

Group 3

NON-CUSTODIAL MEASURES FOR VAWC OFFENDERS REHABILITATION AND REOFFENDING PREVENTION

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I. INTRODUCTION

Although imprisonment may be necessary for certain offenders, it has not offered a successful panacea for prevention of recidivism according to surveys conducted around the world. Therefore, the members of Group 3 agree that Non-Custodial Measures (Hereinafter referred to as NCM) provide a fruitful remedy for prevention of recidivism. Accordingly, having discussed the non-custodial measures available in respective jurisdictions of the members and having referred to the international instruments of the Tokyo Rules (Herein after referred to as TR), Commentary to TR, the Manual on Human Rights for Judges, Prosecutors and Lawyers and the Bangkok Rules, the paper of Group 3 shall focus on following aspects:

1. Identifying the appropriate NCM for VAWC Offenders
2. Current practices of NCM at various stages of the criminal justice system
3. Advantages and Challenges
4. Recommendations.

In terms of Rule 2.1 of TR, NCM means any decision made by a competent authority to submit a person suspected of, accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment; such decision can be made at any stage of the administration of criminal justice including pretrial, trial and post-trial stages.

NCMs are designed to stimulate a general reduction in the use of real deprivation of liberty in the system of criminal law measures with the help of the most suitable alternative sanctions. Community involvement in treatment of offenders is also critical and research shows that the effectiveness of rehabilitation outside the prison and also reducing the recidivism among the prisoners.

In the process of application of any NCM, the decision maker is required to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concern of society for public safety and prevention of recidivism. Therefore, these measures are of considerable potential value for offenders, as well as for the community. NCM are applicable to all kinds of offenders suspected or accused.

Accordingly, in application of non-custodial measures, the judicial authority is required to consider the following factors:

1. The nature of the offence
2. The personality and background of the offender
3. The purpose of the sentence
4. The rights of the victim

The offender is required to be evaluated at all respective levels by the decision maker in order to decide what NCM should be applied to the offender. In the process of deciding the criteria that should be applied is the level of risk of recidivism. It is noted that the NCM applicable to the offender is dependent on the risk level of the offender. In deciding the risk level, the method that should be adopted by the decision maker is Evidence Based Practice (EBP). Evidence Based Practice means decision-making by the competent authority based on the best evidence available. What factors based on the evidence that are available to the decision maker are also noteworthy in this stage. Criminal records of the offender, opinions of the experts such as psychologists and officers of the prison board are examples of evidence that can be considered in the evaluation of the risk level of the offender. These evidence-based factors should be capable to facilitate and support the decision maker to come to a decision of what NCM should be applied to the offender.

II. ISSUES AND CHALLENGES

A. Pre-Trial Stage

The NCMs which are available to any jurisdiction basically at the prosecution stage is suspension of prosecution. This measure can be cooperated with treatment such as cognitive behavioural therapy or rehabilitation for the VAWC offenders. This measure can be considered as rehabilitation of the offender within the community. However, it is not advisable to be used for grave offences such as sexual abuse and rape. Suspension of prosecution is used in Japan as NCM at the pre-trial stage. The prosecutor having considered the gravity of the offence, character, age, environment, circumstances under which the offence was committed, the prosecution is suspended indefinitely or for a specified period. A bail system that minimizes the pretrial detention which should be taken as the last resort is a measure that can be taken at the investigation stage. The offender's personal needs and interests have to be weighed against society's interests at the pre-trial stage¹ as well.

B. Trial and Sentencing Stage

At the trial stage, before the sentence is passed, the offender's "rehabilitative needs" warrant judicial consideration in order to subject the offender to probation orders only in appropriate cases such as misdemeanours relating to domestic violence. The offender can be rehabilitated with the intervention of the community within which he committed the offence. Having considered the pre-sentencing reports, the possibilities of rehabilitation and reintegration of the offender are required to be balanced against the need to protect society and "the interests of the victim" by the judicial authority at the sentencing stage. NCMs are available in most of the jurisdictions in the process of sentencing by the court. In Japan, suspension of execution of sentence is utilized. In appropriate cases, it is incorporated with certain conditions in order to ensure that the offender gets rehabilitated during the period of suspension. In the light of this practice the offender may be basically subjected to a supervision and treatment within the community. Economic sanctions such as fine and confiscation of property are recommended to be accompanied with other suitable measures. However, community service orders are neither appropriate nor proportionate for sex offenders although it can be considered in domestic violence cases where the offence is a minor enough to achieve the purpose of sentence. The probation orders have proved productive for combating recidivism when its process is concerned. "Weekend Jail System" permits the offender to work during the weekdays so that he can earn to support his family. The offender serves his prison terms during the weekends. These weekenders take self-responsibility to refrain from reoffending which is a requirement before the offender is released fully to the community. This system can be used for minor crimes of offences relating to domestic violence.

C. Post-Sentencing Stage

At the post sentencing stage, the community corrections system offers a solution for rehabilitation needs of the offender. In this system, the parolee can be released subject to certain conditions such as (i) report to his supervising probation officer according to a set schedule, (ii) receive visits from the supervising officer at home, (iii) undertake work, (iv) refrain from travelling outside the country or certain territory (v) refrain from offending behaviour, and (vi) reside in an appropriate place (vii) continuing treatment programmes. In addition to that commutation of sentence, halfway houses, remission work or education release and pardon can be used as NCMs.

¹ Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers.

D. Challenges and Recommendations

This paper will next deal with the challenges and the recommendations in application of NCMs.

Challenges:

1. Competent authorities such as judges and prosecutors as well as the policymakers are slow to recognize the norms of NCMs in the process of their decisions.
2. Difficulties in rehabilitation and supervision of offenders, for example lack of educational programmes and vocational trainings.
3. Community acceptance of NCMs for understanding the reintegration process of the ex-offenders.
4. Guarantee of victim's safety and security should be considered at all stages of the criminal justice process.

Recommendations:

1. NCM to be incorporated into law and guidelines for competent authorities such as judges and prosecutors as well as the policymakers, for example, evidence-based research and surveys.
2. To conduct NCMs, Electronic Monitoring Systems can be effective at any stage with treatment programmes. In this system, the offender's movements including his approach to a certain address can be monitored in order to prevent reoffending. It is, however, necessary to have the consent of the offender.
3. Community assistance for supervision and rehabilitation, for example, public apology in the local community, volunteer probation officers (VPOs), halfway houses, support groups (CoSA) and corporative employers are necessary. To get community assistance, we have to build awareness programmes including the implementation of VPO systems.
4. For protection of the victims, it is recommended to create shelters which offer crisis help, round-the-clock secured housing and psychosocial support, advice and counselling to acute situations. This service can be primarily offered to persons and families suffering from intimate partner violence or the threat of such to women and children of all ages. It will be helpful to create supports groups for VAWC victims.

III. CONCLUSION

NCMs, as part of international legal norms in the field of criminal justice, are called upon to ensure an optimal balance between rehabilitation of offenders, protection of victims of crimes and the interest of the community. They are aimed to reduce recidivism or incorrigibility and custody.