



THE 25TH ANNIVERSARY SEMINAR OF THE UNITED NATIONS STANDARD MINIMUM RULES FOR NON-CUSTODIAL MEASURES

REPORT OF THE SEMINAR

From 7 to 9 September 2015, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) hosted the 25th Anniversary Seminar of the United Nations Standard Minimum Rules for Non-Custodial Measures (hereinafter, the “Seminar”). This report summarizes the proceedings and general discussion held throughout the Seminar. (The list of participants is provided in Annex 1.)

Proceedings

1. Director YAMASHITA Terutoshi of UNAFEI opened the Seminar by delivering a welcome address, noting UNAFEI’s role in drafting the Tokyo Rules and UNAFEI’s continued efforts to promote them through its international training courses and technical assistance. (The text of his comments is provided in Annex 2.)
2. Mr OKOCHI Akihiro, Director of the International Safety and Security Cooperation Division of the Ministry of Foreign Affairs of Japan, delivered welcome remarks highlighting Japan’s commitment to promoting international cooperation not only in regard to non-custodial measures but also in areas such as terrorism, illicit drug trafficking, trafficking in persons and cybercrime. (The text of his comments is provided in Annex 3.)
3. Mr HINO Masaharu, Chairman of the Board of Directors of the Asia Crime Prevention Foundation, delivered congratulatory remarks on the 25-year history of the Tokyo Rules. In reflecting on his five-year tenure as the Director of UNAFEI, he outlined the work undertaken at UNAFEI to facilitate the preparation of the first three drafts of the Tokyo Rules, the discussion at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, 1990), and the subsequent approval of the Tokyo Rules by the General Assembly. (The text of his comments is provided in Annex 4.)
4. Following the welcome remarks, presentations were made by: (1) Mr Sven Pfeiffer, Crime Prevention and Criminal Justice Officer, Justice Section of the United Nations Office on Drugs and Crime (UNODC) on the “Key Elements of the Tokyo Rules and their Implementation in Practice”; (2) Professor MINOURA Satoshi of UNAFEI on “The Implementation of the Tokyo Rules in the Asian Region”; (3) Professor AKASHI Fumiko of UNAFEI on “Community-based Treatment and Non-custodial Measures in Asian Countries”; and (4) Professor HIROSE Yusuke of UNAFEI on “Non-custodial Measures in Japan — A Judge’s Perspective”.
5. On 8 September 2015, presentations were made by: (1) Mr IMAFUKU Shoji, Rehabilitation Bureau of the Ministry of Justice of Japan, on the “Implementation of Non-custodial Measures in Japan and Future Perspectives”; (2) Dr Kittipong Kittayarak,

Executive Director of the Thailand Institute of Justice, on “Non-custodial Measures in Thailand, Including for Vulnerable Groups”; (3) Dr Matti Joutsen, Director of the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) on “International Patterns in the Use of Community-based Sanctions”; and Mr Gary Hill, Director of Staff Training of the International Corrections and Prisons Association (ICPA) and Scientific Coordinator of the International Scientific and Professional Advisory Council (ISPAC), and Mr MATSUTOMO Ryo, Certified Social Worker at the Tokyo District Public Prosecutors Office, delivered presentations addressing multiagency cooperation and public participation in non-custodial measures. The presentations were followed by a thematic discussion on multiagency cooperation moderated by Professor Minoura.

6. On 9 September 2015, presentations were made by: (1) Dr WU Zongxian, Professor and Director of the Institute of Crime and Corrections, China-US Center for Forensic Psychology, College for Criminal Law Science of Beijing Normal University (CCLS) on “Chinese Practices Related to The Tokyo Rules: New Developments”; and (2) Mr Pfeiffer of the UNODC on “Challenges of the Implementation of the Tokyo Rules and Future Perspectives”. The presentations stimulated a thematic discussion, which was moderated by Professor Minoura of UNAFEI. The discussion was followed by the presentation of the report of the Seminar by Mr Thomas L. Schmid of UNAFEI.

General Discussion

7. Mr Pfeiffer (UNODC) provided an overview of the implementation and key principles of the Tokyo Rules, emphasizing the need to focus efforts on professional training and dissemination. The aims of the Tokyo Rules are to promote non-custodial measures in order to avoid unnecessary imprisonment, enhance social reintegration and reduce recidivism, and promote community involvement and human rights in the administration of justice. Key principles of the Rules include non-discrimination, minimum intervention, the presumption of innocence, and proportionality. Mr Pfeiffer provided examples of successful application of the Tokyo Rules in countries around the world at the different stages of the criminal justice process. Examples from the pre-trial stage included the introduction of pre-charge warnings in New Zealand, conditional and unconditional discharge in Germany, non-monetary bail in Costa Rica, and police bail in England and Wales. In Malawi, increased access to counsel has decreased pre-trial detention by almost 20% over seven years. In Ghana, the “Justice for All” programme provides judicial review of pre-trial detention, resulting in a 10 percent reduction in the number of detainees. Successful examples from the trial and sentencing stage included the use of community service in Zimbabwe and Sweden, and the use of volunteer probation officers in Kenya. The private sector also had a role to play, for example in electronic monitoring in England and Wales. As for the post-sentencing stage, Mr Pfeiffer referred to the experience with individual pardons in El Salvador, the somewhat mixed experiences with collective pardons in Italy, and early release programmes in Uruguay, Kazakhstan and Nigeria. Mr Pfeiffer further provided examples of non-custodial measures for offenders with specific needs, such as the consideration in Costa Rica of gender-specific mitigating factors, two diversion programmes in the United States of America addressing specific needs of women, fines and community service for drug offenders in Guyana, and the use of pardons and more proportionate sentences for drug offenders in Ecuador. Mr Pfeiffer concluded by noting that although implementation of the Tokyo Rules varies worldwide, non-custodial measures present positive alternatives to imprisonment. Countries should continue to work towards implementing coherent and comprehensive penal policies,

including legislative reform, monitoring and evaluation, improving infrastructure and resource allocation, and increased training and public awareness of the use of non-custodial measures.

8. During the discussion, a question was raised regarding the role of the UNODC in enhancing uniformity of the implementation of rules. It was suggested that uniformity may not be the best solution, since practice must take each country's unique circumstances into account. Bilateral treaties are an option for facilitating international cooperation in the implementation of non-custodial measures on a country-by-country basis, and it was noted that the UNODC has been very involved in promoting treaties that would allow offenders sentenced in one country to serve their sentence in their home country. In addition, the model treaty on extradition, as well as the United Nations Convention on Transnational Organized Crime and the United Nations Convention on Corruption, may be applied to suspects as well as sentenced offenders. Scarcity of financial resources presents a practical challenge to invoking these procedures for the transfer of persons sentenced to non-custodial sanctions. Another issue is that these procedures, in practice, apply primarily to serious offences, for which non-custodial measures are not often applied. In part, this is because the formal process for mutual legal assistance is typically a costly and lengthy procedure. However, this need not be the case, and it was reported that the process is typically more efficient in Europe. Regarding the importance of public support for non-custodial measures, Rule 18 of the Tokyo Rules recognizes the need for public support to achieve full implementation of non-custodial measures. In its efforts to disseminate the Rules, the UNODC collaborates with practitioners from all sectors of the criminal justice system to design assistance programmes for the public. In response to a question regarding assistance in the African region, it was noted that for example UNAFRI and the Raoul Wallenberg Institute are currently providing assistance to countries in Africa on request.
9. Professor MINOURA Satoshi (UNAFEI) presented the results of his survey that addressed the implementation of the Tokyo Rules in the Asian region. The survey focused on all ten ASEAN countries plus China, Japan and South Korea. After analysing the results of the survey, it was found that the status of non-custodial measures in the countries surveyed could be classified into three categories: (1) countries with well-implemented legal frameworks (i.e., Japan, the Philippines, Singapore, South Korea and Thailand); (2) countries that allow many measures but lack effective implementation (i.e., Brunei, Indonesia, Malaysia, Myanmar, and Vietnam); and (3) countries with few measures implemented (i.e., Cambodia and Laos). Professor Minoura cited research suggesting that countries with more social fairness, as measured by the "Gini coefficient", tended to have lower incarceration rates, as did countries that spent more on health and medical services. Based on the survey results and other data, Professor Minoura concluded that countries in the ASEAN+3 region have generally experienced similar trends. The statistics suggested that social welfare services have a positive and practical influence on criminal justice: paraphrasing the words of Franz von Liszt, "the best penal policy is an effective social policy". Thus, instead of focusing on imprisonment, it is important to consider how social welfare services could be used more effectively in crime prevention and the social reintegration of offenders. At the same time, criminal justice agencies are responsible for public safety. Therefore, it is important that offenders are appropriately placed either in prisons or in society based on their needs and the risks of recidivism. Professor Minoura also reviewed several non-custodial measures implemented in the region, including Thailand's compulsory drug treatment programme

and South Korea's use of electronic monitoring. Referring to the situation in Japan, he noted that electronic monitoring is not used and has been criticized on grounds of a possible invasion of privacy. Nonetheless, he suggested that electronic monitoring in conjunction with professional and volunteer supervision might improve non-custodial treatment in Japan. Finally, he concluded that the "welfare model" will be one of the solutions for promoting the non-custodial measures referred to in the Tokyo Rules in Asian countries.

10. Professor AKASHI Fumiko (UNAFEI) introduced UNAFEI's activities to promote the Tokyo Rules by focusing on public participation in community corrections. In January 2015, the 159th International Senior Seminar was held at UNAFEI, during which the participants agreed that community-based treatment is important not only to address the issue of prison overcrowding but also to reduce recidivism. In that light, community-based treatment is not a "soft" option, but a "smart" option. UNAFEI has also hosted the Volunteer Probation Officer (VPO) Seminar 47 times since 1985, during which Japanese VPOs exchange opinions on offender treatment with participants at UNAFEI international training courses. UNAFEI also has a long history of providing technical assistance to requesting countries. From 2003 to 2010, UNAFEI assisted the Philippines in the development of its Volunteer Probation Aide (VPA) System, increasing the number of VPAs from 78 in 2002 to 11,851 in 2012. Also, from 1989 to 2013, UNAFEI provided assistance to Kenya in the introduction of volunteer probation officers into Kenya's juvenile justice system. In July 2014, UNAFEI invited probation officers and volunteer probation officers to attend the Asia Volunteer Probation Officers Meeting, which was the first international meeting of volunteer probation officers. At the meeting, VPOs and officials responsible for community-based treatment in China, Kenya, the Philippines, Singapore, South Korea, Thailand and Japan shared their countries' best practices and challenges regarding topics such as recruitment, training and development of VPOs, securing the safety of VPOs, and reducing stress and financial burdens of VPOs. The meeting culminated in the adoption of the Tokyo Declaration, confirming the key roles played by VPOs through their personal interactions and mobilization of community resources, and resolving to enhance international networking. The Seminar for Promoting Community-based Treatment in the ASEAN Region was jointly hosted by the Thailand Department of Probation, the Thailand Institute of Justice, the Japan International Cooperation Agency and UNAFEI. The participants at the seminar noted that all the countries represented at the Seminar either have or are developing community-based treatment strategies. Further, the Seminar also confirmed the need for continuous training and professional networking in the field of community corrections.
11. During the discussion, the issue of compulsory non-custodial treatment was raised, particularly in the context of drug treatment programmes and electronic monitoring. The UNODC encourages voluntary participation in drug treatment programmes, although several countries reported that participation is required by law. Regarding electronic monitoring, some concerns were raised regarding the dignity of the person, due to the stigma associated with monitoring devices and the intrusion upon the private lives of offenders. However, others felt that current devices are less stigmatizing because they are relatively inconspicuous. Moreover, personal privacy is still respected because the information obtained is merely location data. The goal is to use the least restrictive means possible to monitor offenders while maintaining community safety. It was also stated that electronic monitoring can be used to monitor compliance with restraining orders; in other cases, it is an alternative to imprisonment. Thus, it is important to consider the use of

electronic monitoring case by case.

12. Professor HIROSE Yusuke (UNAFEI) presented on the implementation of the Tokyo Rules in Japan from the perspective of the judiciary. At the stage before trial, Japan utilizes police discharge, summary order procedure and suspended prosecution as diversion measures. In Japan, 95 percent of cases cleared are referred to prosecutors, but only 30 percent of those cases are actually prosecuted. Suspension of prosecution does not require court approval, and in reaching their decision, prosecutors consider the gravity of the offence and facts and circumstances of the suspect and the crime. Under Japan's summary order procedure there is no public trial, and judges analyse documentary evidence in chambers. Imprisonment cannot be imposed as a sentence in such cases, and the consent of the accused is necessary to invoke the procedure. In 2013, 78 percent of all cases were disposed using this procedure. Suspension of execution of sentence promotes social reintegration and avoids the adverse effects of imprisonment. It can be imposed with or without probation, and applies to imprisonment terms up to three years; the suspension period is one to five years. Under certain conditions, sentences can be suspended for a subsequent offence, provided that the offender is also placed on probation. In 2013, 58 percent of all imprisonment sentences were suspended. Since 2008, the number of sentences requiring probation has increased due to new legislation encouraging rehabilitation, the implementation of special treatment programmes and public participation in Japan's newly implemented lay judge (*saiban-in*) system. Professor Hirose concluded by acknowledging the need for judges to understand key concepts of rehabilitation, as well as the need for cooperation between governmental agencies.
13. During the discussion, an issue was raised regarding the delicate balance between the use of suspension of prosecution on the one hand and the rights of victims and the public to see justice carried out on the other. Questions also arose about the relationship between diversion programmes and recidivism rates. Although there are no formal statistics regarding the recidivism rates for suspended prosecution,¹ it was explained that Japanese prosecutors often meet with victims of sexual assault, bodily injury and domestic violence. Victims and the offenders sometimes resolve their disputes outside of court through financial settlements or other arrangements, and the prosecutors do their best to confirm and comply with the victims' wishes. In addition, if there is dissatisfaction with a non-prosecution decision, a review panel of 11 lay people can review the decision. If it is found that the decision was improper, then the prosecution must reopen the case. The discussion also addressed Japan's increased use of probation since the adoption of the lay judge (*saiban-in*) system, and the question arose whether the Japanese public had more faith in custodial sentences than did judges. In fact, the answer depends on the type of crime; lay judges have a tendency to lean toward probation because there is a feeling that "probation is better than nothing", meaning that government will be involved in supervising the offender. Thus there is a tendency for the lay judge system to suspend sentence with probation, as opposed to without.
14. Mr IMAFUKU Shoji (Ministry of Justice of Japan) presented on the implementation of non-custodial measures in Japan, focusing on community-based treatment of adults. Although the Japanese system does not rely significantly on custodial measures, the rate

¹ For information on Japanese criminal justice statistics, interested parties are encouraged to consult Japan's White Paper on Crime, published annually by the Research and Training Institute of the Ministry of Justice.

of re-imprisoned inmates has increased to 58.9 percent. Many of these offenders have no home to return to upon release, and so providing offenders with support that facilitates their social reintegration is the critical point of the government's policy to prevent recidivism. Japanese probation is founded upon three pillars: (1) offender treatment programmes, including cognitive-behavioural therapy and community service, (2) guidance for offenders through collaboration between professional probation officers and volunteer probation officers, and (3) rehabilitation assistance utilizing a holistic approach including multi-agency, private sector, and community collaboration. This approach to rehabilitation relies on the support of volunteer probation officers, who provide personal counselling to help offenders build a sense of self-efficacy. Further, governmental agencies and private employers collaborate to provide job and housing assistance (for example by relying on Japan's 14,488 registered cooperative employers to provide assistance in obtaining employment), as well as providing social and medical services to the elderly and disabled. Community-based treatment will also be a centrepiece of Japan's newly implemented "partial suspension of execution of sentence". Under this system, offenders, in particular drug abusers, will serve a shorter custodial sentence followed by a probation period served in the community. This system removes drug abusers from the cycle of drug use during the custodial phase, and then reintegrates them into the community, providing drug treatment and supervision during the probation period. Regarding future challenges, in addition to continually improving rehabilitation practices, Japan is considering implementing pre-sentence investigations in order to ensure that appropriate offenders receive probation.

15. During the discussion, it was noted that drug and alcohol abuse is a disease, and the question of how Japan handles addiction among correctional and rehabilitation staff was raised. The Ministry of Justice of Japan has a policy of dismissing any employees who use stimulant drugs. The response to alcohol dependency depends on the seriousness of the problem. However, there is a process for providing treatment to staff.
16. Dr Kittayarak (Thailand Institute of Justice) presented on non-custodial measures in Thailand, noting the high rate of incarceration in Thailand and in many countries in the ASEAN region. In addition to applying non-custodial measures in the pre-sentencing and sentencing phases, Thailand utilizes collective pardons as a measure to reduce prison population. In 1986, Thailand established its volunteer probation officer programme to assist probation officers and to bridge the gap between the needs of the local community and offenders. Thailand's 14,696 VPOs supervise offenders in the community and draw on community resources to support offender reintegration. Recruiting of active and motivated VPOs is one of the continuing challenges facing the programme. Restorative justice is another measure that has been implemented to increase diversion and place greater emphasis on victims through Family Community Group Conferencing. Thailand faces significant prison overcrowding due to the rise in stimulant drug offences, and it was reported that 80 percent of female inmates and 70 percent of male inmates are incarcerated for drug offences. In response, Thailand has shifted its emphasis to crime prevention and the diversion of drug offenders to treatment programmes. The Narcotics Addict Rehabilitation Act of 2002 relies on the discretion of arresting officers to determine whether drug offenders are suitable for diversion programmes. Although the Act authorizes detention for 15 to 45 days for the assessment of drug offenders, 70 percent are released on bail. The Community Justice Network, established in 2003, is a new paradigm to empower the community to work as a partner with the criminal justice system. The Network comprises more than 800 community justice centres with 124,668

community justice members. Community justice members receive complaints, report crimes, provide counselling to victims and supervise probationers, among many other activities. In line with the Bangkok Rules, Thailand also promotes non-custodial measures that focus on the unique needs and characteristics of the female offenders, such as the tendency for their offences to be non-violent, their roles as primary caretakers, history of victimization, and so on. To address these characteristics, the Criminal Procedure Code provides alternatives to imprisonment, such as early release and confinement outside of prisons for pregnant or nursing mothers. Moreover, social investigation reports prepared by probation officers have been used to assist courts in imposing gender-sensitive sentences. Dr Kittayarak concluded that non-custodial measures are not merely alternatives to imprisonment but they are better sentencing options. Enhancement of these measures requires engagement of the community, continued training and research on the effectiveness of such measures.

17. During the discussion, the topics addressed included Thailand's compulsory drug treatment programme, measures to address the spread of HIV in prisons and efforts to suppress the supply of drugs. It was explained that the compulsory treatment programme in Thailand was intended to encourage drug addicts to seek voluntary treatment. As there are 100,000 drug addicts involved in the programme, confinement during the 45 day assessment period has been criticized, despite that fact that bail is granted in 70 percent of the cases. Determining whether assessment is necessary depends on the nature of the drug addiction, and guidelines have been developed to facilitate the assessment. It is hoped that the guidelines will reduce the need for detention to conduct the assessment. Punishing drug traffickers and being more lenient towards mere possession of drugs might be the best policy. Regarding the role of the police in the compulsory treatment programme, it was emphasized that the police encourage offenders to pursue voluntary treatment programmes; however, the police are not focusing on medical care. Hospitals and clinics should be encouraged to have open-door policies, which it is hoped will reduce the need for compulsory treatment. Regarding efforts to curtail the spread of HIV, offenders with HIV or other major diseases are prioritized for collective pardons because the institutional setting may not be the most appropriate for their medical treatment. Regarding efforts to suppress the supply of drugs, it was explained that the Thai government is taking efforts to address supply; however, the border with Myanmar remains porous. Thailand has multi-lateral agreements with neighbouring counties to combat drug trafficking and is taking measures to suppress precursors. The government is also working with impoverished regions through "alternative development" to encourage communities to cultivate coffee and other legal crops instead of drugs.
18. Dr Matti Joutsen (HEUNI) presented on international patterns in the use of community-based sanctions. Specifically, his presentation addressed the sanctions of probation, community service, electronic monitoring, monetary payments and restorative sanctions. Historically, restorative justice was the traditional approach to criminal justice until states began imposing sanctions of a retributive nature. Modern systems are blending the aims of general prevention with rehabilitation. Imprisonment is a relatively new sanction taken into wider use during the 1800s. In light of this evolution, it is worth considering whether non-custodial measures, as opposed to imprisonment, should be the cornerstone of the penal system. Data on imprisonment demonstrates that there are global patterns in imprisonment. In Africa, for example, imprisonment rates are generally low despite increases in the crime rates. These trends challenge the view that high crime rates necessarily lead to high incarceration rates. Illustrative of the trend toward non-custodial

sanctions, the role of probation is expanding to include citizen volunteers and the private sector. Community service orders were developed in the 1970s and are being rapidly adopted in many countries, as is the newer trend of electronic monitoring. Moreover, restorative justice is returning as a dispute resolution mechanism that applies to a broad range of offences and at all stages of the criminal justice process. In addition to these measures, monetary sanctions take many forms, including fines, *diyya* (financial settlements under Islamic law), personal reparation, confiscation, compensation orders and day-fines. In Germany, fines have become the most common criminal sanction, filling the gap left by the steady decline of imprisonment from over 75 percent of all sanctions in 1862 to below 10 percent in 2012. Dr Joutsen considered whether changes in criminality, changes in views on punishment, and changes in availability of non-custodial sanctions could explain increases or decreases in the use of imprisonment and of non-custodial sanctions. He concluded that there is no clear correlation between the use of any specific sanction and factors such as the amount or seriousness of the crime, attitudes towards crime, or the availability of sanctions. As a result, the extent to which we use imprisonment is not predetermined, and it is necessary to reconsider the view that imprisonment is inevitable. In sum, the theoretical underpinnings of punishment through the criminal justice system, including retribution, deterrence and rehabilitation, can in many cases be better achieved through non-custodial sanctions.

19. Mr Gary Hill (ICPA & ISPAC) presented on multiagency cooperation and public involvement in non-custodial measures. Studies have shown that increasing incarceration has little impact on reducing crime rates; however, there are direct links between crime and factors such as employment, poverty and education. Practitioners can use simple measures to facilitate non-custodial measures, such as providing detainees with the name of a bail bondsman or helping them access legal services, but the scope of these measures increases by relying on volunteers, NGOs, non-judicial agencies and other community resources. Mr Hill provided a striking example of how coordinated efforts can mobilize public participation and achieve collaborative solutions. In Isfahan Province in Iran, a commitment was made to reduce the prison population in response to the spread of HIV within the prison. An executive committee was established to set policy and to plan. The strategy was further coordinated by arranging meetings with the prosecution, the judiciary, politicians, and provincial boards. Measures to secure public support included coordination with victims' groups to obtain support for the use of conditional release and pardons, holding parties and fundraisers to provide funds to support released prisoners, a one-day conference and making a short film on the reduction of the use of incarceration. As a result of these efforts, the inmate population was decreased by 11.5 percent within the first five months.
20. Mr MATSUTOMO Ryo, Social Welfare Advisor at the Tokyo District Public Prosecutors Office, presented on support for the rehabilitation of suspects and the accused. Because those who are incarcerated typically require social welfare support, the rehabilitation process must begin as soon as possible. This support is known as "rehabilitation support before entry". Coordination of social welfare services and rehabilitation support are key components of support before entry. Such methods in Japan include the Nagasaki Model and the New Nagasaki Model, which coordinate social welfare services during the trial and prosecution phases, respectively. In Japan, a number of agencies and organizations, such as public prosecutors offices, law firms and bar associations, collaborate with certified social workers. The Tokyo District Public Prosecutors Office began social reintegration support in January 2013. Social workers are placed in prosecutors' offices as

part-time workers who handle individual cases and advise on and coordinate social welfare services. Support is provided for cases of suspended prosecution, cases where fines are imposed, and cases where sentences are suspended. The programme addresses minor offences such as theft, fraud, trespass, etc., so it is expected that social welfare support will have an impact. Many of these offenders are homeless, and they do not have stable jobs. Others have mental disabilities and require medical support. Mr Matsutomo stressed the importance of relying on family members to provide rehabilitation support, as well as pursuing informal support when formal support is unavailable. Future challenges include the development of social resources, long-term follow-up activities, improving the skills of specialists, establishing systems for collaboration with social workers and expanding citizen understanding and participation in the programme.

21. A panel discussion on multiagency cooperation was moderated by Professor Minoura of UNAFEI, who suggested that sectionalism and the lack of leadership are significant challenges to the success of multiagency cooperation. Mr Hill, Dr Joutsen and Mr Matsutomo were asked for their opinions on overcoming these challenges. Mr Hill stated that solutions involve training, management, oversight and education. Dr Joutsen suggested emphasizing “coordination” by showing each agency how it will benefit from collaboration and making sure that each agency understands its role in achieving common goals. Mr Matsutomo stated that the multiagency approach is difficult in Japan because agencies operate under the “silo” mentality. He stressed the importance of identifying a clear strategy, tapping leaders and developing an institutional desire for coordination.
22. Following the panel, an open discussion session addressed restorative justice, electronic monitoring and strategies for improving public perception of non-custodial measures. A noteworthy example of restorative justice is its application to manslaughter cases by courts in Kenya. In such cases, victim impact statements are included in pre-sentence investigation reports, as well as any resolution of the case that may have been negotiated through village elders. The application of restorative justice to cases of violence against women was discussed. There was an expression of concern over the use of mediation in such cases, in which an abuser is presumed to exert physical or mental control over the abused. The power differential between the abuser and the abused was acknowledged, as was the fact mediation may often be inappropriate. However, there were also concerns that a prohibition against mediation of such cases would be too absolute. It was also stressed that informed consent must be a prerequisite to mediation. Another issue discussed was strategies for encouraging victim participation in restorative justice programmes. It was stressed that consent by all parties is fundamental to restorative justice. One of the most important things for victims is to understand why the crime happened. They also want to be compensated for their losses, as well as receive some form of recognition.
23. On the issue of electronic monitoring, the discussion considered whether such monitoring had any deterrent effect. It was stated that electronic monitoring is widely used in China, but there are no statistics establishing any deterrent effect, and practical experience suggests that monitoring is unlikely to have such effect. Although monitoring can locate an offender, it does not reveal what the offender is doing. It was suggested that the purpose of electronic monitoring is not to reduce crime but rather to be used as a tool for supervision. The positive effect of monitoring is that it frees up the time for probation officers to perform other valuable rehabilitation services. It was also stated that electronic monitoring is usually successful, although some will commit drug offences or abuse

alcohol. On the other hand, an offender's criminal behaviour may continue also while in prison.

24. The session closed with a discussion on strategies for improving public perception of non-custodial measures. Dr Kittayarak stated that alternative measures are not popular among the Thai public due to concerns about public safety, and he stressed the need to find ways to persuade the public that non-custodial measures do not mean releasing dangerous offenders into the community. Mr Hill stated that we should not "sell" alternatives to imprisonment as a solution to overcrowding, but rather as the appropriate sentence to protect the public, punish the crime, help the victim and rehabilitate the offender. Community supervision is used because the offender is not dangerous, and prison resources are reserved for dangerous offenders. Reducing the prison population should be accomplished through legislation and the principle of the least restrictive means. Dr Joutsen stated that it is important for the public, prosecutors, judges, the media, and so on to understand that non-custodial treatment involves programmes to meet offenders' specific needs and that prisons can make offenders worse.
25. Dr Wu (CCLS) presented on China's experience related to the implementation of non-custodial measures. Since the 1980s, Chinese scholars have been studying community corrections, with emphasis on the need to reduce the prison population. Legislation establishing community corrections was formally adopted in 2011. Under current law, offender supervision and community corrections are administered by the people's procuratorates. Four categories of offenders are eligible for community corrections: (1) those sentenced to public surveillance, (2) those placed on probation, (3) those granted parole, and (4) those allowed to serve their sentences outside prisons. Probation is the most commonly used measure, with 86 percent of non-custodial sentences resulting in probation. Dr Wu elaborated on the key components of China's community corrections system, such as offender supervision and administration, providing education and rehabilitative treatment, and providing practical help and assistance to reintegrate offenders into society. Recent innovations in community corrections include incorporating enforcement of penalties into the framework of community corrections, the implementation of social investigation of offenders during the pre-trial stage, and the utilization of volunteers in community corrections. Other innovations include paid service to community organizations, the use of probation orders, and the creation of community corrections teams composed of government employees, social workers, volunteers and offenders' families. These teams promote the efficiency of administration and assistance efforts. Finally, Dr Wu introduced the numerous efforts undertaken by CCLS to research and promote community corrections.
26. During the discussion, training for judges and prosecutors on the implementation of non-custodial measures was addressed, as well as efforts to increase public awareness. It was acknowledged that training judges and prosecutors and informing the public are very important, and the Chinese Ministry of Justice has issued notices on implementation of pilot projects in community corrections since 2003. At the same time, local governments have issued their own implementation documents identifying specific measures. Other dissemination, training and public awareness measures include seminars, professional journals, reports and evaluations conducted by the media, and television dramas. Regarding the recently adopted community corrections law, specific procedures on community corrections are prescribed, including compulsory measures, and efforts were taken to ensure that due process is strictly observed. To encourage offender rehabilitation,

the law provides rewards for success, as well as sanctions for non-compliance. The law also contains measures designed to encourage public participation in community corrections.

27. Mr Pfeiffer (UNODC) addressed the challenges facing the implementation of the Tokyo Rules. He recalled the advantages of non-custodial measures over incarceration, stating that they provide a more adapted response to crime, avoid the adverse effects of incarceration, reduce prison overcrowding and the cost of sentence execution, and are more effective at offender rehabilitation. Despite these advantages, non-custodial measures are underutilized for several reasons including a lack of appropriate legislation and implementation, lack of administrative structures and resources, lack of interagency cooperation, and lack of support among criminal justice officials and the public. Mr Pfeiffer also identified challenges in the use of non-custodial measures, such as balancing the rights and interests of victims and offenders, concerns over “net-widening”, and insufficient attention to particular categories of offenders. For example, non-custodial measures must strive for gender sensitivity and should be used to mitigate the disproportionate stigmatization of female prisoners. Likewise, non-violent drug offenders account for a large percentage of prisoners and many of them have specific treatment needs. As the criminal justice community continues to evaluate non-custodial measures, it is also necessary to ensure that they are part of coherent and comprehensive criminal policies, which may include such important aspects as decriminalization and depenalization, sentencing reform (including mandatory minimums and life sentences), access to legal aid, offender treatment, the promotion of social reintegration and so on. Setting the stage for the thematic discussion, Mr Pfeiffer identified several issues that may warrant further action at the UN level: (1) focusing on global overuse of pre-trial detention; (2) closing the global data gap by improving the collection of data on non-custodial measures; (3) the need for international standards on minor drug offences; and (4) the need for UN guidance on probation, electronic monitoring or other measures.
28. During the thematic discussion, the participants addressed a wide range of issues, including the global data gap, non-custodial measures for women, pre-trial detention, and decarceration. Further, the need for and desirability of UN guidance on probation, electronic monitoring, and minor drug offences were discussed. Regarding the global data gap, the insufficiency of data on non-custodial measures was acknowledged, and it was suggested that the UN Programme Network Institutes (PNI) may be utilized to help in closing the global data gap. It was noted that the research-oriented role of the PNI is well suited for the collection and objective analysis of such statistics. Regarding women offenders, there is a need to identify best non-custodial practices. It was noted that the UNODC has a guidance note on non-custodial treatment for women. The issue of pre-trial detention was identified as a critical area for non-custodial measures. It was observed that pre-trial detention is connected with the issue of speedy trial. Regarding decarceration, significant political attention is being paid to this issue in countries such as the United States, Russia and China. It was suggested that Japan—due to its history of involvement with the Tokyo Rules, its experience with volunteer probation officers in non-custodial treatment, and its role as the host of the Fourteenth United Nations Crime Congress—is uniquely positioned to raise this issue at the next Congress. Regarding the need for guidance on probation, it was suggested that such guidance would be welcome because some countries, particularly in Asia, do not have legislation or do not know how to implement it. Regarding electronic monitoring, some observed that the development of technology may make it ripe for UN guidance, and that useful guidance would state

which techniques are best and which groups of offenders should be targeted.

29. Much of the discussion focused on the need for and desirability of UN guidance on minor drug offences, and the moderator presented the question of whether minor drug crimes should be addressed in or building on the Tokyo Rules. Some viewed such guidance as a top priority in order keep the high percentage of non-violent drug offenders out of prison. It was noted that the UN views drug dependency as a health issue and that it should not be criminalized. In Thailand, minor drug offences are common, and drug laws are quite strict, as a result of which possession of a small number of tablets can result in 10 years of imprisonment. It was reported that the Thai government is trying to change drug abuse from a criminal to a health issue. It was also suggested that assessment of drug users is very important in the criminal justice process and that those with addiction should be diverted to treatment. However, some concern was expressed over guidance for minor drug offences because some countries, particularly in Asia, do not view any drug offences as minor; therefore, it may be difficult to achieve consensus. It was also suggested that minor drug offenders require closer scrutiny to determine whether mere possession is the only reason the offender is incarcerated. It was noted that even non-violent drug crimes, such as driving under the influence, have the potential to cause serious harm, and significant percentages of drug offenders often have links with organized crime. Nevertheless, in Japan, despite strict drug laws, first time offenders, once sentenced, are very unlikely to face incarceration. Likewise, in the Western world—including the United States, where 70 percent of offenders have a history of drug use—most minor drug offences do not result in imprisonment, although drugs are often viewed as the underlying reason for the crime. As the discussion concluded, it was suggested that the continued dialogue on non-custodial measures, in addition to focusing on global standards and best practice, might benefit by considering the broader purposes underlying each criminal sanction that is imposed.

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