hours. At present there are few experts in this field. As drug-related prisoners are located in association with prisoners of other categories in different institutions scattered throughout Japan, experts cannot care for

their individual needs. The feasibility of centralizing drug addicts in designated prisons to facilitate implementation of specific treatment programmes is being studied.

Korea

There is no specific problem encountered in dealing with drug-related prisoners who only constitute about 1.6% of the prison population. Education plays an important part in the fight against drugs. Severe sentence is imposed on drug related offense ranging from 7 years to life imprisonment.

The Correction Bureau is well aware of the need to training staff to understand the problem of drug related prisoners, and senior staff exchange their experiences with their counterparts in neighboring countries on a regular basis.

Malaysia

Prior to 1988 because of the severity of the problem of drug addiction, there was a staff confession scheme whereby staff who were addicted to drugs were allowed to participate in voluntary treatment programmes while receiving half-pay.

Drug-related prisoners comprise about 43.39% of the prison population as of December 31, 1991. In recent years, separate establishments were constructed to house drug addicts in order that specific programmes for drug addicts could be implemented smoothly. The countermeasures taken are quite similar to those in Hong Kong.

In addition, there is an anti-drug committee formed in every prison specifically to tackle this problem. The members of the committee are carefully selected by the head of the institution. They formulate plans to guard against smuggling of drugs into any institution, the maintenance of intelligence system and the apprehension of offenders. They also submit reports on their achievements to headquarters regularly. Heads of institutions participate in an annual general meeting with their colleagues to share experiences and discuss effective countermeasures against dangerous drugs.

Inmates are requested to supply information on any drug activities inside prison by dropping a note into an information box designed for such purpose. Due to fear of being identified as an informer and retaliation by fellow inmates, the scheme was not successful. The scheme has been modified so that each inmate is given a piece of paper and writing material. He is required to approach the complaint box and deposit his own paper, whether with or without information. As this is a mandatory procedure, those who wish to supply information feel less inhibited to do so. Information so received will be carefully screened by the anti-drug committee and appropriate follow-up action taken accordingly. The possibility of visitors smuggling in dangerous drug into prison through handing on of food items and daily necessities has been eradicated because this practice was stopped in 1984. On the whole, drug trafficking inside the prison is very negligible but all precautions have been taken so that this cancerous habit does not become critical.

From experience, drug addicts have very weak willpower. They can maintain a drug-free life while they are in custody. But once they are released, due to the easy access to drugs and other reasons, they soon relapse into the taking of dangerous drugs.

The Therapeutic Community project was introduced in September 1992 as a pilot project at the drug treatment and rehabilitation prison at Kajang. This program bridges the communication gap between staff and inmates typically found in correctional institutions and also utilizes inmate peer influence, the self-help concept, to help inmates gain awareness and a more responsible outlook. Inmates who live and work together meet with the staff regularly with an expressed goal of improving post-release performance. By employing, under staff direction, open communication, confrontation, as well as other treatment

methods, inmate participants can model and adjust their behaviour through learning.

Conclusion

Given the different political, cultural, social, economic and geographical backgrounds and constraints of participants' countries, it is generally felt that there is no universal solution to the problems encountered. However it is the consensus of the group that the following areas are worth pursuing:

1. As far as resources and security factors permit, it is preferable to separate all drug-related prisoners from those non-addicts and to centralize them in separate designated institutions to facilitate implementation of treatment programmes specially designed for drug-related prisoners;
2. Inmates need something purposeful to do to occupy their minds so as not to dwell on the restraints imposed by an institutional life. The fundamental principle that men basically want to keep themselves occupied and be able to do something useful and constructive can be utilized for good. The more professionally orientated and rigorous the programme of industrial and vocational training, the better will be the result not only to the offenders but also to others by putting minds and energies to gainful employment during incarceration;
3. Exchange programmes amongst senior officers of participants' countries to broaden their scope of horizon on correctional work in the Asia and Far East region should be encouraged;
4. Training of correctional service staff to understand more foreign languages and cultures will reduce the problem of communication gap and misunderstanding in handling foreign prisoners.

Appendix 1

No. of Addicts by Length of Sentence and by Age on Admission

Sentence	Age on Admission								Total
	Under 16 years	16–20 years	21–24 years	25–29 years	30–39 years	40–49 years	50–59 years	60 years and Over	
Male									
Imprisonment without Option of a Fine									
7days or less	–	–	1	1	–	–	–	2	4
>7 days –<1 month	–	1	4	9	8	4	2	1	29
1–<3 months	–	5	14	28	54	26	10	9	146
3–<6 months	–	2	33	65	149	70	29	23	371
6–<12 months	–	3	43	114	230	130	47	16	583
12–<18 months	–	2	33	38	70	25	7	8	183
18 months–<3 years	–	5	34	67	106	55	16	6	289
3–6 years	–	2	20	32	50	26	8	1	139
More than 6 years	–	–	2	8	10	10	–	–	30
Imprisonment in Default of Payment of a Fine									
7days or less	–	–	1	2	3	3	–	–	9
>7 days–<1	–	–	2	6	11	4	4	1	28
1–<3 months	–	1	5	10	12	4	5	1	38
3–<6 months	–	–	–	2	5	3	–	–	10
6–<12 months	–	–	–	–	1	2	–	–	3
Detention									
Drug addiction treatment centre	2	102	173	287	521	316	101	26	1,528
Training centre	–	5	–	–	–	–	–	–	5
Sub-total	2	128	365	669	1,230	678	229	94	3,395
Female									
Imprisonment without Option of a Fine									
7days or less	–	–	1	–	–	1	1	–	3
>7 days –<1 month	–	–	–	1	1	–	–	–	2
1–<3 months	–	–	1	1	3	–	–	–	5
3–<6 months	–	–	–	3	11	2	–	–	16
6–<12 months	–	–	–	7	6	7	2	1	23
12–<18 months	–	1	1	–	2	2	–	–	6
18 months–<3 years	–	–	1	1	4	3	1	–	10
3–6 years	–	–	–	–	3	–	–	–	3
More than 6 years	–	–	–	–	1	–	–	–	1
Detention									
Drug addiction treatment centre	–	11	23	34	32	3	–	–	103
Training centre	–	2	–	–	–	–	–	–	2
Sub-total	–	14	27	47	63	18	4	1	174
Total	2	142	392	716	1,293	696	233	95	3,569

Source: Correctional Services Department in Hong Kong.

Appendix 2

The Number of Foreign Prisoners in Korea

Nation	Year									
	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
Total	123	111	128	72	64	61	66	84	93	142
Sub-total										
Convicted	59	67	66	40	41	39	44	38	52	81
Unconvicted	64	44	62	32	23	22	22	46	41	61
China										
Convicted	38	39	36	17	18	11	12	7	26	39
Unconvicted	25	15	20	16	3	9	5	22	14	20
Japan										
Convicted	9	8	7	5	5	4	12	15	8	7
Unconvicted	7	6	8	5	3	1	2	2	2	2
U.S.A.										
Convicted	7	6	3	7	10	6	7	6	7	10
Unconvicted	8	6	9	6	3	2	2	7	2	4
Others										
Convicted	5	14	20	11	8	18	13	10	11	25
Unconvicted	24	17	25	5	14	10	13	15	23	35

Some of the Japanese have been charged with violation of stimulant drug law. Most of the Chinese are residents of Korea.
Source: Correction Bureau, Ministry of Justice in Korea.

Group 4: Training and Development of Research

Chairperson: *Mr. Peter Ruzsonyi (Hungary)*
Rapporteur: *Mr. John Tara (Papua New Guinea)*
Members: *Mr. Peck Tiang Hock (Singapore)*
Mr. Boldbaatar Jigjidsuren (Mongolia)
Ms. Chizuko Hanada (Japan)
Mr. Takashi Yamaura (Japan)

I. Introduction

The group members consisted of two correctional officers, one probation officer, one senior psychologist, one research worker and one senior teacher in a police academy. The group was assigned to deal with the topic of "STAFF TRAINING AND DEVELOPMENT OF RESEARCH."

Modern facilities and buildings are important and desirable in a correctional institution; however, these are not the most essential requirements.

The greatest important resource in any organization is the personnel who work in it. It is safe to say tha. a staff of poor calibre working within a modern facility will have little or no success in correctional work whilst staff of the right calibre working within old buildings will still be able to plan and maintain an excellent correctional programme. The key to success, therefore, lies in the recruitment, selection, training and retention of suitably qualified staff for the correctional service.

The UN Standard Minimum Rules for the Treatment of Prisoners No. 46 (1) and 47 (1), (2) and (3) state:

"The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends."

"The personnel shall possess an adequate standard of education and intelligence."

"Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests."

"After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals."

The primary objective of these guidelines is to underline the importance of the recruitment and selection procedure needed to attract potential candidates for correctional service. Efforts should also be made to develop an on-going system of in-service training not only at the basic level but including refresher and development courses in order to develop the correctional personnel to their fullest potential. Hence, each correctional personnel must see himself/herself as a vital component of that organization; his or her success will determine the success of the service.

With this in mind, our group decided to focus mainly on the following issues for discussion:

(a) Recruitment and Selection of correctional personnel;
(b) Training system for the correctional personnel—Existing problems and suggested solutions; and
(c) Development of applied research.

II. Methodology

The methodology adopted for this paper consists mainly of information collection from and interviews by members of our group with all the participants of the 94th international training course in crime prevention and the treatment of offenders.

One member of the group was also assigned to conduct an individual review of the current procedures and practices in the relevant areas in their individual countries. All findings and proposals were presented to the group meetings for discussion and clarifications.

Information gathered from the above interviews was collated and analyzed collectively to review existing practices in the areas of staff recruitment, training and development of research.

Based on inputs by the participants, the analysis of the information collected and group discussions, a number of proposals were examined for introducing improvements in various practices and procedures.

III. Recruitment and Selection of Correctional Personnel

(a) Recruitment

The effectiveness and efficiency of an organization depends to a large extent on the quality of its staff. In an agency which designs and administers treatment programmes for offenders the demands of staff are onerous and complex. While basic qualifications and initial training are essential, the personnel must be offered opportunities to develop their knowledge and skills as part of their employment conditions. The organization should be able to attract adequately qualified staff, through appropriate public information and systematic recruitment drives.

Correctional organizations still face many hurdles in attracting well qualified staff and public support. In the scheme of things, some governments generally do not consider corrections, particularly prisons, as a priority area, indeed very often its needs for resources receive low priority. The public, on the other hand, do not have much information about prisons and their operations and thus the prisons maintain their reputation as places to lock up unsocial and violent characters away from the society. Until very recently, correctional work has been perceived as unrewarding, the environment oppressive and salaries and other conditions of service poor compared to other uniformed services.

Participants from some countries expressed that during economic downturn and recession, correctional services suffer the most, especially when areas such as health, education and welfare demand more funding. The transition to democratic form of government in some countries of Europe has also put extra pressures on correctional services in these countries.

Like other countries, correctional services in Singapore in the past has suffered the effects of severe manpower shortage. Fortunately, in 1990 government has recognized the essential role of corrections in the criminal justice system. This has resulted in a salary increase that has put correctional officers on par with officers in the police force. The impact of this resulted in a higher recruitment level, and the number of correctional officers, both senior and junior ranks, recruited during the period numbered about 300. As for recruitment process, vacancies are normally advertised in newspapers and the print media locally and abroad which usually draws good response from interested Singaporeans and Malaysians who wish to take up a career as correctional officers.

In Japan, the correctional personnel are recruited from among those who have passed their national examination administered by the National Personnel Authority, which is a body vested to conduct the recruiting examination of national public servants. The law requires them to have a

certain degree of competence in the areas of medical science, sociology, psychology, education and/or other disciplines relevant to treatment of offenders.

Generally, the recruitment of correctional personnel follows this general pattern in most countries like Hong Kong, Malaysia, Mongolia, Papua New Guinea, Brunei, Kenya, etc. Usually, specific educational qualifications, job specifications, salary and allowances, and terms and conditions are made in the advertisements through government bulletins, radio and television, newspapers, public notice boards or through visits to schools and other related public organizations with a view to attracting suitable applicants to fill in the vacancies. In summary, the problems of recruiting suitably qualified officers can be grouped as follows:

1) The strong resentment against and low social status of correctional work is a perennial problem faced by some countries which are not able to attract adequately qualified personnel to work in the correctional field. In certain cases, personnel with low intellectual capacity and poor perceptive skills are recruited. With this quality of staff, one can hardly expect an efficient and effective delivery of correctional work.
2) The low salary in another obstacle to the recruitment of better personnel. Sadly in some countries, the salary of junior correctional officers is not enough to meet the needs of a family. This causes resentment and discontent among the junior officers.
3) The limited scope of promotional opportunities was also expressed by some of the participants to be one of the main reasons that led to high turnover rate of correctional staff. Additionally, the absence of a concrete system which provides opportunities for staff career development, adds up to the lowering of morale of the existing correctional personnel.
4) The process of staff recruitment for correctional officers has posed a considerable problem in some countries. Even though the general criteria for recruitment has been met, it is noted that in most cases, these do not take into account the judgement of applicant integrity, professional capacity, emotional stability, ability to work with others and personality makeup. In line with this, the importance of a recruitment policy that includes well-directed selection criteria needs greater emphasis.

(b) Selection and Appointment

Selection and appointment are the final stage of the recruitment process. Applicants who meet all the qualification standards for the appointments would be invited for an interview by a Selection Board.

In Negana Brunei Darussalam all aspects of recruitment are conducted at the discretion of the prison director. His office later forms a selection board comprised of his senior prison officers and through conventional meetings they make the necessary selections and appointments.

In Singapore, appointments are processed through two different boards. The appointments classified as senior officers are made through the selection process by the police and civil defence commission, whilst the junior ranks are recruited and appointed by the prisons department.

Similarly, Papua New Guinea has two boards. Appointments of probationers and correctional officers up to the rank of the chief superintendent are made by the Prisons Department Selection, Promotion and Appointment Board. The executive appointments, (ex. Assistant Commissioners, Deputy Commissioners and other Specialists) are made by the National Government's, Public Services Commission, Selection, Promotion and Appointment Tribunal.

In Japan correctional officers are recruited from among those who have suc-

ceeded in the correctional officers recruiting examination which is conducted by the National Personnel Authority. The number of recruits depends upon vacancies in the authorized staff strength. A written examination is designed to test the applicant's aptitude and intelligence. The oral interview is to test the applicant's leadership quality, emotional stability, etc. In addition, the Prison Authority has certain obligatory jurisdictions to conduct direct recruitment of subordinate personnel, to alleviate the situation of staff shortage.

In Hungary, personnel recruitment and selection are conducted by the Department of Personnel Division. A careful check of the criminal records of the applicant and his family, intelligence test and medical examination are conducted at this stage. The names of selected candidates are forwarded to the Director General of prisons for his approval.

Briefly, the process of recruitment, selection and appointment of correctional personnel is basically similar in most countries:

Firstly, all the applications are strictly tested against the requirements of the job specification as advertised. The job specification would comprise the educational qualifications, academic status, work experience, age, gender, general health, marital status, criminal records and other information.

Secondly, preliminary selection process begins soon after all applications have been received with a short list of candidates drawn up. The shortlisting of applicants will then have to undertake an intensive selection process conducted by the boards or commissions.

Thirdly, the examinations are composed of personal interview, written and oral intelligence tests, psychological tests and other specific job-related or job-oriented questions and examinations. If the applicant reference and examination results meet the desired standard of the Selection Board, then the candidates appear for a complete medical examination.

After selection and appointment has been made, a recruit correctional officer will be put through an intensive and extensive training programme which consists of basic training, orientation/induction, on the job or practical and specialized training programme. This is to help him to gain knowledge and skills in the correctional field before commencing his duties in a correctional institution.

IV. Training System of the Correctional Personnel

Training is a very important and integral part of a dynamic organization. It is seen as an effective means of improving staff performance and increasing productivity. Through training, new skills and professional knowledge are acquired to cope with future work challenges. In addition, training develops better ways of dealing with existing tasks.

The objective of training for correctional officers is to assist and equip them for professional work in the correctional field. It is therefore recognized that training is essential to keep them abreast of the development and to improve their management and supervisory skills.

However, staff training and development in some of the Asia and Pacific countries has been hampered by the lack of effective manpower planning, a permanent training facility, qualified trainers, and training aid and finance. Over the past year, however, every endeavor has been, and continues to be made by these countries to acquire the necessary funds and aid to develop a comprehensive staff training programme in order to improve staff performance towards excellence and professionalism in the service.

(a) Types of Training

In general, the major levels of training

for correctional officers can be divided into two types:

i) Pre-Service/Induction Training

This training is aimed at providing new recruits with skills and knowledge to adapt to their new working environment in order to establish confidence in the performance of their duties. The pre-service/induction training also aims to impart in them a sense of professional ethics, conduct, do's and don'ts, etc. The course content for this training include: basic prison laws; foot-drills; unarmed combat; correctional programs, philosophy, counseling skills and use of firearms, etc. Other practical skills taught in training programme are self-defence, first aid, riot drills, fire drills, and so on.

ii) Refresher and Developmental Training Courses

Refresher courses are organized regularly for correctional staff to update their operational knowledge. It also serves to inspire a renewal of interest in their daily duties.

Developmental training courses for promotional purposes are conducted for selected personnel to give them a thorough grounding in the theoretical aspects of their work. This is to prepare them for a higher level of responsibilities.

Apart from the above training courses, in most participating countries, senior correctional officers are from time to time given opportunities to receive training at institutions of higher learning locally or abroad. These include attachments to correctional institutions in the United Kingdom, Japan, Hong Kong, Australia, etc.

(b) Comparative Training Analysis

Without any doubt, the training aspect of the representative countries has been upgraded over the past years and a great improvement is shown when compared to those days when there was hardly any training of their correctional officers in some countries. However, much more needs to be done.

Though the courses of training and the list of subjects being taught showed some similarities in the countries represented, it is noted that the training system differs from one country to another.

i) Japan

Japan's prison system was established during the Meiji era. The first training centre was established in 1890 with training experts and instructors invited from Europe.

Today, Japan Correctional Bureau has the Training Institute for Correctional Personnel which is located at Fuchu City. It has eight branches across the nation. Two types of training courses are provided for the correctional staff. One is called the Junior Course which is conducted by the Branch Training Institutes for junior officers. The other is the Senior Course which is conducted by the Training Institute at its main office for senior management staff. A mandatory 220 days primary courses are offered to newly recruited correctional officers, both in the juvenile and adult institutions. In practice, only three months are spent at the Training Institute whilst the rest of course duration is on attachment to various correctional institutions to gain firsthand job experience.

Besides these systematic training courses, the correctional institutions offer various kinds of in-service job oriented training programmes, orientation and guidance programmes for recruits, regular workshops, etc. to improve their professional capacity. Such training and workshops are usually conducted during off-duty hours in order to enable all staff to participate.

In Japan, the foundation of the training system has been laid. It is now moving on to develop a comprehensive curriculum for training, building up training resources, and identifying and sending their potential officers for advanced and specialized

training.

ii) Malaysia

In Malaysia, basic courses for newly recruited officers as well as refresher courses for serving correctional officers are conducted regularly in the Prison Training College. Apart from the local training of recruits, Malaysia has been very adept at taking advantage of all the formal and informal, regular and ad hoc channels for training of their correctional officers locally or abroad in various correctional fields, namely:

1) Advanced prison management courses/ seminars in Japan, Australia, United Kingdom and U.S.A.;
2) Study visits to penal institutions in Asian countries, Korea, Hong Kong, etc.;
3) Diploma or degree courses in management services, counseling, psychology, and social science at local university; and
4) Short courses in effective management, personnel management or financial management conducted by National Institute or Public Administration (INTAN).

iii) Singapore

In 1990, the relocation of the Prison Staff Training School marked the beginning of the newly conceptualized training approach in Singapore. Today, training is given special emphasis and priority because the Singapore Prisons Department recognizes its importance:

1) Three-month basic courses for newly recruited officers as well as short developmental courses for serving officers both senior and junior ranks are conducted in the school;
2) Consultants and experts from overseas are engaged for the training of senior officers. These included the reputable British Crown Agents and Britain Prison Service whose college officers conduct Advanced Prisons Management course and Control and Restraint Technique;
3) Institutional in-house training programme conducted in the establishment also serve to complement programmes conducted in the Prison Staff Training School;
4) Senior officers are also given opportunities to pursue overseas training and study visits to Japan, United Kingdom, Hong Kong, U.S.A., Denmark, ASEAN countries, etc. to broaden the intellectual capacities of correctional officers, especially those officers in leadership positions; and
5) Training courses for the correctional staff both senior and junior ranks are also arranged at regular intervals with the Civil Service Institute (CSI), Police Academy, National Productivity Board, Singapore Civil Defence Force, etc. to equip them with the necessary knowledge in other related subject matters.

iv) Mongolia

Mongolia has its own training centre for correctional staff in the Police Academy, but it is not properly established. This is attributed to the limited resources and financial constraints. The general features of staff training in Mongolia can be divided into two levels:

1) The basic correctional training courses are available for junior rank officers before taking up their positing to the various correctional institutions; and
2) The four-year diploma programme is provided for senior management staff like superintendents, supervisors and inspectors of intelligence services.

The course contents for the diploma course rare:

— criminal law of Mongolia (220 hours);
— criminal procedure law of Mongolia (200 hours);
— administrative law of Mongolia (220

hours);
— correctional labour law of Mongolia (180 hours);
— criminology (180 hours);
— criminalistic (180 hours);
— psychology and pedagogy (240 hours);
— special courses/intelligence services, registration of prisoner, etc. (360 hours).

To qualify for entry prospective correctional personnel must be physically and mentally fit, age between 18 and 23 and have successfully passed the entrance examinations and must be a graduate of a recognized secondary school.

v) Papua New Guinea

Papua New Guinea has a Staff Training Centre for the training of recruits and officer cadets. Various courses in correctional work and other related subjects are conducted. These include: treatment of inmates in various categories, security precautions, contingency plans for riot, escape, hostage taking and other general administrative matters. The training centre also conducts other courses such as refresher courses, promotion courses and other specialized courses.

There are several problems in Papua New Guinea correction system especially in personnel management and staff training, namely:

1) The selection of personnel in terms of quantity is not a problem, but the quality required is yet a problem, especially the need for treatment specialists such as psychologists, psychiatrists, qualified educational instructors, etc.
2) Refresher and developmental courses for staff members are also difficult because of the problem of no set curriculum within the training centre and lack of training aids. This is due to lack of expertise in developing more appropriate syllabi.

However, several plans of action have been taken in order to implement:

1) Building up training resources and aids;
2) Identifying and sending more senior officers for overseas courses;
3) Developing a structured in-service training programme; and
4) Assigning staff development officers to assist the superintendent in the selection of staff members for promotion.

vi) Hungary

Hungary has a well designed training system. The entry level requirements are elementary school (class 8) and prior completion of their National Service.

The training system is organized in a way that all entrants are given opportunities to progress up the stages which constructively combine academic and practical training.

There are four stages of progress and only the best can reach the highest, that is to obtain a degree after going through the Correctional Academy and later to be commissioned to an appropriate commissioned officers rank.

Simultaneously, those who bow out at the early stages of the professional levels will occupy base level and middle level positions respectively.

The other entrants are those who possess special qualifications from recognized universities, and their entry into the department is direct.

In Hungary, the training process is as follows:

(a) Pre-service training (80 hours)

The pre-service training is organized every month for new recruits. After completion of this training, they are required to take practical training at correctional institutions for a minimum of 1 month under the close supervision of experienced staff.

(b) Basic training for junior officers

This training course is designed for cor-

rectional officers to undergo 5 months full time or 10 months correspondence course at the special training school. The course contents are: basic work operational procedures (210 hours), prison laws (70 hours), treatment studies (160 hours), language writing skills (20 hours), psychology (40 hours) and field work (100 hours).

(c) Medium level professional school for junior officials

This is a 10-month advanced course for junior officers who want to develop their knowledge and skills in correctional work. The criteria for this course are:

1) must possess a high school certificate; and
2) must complete basic training course for junior officers.

The specialization studies such as security, economy, finance, medical service and criminal registration are available for them to choose. The trainees are also taught various basic and general knowledge of correctional work.

(d) Correctional academy (3 years full time or 4 years correspondence course)

This training course is organized for:

—junior officers who have completed basic training course or medium level professional school; and
— those who posses a high school certificate.

It has absolutely independent curriculum. It includes: penal code, correctional law and criminal registration, correctional psychology and pedagogy, principles of Hungarian correctional law, management studies, computer knowledge, tactical formation training, foreign language, etc.

However, there is a special course for those specialists who have finished civil universities and enter the correctional field in Hungarian correctional administration.

V. Existing Problem in Staff Training

Basically, the training of the correctional staff aims to achieve the following objectives:

(a) To provide the new recruits with adequate information about the structure, operation and mission of the service;
(b) To develop operational skills and the right work attitude in the performance of the job; and
(c) To promote professionalism and excellence in the service.

In line with these objectives, an intensive and well planned training programme is needed for the training of existing staff to develop their knowledge, skills, attitudes and abilities. A good development training programme can also help to enhance the correctional department to retain the competence of correctional officers for the service. In this way, the work force of the service will become strong and the quality of correctional work will also be enhanced.

Apparently, there are still many problem areas in the correctional services of the Asia and Pacific Region in the field of staff training.

One problem in the area of staff training is lack of a standardized training manual and curriculum. Problems are encountered due to the absence of a basic framework for the identification of appropriate new training curriculum. The old training manuals are no longer applicable or appropriate because of the rapid changes that have taken place not only in the correctional department, but also in the whole criminal justice system over the years.

Another is the lack of capable and well trained instructors to implement the training programme. The success of a training course depends on how well the subjects had been effectively imparted by the instructors. In some countries, the trainers often lack the skills in teaching and are

unable to create a conducive atmosphere for the learning process. Ultimately, no learning takes place and the time and resources spent in the programme are wasted.

The financial difficulties of some countries have likewise been pointed out as a problem. For the system to progress further into the field of training development, the government must make available funds. Without financial support, training systems cannot be set and training courses cannot be implemented.

Also the group brought up as another problem area the lack of a proper system of institutional in-house training programme in most countries. Even in Japan, each correctional institution provides various kinds of in-house training to its personnel to improve their professional capacity. But due to the decentralized nature of training, there is no central body to coordinate in-house training, resulting in the lack of uniformity in the training topics being taught to the staff. This type of training is also conducted on an ad hoc basis.

Lastly, the lack of training facilities and aids have been hampering the effective implementation of training progammes in some representative countries.

VI. Suggested Possible Solutions

Having discussed the pressing problems in the areas of staff recruitment and training, the group then went on to look into the most appropriate solutions that could be adopted and implemented.

(a) Recruitment

In many representative countries there exists identical problems of attracting high calibre, suitable and educated personnel for prison jobs. The correctional department has to adopt a good recruitment system with a view to attracting and selecting qualified persons to join its work force. It involves the ability to publicize and maintain a good organizational image, and also the ability to set up an effective staff selection process.

It is also necessary that the government and correctional administrators in various countries consider the following practical solutions for implementation in order to attract and retain suitable employees:

i) Improvement of Correctional Officers Terms and Conditions of Service

The necessity to award a premium to correctional officers who have to work under demanding prison conditions prompted the group to suggest that an attractive salary scheme and a reasonable benefit package be provided with the following features:

— Introduction of multiple rank structures to allow for more promotional opportunities. This is to give competent officers a better opportunity for rapid progression;
— Improvement of correctional officers' salary scales to the same level as that of other uniformed services like police officers;
— Introduction of multiple entry salary points in order to cater for recruitment of candidates with varying educational qualifications; and
— Recommendation of skills allowance for those performing specialized duties and special allowance as a premium to compensate for the special stresses of correctional work.

Also, the giving of training awards and scholarship to dedicated officers in recognition of their achievements in the service can be used as an incentive to uplift the morale in the performance of the job. This is an essential feature for the maintenance of high employee morale, as employees know they have the opportunity to advance upwards through the service.

ii) Enlargement of Public Awareness in Correctional Activities to Enable the Public to Have a Better Understanding of Cor-

rectional Work

In most countries, the job of correctional service is a silent job, that is, its work is not carried out in the public eye and it tends to shy away from publicity and the news media.

In view of this, it is necessary for the correctional service to have a public information unit which can work towards better recruitment of qualified staff.

The group also suggested that the recruitment and selection procedures must have the following components to enhance acquisition ability in the work force:

— A standard prerequisite level of educational qualification;
— A written test for aptitude and intelligence;
— Oral tests of applicants' temperament, personality, expression, emotional stability, etc.;
— The selection panel should consist of members who have a wide experience in correctional work, a psychologist, etc.

It is envisaged that concerted efforts must also be made to improve the department's general relationship with the people in the community for the purpose of promoting good public image of the correctional services by ways of:

— participation in community sporting and social activities by staff members;
— conducting public awareness programmes about prison work through seminars, exhibitions, documentary programmes, newspapers and other forms of mass media. Through these means, the image of a correctional officer doing a meaningful, challenging and promising job is conveyed to the public; and
— allowing the offenders to participate in community work or function through music and drama to increase awareness among members of the public that rehabilitation of offenders is not something that has to be resolved by offenders, their family and correctional authorities only but something the community can help with. Thus, through this community-based rehabilitation programme, it will definitely reflect well on the correctional department and give a true and factual account of the correctional work.

(b) Staff Training

After much discussion of the problems in staff training, the group presented the following solutions:

First, the establishment of a comprehensive training manual and curriculum is a basic training foundation to meet the challenges and the growing needs of correctional work. This would provide the trainees with the opportunity for personal growth, improved work performance and job satisfaction.

Second, the engagement of reputable agencies to conduct a variety of specialized and advanced training courses for senior correctional officers is of paramount importance to provide professional enrichment and prepare them to tackle new roles and responsibilities for coping with the changing demands in the correctional field.

Third, the group acknowledges the importance of the trainers in the effective implementation of a training programme. As far as resources and finance would permit, the training institutes should utilize the services of a considerable number of specialized and well-trained lectures who can effectively teach the trainees. The trainers must have full knowledge in the various methodologies of teaching, in the presentation of the course content and in the maintenance of a conducive atmosphere in which the trainees can learn.

Fourth, there is a recognized need to adopt a systematic approach for the identification of training needs. It is important that trainers from the training institutes conduct training needs surveys and research

to assess and review the training level of the correctional staff, identify areas of weakness and recommend improvements. With the completion of needs identification, the trainers would then draw up for implementation training packages such as an Operations and Security Package, a General Administration Package, a Rehabilitation Package and a Specialist Package.

Fifth, the training of correctional officers outside the country shall be given special emphasis to enable them to acquire wider knowledge relating to correctional policies and future planning and research, and to exchange knowledge with other agencies, regarding policies and procedures. The most important goal of training abroad is exposure to the availability and utilization of modern correctional models and advanced prison management systems currently being used in some countries. These can serve as a model and can also provide officers with substantive grounds for comparison with their own systems.

In recognition of the need for the arrangement of regional and international training programmes, the group unanimously agreed on the following suggestions:

(1) The provision of technical co-operation through training courses, conference and seminars among countries within the same region to share relevant common experiences and information to gain a better understanding of the merits of correctional work;
(2) The exchange of correctional personnel for short periods especially in specialized field of correctional work to conduct training programmes abroad;
(3) The exchange of correctional information in the form of newsletters, periodicals, journals and research papers on various subjects in correctional programmes and activities in the criminal justice system; and
(4) Organization of study and observation visits to promote regional and international cooperation for staff training. The field visits would widen one practical and intellectual knowledge in the field of correctional managements.

In summary, the training of correctional staff is vital and it is felt that it is only by this route that the correctional department will function more efficiently in the discharge of its duties and responsibilities.

VII. Development of Applied Research

Research in the field of criminal justice, and corrections in particular, has been carried out until recently in universities and research institutions. Many valuable insights on various facets of corrections have been obtained through research studies by these institutions. However, there remains a lot to be done and it is gradually being recognized that at least some research should be conducted by the agency itself, i.e., the correctional organizations. Research by outside bodies are useful, but for day-to-day management and operational needs correctional organizations are best placed to conduct research. Furthermore, the availability of a research unit within correctional organizations would immeasurably assist in organizing and administering staff training programmes.

The objectives of research within a correctional organization should be, among others, to:

— conduct studies that would assist in providing philosophical approaches to correctional practice,
— inform the most effective ways of implementing programmes to deal with inmates,
— identify programmes with proven success,
— assist in the development of appropriate recruitment and training of staff,

— monitor the flow of inmates and their characteristics, and
— keep the correctional administrators informed of issues that require their attention.

It follows, therefore, that the research unit at any correctional organization should be able to conduct various types of research. However, instead of establishing a large research unit within the organization, it may be productive to set up a small unit of qualified researchers, and to use experts from local universities or institutes as consultants. So long as the organization can identify and crystallize its requirements for research, the actual conduct of the research can be facilitated.

A comparative survey of participants in the 94th international programme indicates that most countries have reasonable sound statistical units, but great lack of research facilities. Some countries lack adequate resources to fund research and some lack qualified researchers.

The following describes in brief the state of research in correctional administration:

i) Singapore

The departments research and statistics unit (RUS) is responsible for the collection of all statistics concerning the prison population and rehabilitation programme.

Some of the research programmes undertaken include profile studies of prisoners, projections on prison population, studies on recidivism, and staff training. This is basically to improve existing policies and procedures comparative to the current development.

ii) Hungary

In Hungary, the department of research and international relations is directly under the director-general.

Some of their research topic include:

— different categories of offenders;
— influence of correctional institutions;
— treatment of offenders, security system of corrections, resocialization of young offenders;
— economic conditions of corrections enterprises;
— organizational and economic conditions of prisoners work, modernization of correctional organization, development of correctional law, social statutes and position of correctional staff.

The information is managed under discrete confidentiality.

iii) Japan

Japan has one Research and Training Institute under the Ministry of Justice. The Institute is divided into three departments: criminological research department, training department and the United Nations training cooperation department.

The criminological research department is responsible for the implementation of research projects on the criminal justice administration, and for the studies concerning the solution of the crime trends in recent years, and also makes recommendations for appropriate measures to forestall the development of such crime trends.

Matters of comparative research include:

— actual situation of prisoners and appropriate treatment;
— rehabilitation and aftercare programmers; and
— comparative study of criminal justice.

iv) Mongolia

The prisons department does not have a research unit of its own but from time to time utilizes that of the Police Academy.

Two researchers are currently conducting research into:

— recidivism;
— rehabilitation and the overall administration of correctional institutions in the

country.

v) Papua New Guinea (PNG)

PNG correctional service has a well organized statistical division that gathers and stores information to be utilized for operational purposes. Plans are underway to establish one research unit.

However, from time to time as and when necessary, the national applied research institute or other institutes with similar backgrounds are hired at a minimal cost to conduct research on specific areas of concern.

Major research conducted so far includes:

— inquiry into the overall security measures and staff accommodation by Australian Aid Bureau (AIDAB);
— departmental policy research by members of correctional services and national institute of applied research.

The criminal justice system in this era is doing more research now than before, due to the fact that the trend of crime and criminality is increasing and is very complex in nature.

This enhances the ability of members of the criminal justice system to conduct researches into finding appropriate measures to appropriately counter the uprisings.

Correctional organizations, in that endeavor, find as their ultimate goal manpower resource development to provide the institution with its security and rehabilitation needs.

VIII. Conclusion

Although prisoners have a long background history, the criminologists and penologists and other researchers of today are still searching to find favourable concepts and means to substantially neutralize the criminal intensity of an offender and control the general crime trends through well developed and coordinated staff development and rehabilitation programmes in the prisons and other institutions.

These are the ultimate objectives of a contemporary prison system.

We have acknowledged that achievement of these aims very much depends on the availability of high calibre manpower resources developed professionally and skillfully to undertake the highly demanded aspirations of the departments.

Discrepancies and problems in the areas of recruitment, selection appointments, training (programmes and facilities) have been identified as setbacks to development.

Similarly we have also acknowledged the problems in attracting and recruiting suitable candidates. For instance:

— difficulties in recruiting high calibre staff due to the poor service conditions and remunerations offered.
— lack of proper facilities and qualified trainers.
— low budget priorities by the government and under-budget appropriations.
— negative public views and not being in the face of the public and society at large.

These problems are highly sensational in nature and solutions cannot be easily established. Nevertheless, the authorities must find ways to overcome them and one such way is to strategically plan and lure support from the appropriate financiers, prestigious corporations and government authorities and the public at large (communities).

Possible approaches are:

— public display or open-day exhibitions of prison products.
— organize visitation to goals by government and private authorities and other prestigious members of the society to gain firsthand knowledge and insight of the prisons.
— public seminars and conventions and opening up dialogue and public partic-

ipation in the forming of institutional programmes.
— prison officials equally participating in areas of sports clubs, charity organizations, etc.

Precisely, the intention is to have those in high places and the public fully educated on the imminent situations existing in the prisons and have them equally participated in rendering and improving the image and position of the prison organizations in line with the other segments of the criminal justice system.

In spite of these circumstances the matter of the fact in reference to the theme is that staff training and research development under any state prisons must continue to give high priority to enhance effective staff training and personnel development through:

— standardized recruitment, selection, appointment and training procedures and processing through a board consisting of psychologists, criminologists and prison experts and others.
— training programmes and curriculum designed to be job oriented and tuned to necessary changes and developments taking place.

Finally, but not the least leave-way must be made available for performances to be assessed on a regular basis through establishing research divisions or utilizing the services available in outside intra-governmental or private organizations.

Respectively it is undoubtedly accepted that, regardless of how far an organization may have progressed and to what extent they have developed staff training and research development have always remained an important tool to be utilized as and when necessary.