REPORTS OF THE COURSE

GROUP 1

PROMOTION OF ALTERNATIVES TO IMPRISONMENT

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I. INTRODUCTION

This Group was assigned to analyse and study the Promotion of Alternatives to Imprisonment. Since the participants in this Group are from Indonesia, Malaysia, Palau, Papua New Guinea, Thailand (one participant each) and Japan (four participants) the emphasis is on the criminal justice systems of these countries in relation to the topic under discussion. Next year (2005) is the 50th anniversary of the United Nations Standard Minimum Rules for the Treatment of Prisoners. A natural progression in the better treatment of offenders worldwide was the adoption of the Standard Minimum Rules for Non-custodial Measures by the United Nations in 1990. In short these measures are called The Tokyo Rules. This paper reflects the on-going efforts of all countries to enhance the use of non-custodial measures in order to alleviate problems related to prison overcrowding and encourage the reintegration of offenders into the community.

Besides assessing the current non-custodial alternatives available to the domestic criminal justice systems of the participants' countries, this Group will explore the introduction of other alternatives to imprisonment and attempt to highlight the associated problems and tentative solutions upon evidence-based practice. Since a holistic approach to non-custodial measures is advocated in The Tokyo Rules, agencies that implement non-custodial measures and the use of community resources are matters that will be looked at. Of equal importance is the expertise that is required to supervise, guide and support offenders in non-custodial programmes. Therefore, this paper will also look at the staff and volunteers' training that is required for the successful rehabilitation and reintegration of offenders into the community.

II. CURRENT USE OF ALTERNATIVES IN THE PARTICIPANTS' COUNTRIES

This Group decided that surely the right approach to the given topic is to gauge the availability and use of the non-custodial alternatives in the participants' countries. Effective and comprehensive utilization of the current alternatives can in itself produce immediate results in reducing prison overcrowding besides accelerating community participation in the treatment of offenders. What follows is a synopsis of the comparative situation in each participating country *vis-à-vis* the use of non-custodial alternatives at three important stages of the criminal justice system, each stage providing an opportunity for the diversion of offenders from custodial measures.

A. Pre-trial Stage

1. Investigation

The legislation of most countries only allows for the custody of suspects by police for 24 hours (48 hours in Thailand and Japan) before the suspect is taken to court for further detention. The period of detention that can be ordered by the court is fixed by law and is generally accepted by all countries as a reasonable period for investigation. All participants agree that their respective courts subject the request for detention by the

police to strict scrutiny. Suspects not satisfied with the detention order can appeal to a higher court.

2. Prosecution/Indictment

Once a suspect is charged/indicted in court, bail is generally given by most countries at the pre-trial stage. For example, bail is widely given in Malaysia (about 90 %), in Palau bail is given in about 95 % of the cases, it is generally given in Papua New Guinea. By law bail is given in Thailand in all cases and, according to the Constitution, excessive bail should not be set. However, in practice many offenders have no money for bail security and are kept in custody. For grave crimes like drug smuggling and murder bail is not allowed. In Japan, in about 70% of the cases at the investigation stage, investigation is carried out without arrest of the offenders. For offenders who are eventually prosecuted and are under detention at the time of prosecution, about 30% of them apply for bail and bail is granted in about 13% of such cases. The only exception to the granting of bail is Indonesia where bail is generally not given. In fact, there is no provision for bail in the Indonesian law but there is customary practice to allow bail in certain cases.

3. Administrative Fines/Compound

Administrative fines and compounding of offences by the police and other law enforcement agencies (e.g. local authorities in Malaysia) is another avenue for the diversion of offenders. Such fines are widely used in Malaysia, Papua New Guinea, Palau, Thailand and Japan and this alternative takes care of most petty crimes especially those punishable with a fine only, for traffic offences. In Papua New Guinea, referral of minor offences may even be made to a village court. The option of administrative fine is, however, not available in Indonesia where all offenders are prosecuted in court.

4. Drug Dependents

Drug dependents are diverted for rehabilitation and treatment in Malaysia and Thailand and do not face criminal prosecution. In Indonesia, although there is a Narcotics Law for rehabilitation of drug addicts it is seldom used, only a few addicts are sent for rehabilitation. In Papua New Guinea and Palau there is no provision for the diversion and treatment of drug addicts. In Japan, there is no law for rehabilitation at present although a pilot project has been started in Gunma prefecture where the rehabilitation of drug addict offenders at a voluntary run centre is part of the bail conditions.

5. Other Alternatives

Other alternatives exist in Japan at the pre-trial stage namely suspension of prosecution, summary prosecution and caution by the police which can be used for offences like minor theft, minor injury, minor assault and all other minor cases punishable with fine. In Papua New Guinea, under the Summary Offences Act 1988, the police can use their discretion to caution and discharge offenders for minor assault, abusive behaviour and drunk/disorderly behaviour as long as the consent of the victim is obtained. Suspension of prosecution, summary prosecution and caution by the police are not available as an option in Malaysia, Indonesia, Palau and Thailand.

B. Sentencing Stage

1. Caution and Discharge

The courts in Malaysia, Indonesia and Papua New Guinea can caution and discharge offenders in minor cases. In Palau, Thailand and Japan there is no provision for a caution and discharge.

2. Fine

Fines are the most widely used alternative in all participating countries except Indonesia. In Japan a fine is used as a sentence in about 90 % of the prosecuted cases whereas in Malaysia, Papua New Guinea, Palau and Thailand a fine disposes of almost all traffic cases, petty criminal cases, like simple theft and assault, and cases of minor infractions of building and employment laws. In Indonesia although there is provision for fines, offenders are normally sentenced to imprisonment.

3. Conditional/Unconditional Good Behaviour Bond

First offenders in Malaysia committing less serious crimes are generally placed on good behaviour bonds. In Papua New Guinea good behaviour bonds are given for suspended sentences. In Indonesia, Palau, Thailand and Japan good behaviour bonds are not provided for as a non-custodial alternative.

4. Compensation and Compounding

The payment of compensation is used in various ways as an alternative to imprisonment. In Malaysia, compensation may be ordered to reduce the length of imprisonment. In Papua New Guinea, the payment of compensation to the victim may be a condition for the release of the offender. Compensation may also be ordered in addition to a fine. In Indonesia, Palau, Thailand and Japan there is no provision for the payment of compensation at the sentencing stage. In Malaysia, 23 listed criminal offences can be compounded by the victim after prosecution has begun. Such compounding has the effect of an acquittal of the offender.

5. Suspension of Execution of Sentence

Suspension of execution of sentence is practiced in Papua New Guinea, Thailand and Japan either with or without probation. In Japan suspension of execution of sentence is widely used in up to 60 % of the cases where the sentence is one of imprisonment while in Thailand suspension of execution of sentence is moderately ordered. In Palau suspended sentences are usually given to first time offenders. Malaysia and Indonesia do not have provisions for the suspension of execution of sentence.

C. Post-Sentencing Stage

1. Police Supervision

Only Malaysia has the provision for the court to order police supervision to enable the early release of offenders who are sentenced to imprisonment. This order can be used as a device to reduce the length of the sentence of imprisonment.

2. Remission/Parole

Remission of sentence exists in all countries except it takes different forms, for example: remission for good behaviour in Malaysia; good time allowance in Thailand; and release on parole in Papua New Guinea, Palau and Japan. In Indonesia remission is in the form of early release for good behaviour but decided by the executive for release on National Independence Day.

3. Pardon

In all participant countries there are provisions for pardon or amnesty. In Indonesia, Papua New Guinea, Palau and Thailand the decision on pardon is made by the government to coincide with the celebration of important national events. In Malaysia, pardons are rare and decided on a case by case basis. Similarly, in Japan amnesty by Cabinet order is seldom given.

D. Juvenile Offenders

Although the focus of this paper is on the common non-custodial alternatives for all offenders, juvenile offenders deserve a special mention. All criminal justice systems have a special interest in the treatment of juveniles because of the greater opportunity for modifying their behaviour at a young age. In one way or the other, juvenile offenders can be diverted from custody in all participant countries by unconditional discharge, probation orders, good behaviour bonds, placed in the care of parents or relatives or sent to juvenile training homes/reform schools.

Wherever possible, juvenile offenders are put on bail pending trial and they are always remanded in separate facilities to adult remandees. Most countries have special training programmes for the rehabilitation of juvenile offenders which include components like character building, acquiring skills and social adjustment.

III. PROBLEMS AND SOLUTIONS TO THE INTRODUCTION OF ALTERNATIVES

Upon concluding their appraisal of the current use of alternatives in all countries, the Group proceeded to explore the introduction of new alternatives in their respective criminal justice systems, the associated problems and the possible solutions. This task was undertaken with the understanding that the proposed new alternatives are practical in nature and would modify or upgrade the current alternatives. In this context they could hopefully be implemented in the near future. Such alternatives aim to provide a broader and better choice for the application of non-custodial measures. Again, for ease of reference, this sub-topic was considered along the lines of the pre-trial, sentencing and post-sentencing stage.

A. Pre-trial Stage

1. Caution by Police

In Japan, in a designated range of cases for example shoplifting, petty theft and taking into consideration other factors like the suspect has no criminal record and a stable residence, the police can caution the offender as a means of diversion. The only problem to the more extensive use of this alternative is that the range of crimes where a caution can be given is limited. The proposed solution to a wider use of this alternative is to extend the category of crimes that can be disposed by way of caution. Minor assault is one such example. The Japanese participants suggested that as a safeguard for the wider implementation of this alternative, the consent of the victim should be taken into consideration before the police exercise their power of caution. It should be noted that since arrest is not a prerequisite to begin an investigation in Japan, a caution is not a direct diversion to custody.

2. Administrative Fine/Compound

In Malaysia this alternative can be widened for administrative fines to cover more offences for example traffic accidents involving minor negligence, failure to renew permits/licenses, etc. The category of persons who can compound offences can be widened for example in simple theft and damage to property cases. The problem would lie in increasing the manpower to handle the extra workload. Simpler procedures for payment of administrative fines and compounds, for example by automated teller machines, would make this alternative more viable.

Indonesia proposes to introduce provisions for administrative fines/compounds as an alternative at the pre-trial stage since this option is not currently available.

3. Bail

In Malaysia, Palau, Thailand and Indonesia the current situation of release on bail at the pre-trial stage is effective. Therefore, modification for the further use of this alternative at the pre-trial stage is deemed unnecessary.

In Papua New Guinea, bail is a problem in certain areas, especially rural areas, where High Court Judges only sit on circuit. Hence, the offender has to be remanded in custody until the Judge is available. The solution to the problem would be to allow lower court judges and, where necessary, even the police to give interim bail in certain cases until the circuit sitting of High Court Judges.

In Japan, release on bail is low. Among the reasons for this situation are that the amount of bail may be fixed too high and defence counsel do not make requests for bail. Presently the only solution for the wider use of bail would be to give more flexible consideration in fixing the bail sum.

4. Suspension of Prosecution

In Japan, in the case of suspension of prosecution, aftercare services for offenders who have been detained is provided by the government for a certain period based upon statute. This service consists of shelter, care and temporary aid such as food, clothing, etc. However, this aftercare service has not been widely utilized because of budget constraints. The proposal is for such services to be consolidated so that the discretion to suspend prosecution can be more widely exercised with the assurance that offenders who have been detained can avail themselves of the aftercare services.

In Thailand, the government is proposing to introduce the law on suspension of prosecution with the objective of solving the problem of case overload in the courts.

Indonesia, Malaysia, Palau and Papua New Guinea do not currently practice this procedure.

Similarly, summary prosecution is currently not practiced in Indonesia, Malaysia, Palau, Papua New Guinea and Thailand. Although it may be a good measure to introduce in Malaysia, acceptance by the public may be a problem since the concept of an open court hearing is deeply rooted in the Malaysian judicial system. Perhaps public education on the benefits of summary prosecution is one solution in changing public perception towards the implementation of the system. The necessary legislation would have to be drafted.

In Japan summary prosecution continues to function smoothly as a non-custodial alternative.

B. Sentencing Stage

1. Fine

While a sentence of fine is widely used by the courts in Malaysia, Palau, Papua New Guinea and Japan, both Indonesia and Thailand have room for the further promotion of this alternative.

In Indonesia, at present fines are only used for traffic offences. It is suggested that this option be used to cover other offences as well but the social atmosphere is geared towards custodial sentences, the reality is that punishment by imprisonment is the preferred method rather than non-custodial measures. So the problem here is one of attitudes and perception of society towards the sentence of a fine only.

In Thailand, fines are used in about 40 % of the cases. For certain offences like carrying arms (not firearms), offensive weapons like knives, a fine is considered too lenient an option and courts prefer to impose a harsher sentence. A better solution would be the introduction of community service for such offenders. In fact, last year Thailand amended the Penal Code for fine defaulters to do community service instead of going to prison. Measures like this would promote the further use of fines as a non-custodial alternative.

In Papua New Guinea, flexibility is given to certain offenders to pay a fine within a certain period so that defaulters do not go to prison immediately. Child offenders, the ill and the elderly, pregnant women or women with small children, important persons and those in employment are some of those given time to pay their fine. For offenders who have been in pre-trial custody, the time spent in such custody may be computed at the sentencing stage resulting in shorter sentences which may even be executed at the police lock-up itself. In this manner prison overcrowding is reduced.

2. Probation

All participants were unanimous that probation in one form or another should be widely used to moderate prison sentences or, coupled with other non-custodial measures, it should make non-custodial options more effective. For example, formal probation can be a condition of good behaviour bonds in Malaysia for the better supervision of offenders. With such probation the courts may be more inclined to put more offenders on good behaviour bonds.

Probation could also be widely used in Indonesia where the prosecution supervises the probationer by keeping in contact with the village chief where the probationer resides.

In Japan, if an offender who is on probation upon suspension of execution of sentence commits another offence during the period of probation, he cannot be given a suspension of execution of sentence again. This limits the discretion of the courts to order probation for the second offence even where the courts feel that probation would still be a suitable alternative. An example would be where the probationer has committed a minor traffic violation but it is recorded. In such a situation, it is suggested that the law should be amended to give discretion to the courts to order probation as a second chance for offenders. For this second time probation, the courts could impose more intensive supervision/probation. In cases where the first suspension of execution of sentence was made without probation, the suspension of execution of sentence for the second offence should be ordered with compulsory probation. Currently about 30% of adult probationers are recommitting offences and the concern is that if second time probation is allowed there would be an increase in the workload of probation officers. This area would have to be looked into before this suggestion is implemented.

Other new alternatives that can be introduced in Japan at the sentencing stage are restitution or compensation orders for victims and suspension of execution of sentence with community service. The introduction of these alternatives would require amendments to the penal law.

Thailand has a similar concern of imposing an extra workload on probation officers. Currently, professional probation officers are handling four categories of offenders- i.e. adult parolees, adult probationers, juvenile parolees and juvenile probationers. As of 1 October 2002 even drug addicts are placed

under probation. Since the courts are aware of the workload (burden) of probation officers, there are fewer orders for the suspension of execution of sentence *with* probation. This alternative can be increasingly used if more professional probation officers are recruited and sufficient training given. Furthermore, the administration of the probation service should be improved with better salaries for probation officers and taking care of their welfare, for example, paying allowances for home visits. Although 300 professional probation officers posts were approved by the government last year, the actual recruitment has not been carried out due to financial constraints.

Malaysia will consider the introduction of the suspension of execution of sentence with probation since such an alternative is not available at present. The necessary amendments to the law have to be made and a specialized probation service has to be created.

C. Post-Sentencing Stage

When considering the expansion of alternatives at the post-sentencing stage, the Group had in mind Rule 9.4 of The Tokyo Rules i.e. *Any form of release from an institution to a non-custodial programme should be considered at the earliest possible stage*.

1. Parole

A large part of the discussions were centred on the extensive and better use of community-based parole for a quicker processing of offenders out of the prison gates. Special attention was paid to the parole system in Japan which is more developed than that of other participant countries.

In Japan, the problem appeared to be that the rate of parole is about 56% of all discharged offenders. The rate of parole for drug offenders is also low. It is felt that a wider use of parole should be realized by examining parole discharge procedures. Currently the Penal Code provides eligibility for parole after 1/3 of the sentence is served (executed) but in reality more than 2/3 of the sentence is served in prison. If the execution rate of the sentence in prison is less than 2/3 then more offenders can be put on parole. However, the risk of re-offending and harm to society is an important consideration in shortening the execution rate especially in the case of serious offenders and recidivists. Re-offending by prisoners on parole and the media coverage that would follow may eventually lead to longer prison sentences which in itself may further compound the effectiveness of parole in the long run besides leading to prison overcrowding. One solution to this problem would be to introduce intensive parole/specialized treatment programmes for certain categories of offenders so that parole supervision would receive better public support. In this manner, even the more risky offenders can be released on parole. Another area that should be looked at is expanding the role of the Parole Board such that the Parole Board should be able to function in an independent manner in parole decision making. Currently, the Parole Boards appear to be dependent on the prison authorities to initiate the application for parole. A common recognition of the policy of parole by the prison authority and the Parole Board would widen the net for placing offenders on parole. There was common consensus in the Group that we should be mindful of the safeguards that ensure a fair working of the system of parole so as to guarantee its due process.

The role of professional probation officers is also important in determining offenders suitable for parole. In 10 large scale prisons in Japan, professional probation officers visit prisons on a regular basis and through this process, even prior to an application for parole by the prison warden, the candidates for parole can be screened by the professional probation officers. Of course, it would be ideal if full time professional probation officers are stationed in prisons, as is the practice in the United Kingdom.

In Palau, the parole system is working well where prisoners can apply for parole as of right after serving 1/3 of their sentence. The application is made to the Parole Board and the Parole Board will refer the application to three departments, i.e. the Minister of Justice, Attorney-General's Office and the Corrections Division. If any two of these departments recommend parole, release on parole is granted by the Parole Board. The conditions for parole are set by the Parole Board. A somewhat similar process is used for the commutation of sentences by the President.

Release on parole is also available in Papua New Guinea where it is widely used to suspend execution of part of the prison sentence.

In Thailand, inmates have no right to apply for parole; it is a privilege for those of good behaviour. There are Parole Committees in every prison which initiate the parole. These Committees determine the inmates for parole and make recommendations to the Parole Board for release on parole. The Parole Board is chaired by the Director-General of the Corrections Department and consists of committees representing other criminal justice agencies. Parole is widely used in Thailand and the figures from October 2002 to August 2003 show that a total number of 22,073 inmates were released on parole.

There is no parole in Indonesia; however, offenders are given early release after having served 2/3 of their sentence and are certified to be of good behaviour.

In Malaysia, the proposal to introduce release on parole for offenders is currently under study.

2. Remission and Pardon

As mentioned earlier, remission for good behaviour and pardon are available in almost all countries. The standard procedures for release on remission and exercise of the executive discretion for pardons do not provide any room for the further promotion of this alternative. However, the Group noted with interest the good time allowance system practiced in Thailand where inmates can work towards an early release by earning remission for good behaviour, progress in education and/or support of prison activities. In this manner the offender himself is empowered with the motivation and the opportunity to secure an early release.

IV. FUTURE PROSPECTS

The Group discussed future prospects by adopting an integrated approach to the promotion of alternatives; reference to the criminal justice system of a particular participant country is only made for purposes of illustration. Besides presenting the mission of non-custodial measures, this chapter considers some pertinent issues related to the given topic, for example, alternatives for target groups like juvenile offenders, drug addicts/abusers and offenders at the pre-indictment stage, the requisite staff training and the importance of an evidence-based assessment of alternatives. Consonant to the spirit of The Tokyo Rules, across the board alternative dispositions can hopefully be found for all participant countries. This would be reflected in the recommendations of this Group at the end of this paper.

As a starting point for future prospects, this Group discussed the principles of a legal/social system that would support the widespread use of non-custodial measures. Some of these principles are discussed below.

A. Principles

1. Public Consensus/Awareness of Criminal Justice Officials

One of the most important challenges for criminal justice practitioners to promote the wider use of non-custodial alternatives is the perception of the offender by society. Public education is needed for the realization that alternatives are workable and bring immense benefits. On the other hand, criminal justice officials must be made aware of the need to understand and promote non-custodial alternatives. There has to be an integrated approach in criminal justice policy where the victim, the offender, the public and the penal authorities are active participants in the use of non-custodial measures. In other words, where applicable, non-custodial measures are seen as a complete answer to the diverse needs of all the parties involved in a criminal justice system. The gains of reintegration/rehabilitation should be subjected to an empirical evaluation and given wide publicity. Empirical studies can illustrate the success of rehabilitation.

It is an obvious fact that a rehabilitated offender who is a socially responsible individual is the best outcome of any criminal justice system. In fact, this is the ultimate goal of all criminal justice systems. Modern prisons too stress the eventual rehabilitation of offenders. And yet, non-custodial measures which best promote rehabilitation are not widely used because the public, criminal justice officials and policy makers are not aware of the gains of rehabilitation.

Transparency of rehabilitation programmes would be a step in the right direction to foster an understanding and appreciation of non-custodial measures. Issues like stigmatization should be tackled head on to make a real difference to the offender-society relationship.

2. Victim Redress Mechanism

One main concern expressed by all participants during the Group workshops is that victims can feel short-changed when the offender is given a non-custodial punishment. In fact, some participants felt that in such a situation the victim himself may resort to revenge/retaliation resulting in further offending in society. To counteract this, a better victim redress mechanism has to be in place, a mechanism that would not disregard the victims' loss or feelings arising from the commission of a crime. The term 'victim' itself should be given the widest possible definition so that other members of society directly affected by a crime perpetuated on the victim can avail themselves of the victim redress mechanism. Among others, a victim redress system would include opportunities for victim support/counselling, victim impact statements, restoration and victim participation in offence resolution.

3. Alternative Offence Resolution Mechanism (Restorative Justice)

The current practice in all participating countries is that offenders are diverted either by the police, prosecution or the courts. In all these situations both the victim and the offender do not participate jointly. More importantly, neither the offender nor the victim sees both sides of the proverbial coin. This is where the role of an alternative offence resolution mechanism comes in. Instead of concentrating on either the offender or the victim what needs to be resolved is the offence itself i.e. the commission of a crime in society. An offender-victim mediation approach will throw much light on how the offending came about to be, the victim's loss or feelings and the offender's reason and motivation for committing the crime. Solving the offence in this manner would open up wider possibilities for non-custodial alternatives thereby giving a human face to crime. Many offences can be resolved and re-offending prevented where the offender is apprised of the commission of the crime in an objective manner. This mechanism would also open up real and effective possibilities for restoration.

4. Offender Screening and Classification Programmes (Needs and Risk Assessment)

It is wrong to think of offenders as a homogenous group whose only hope lies in the prison system. Many offenders have the will and circumstances to turn over a new leaf if given the opportunity. In this respect, the criminal justice system, especially the courts, should have the benefit of offender screening and classification programmes where a professional analysis of the needs and risk assessment of the offender and his circumstances is available to the adjudicatory authority. Among other matters, such professional analysis would chart the offender's profile and provide the social information necessary to make an informed decision relating to the appropriate punishment. It is something like the 'real person behind the offender' concept. A parallel may be found in the pre-sentence reports for juvenile and youthful offenders that are currently being prepared in most countries. One obvious benefit of such classification is that it would enable the justice system to divert offenders whose profiles are most conducive to non-custodial treatment.

5. Real and Workable Alternatives to Imprisonment

A practical drawback to the extensive use of alternatives is that most countries simply do not have a wide range of real and workable alternatives to imprisonment. On the other hand, some current alternatives may not be suitable for present realities. In that event, criminal justice systems must ensure that real and workable alternatives are in place so that offenders can be comprehensively processed. Such alternatives would give law enforcement agencies and adjudicatory bodies a wide choice of non-custodial measures. This would lend credence to the belief that the policing of offenders can be done by the non-custodial process.

6. Evidence-based Practice Approach

The success of non-custodial measures can be best gauged with the introduction of an evidence-based practice approach which will provide an accurate evaluation of the effectiveness of such measures. It is of importance that the various aspects of the related research should be based upon a randomized controlled trial (RCT). Databases of statistics have to be updated and strengthened so that they can be reliable sources of current diversionary practices. Cost performance is another area that would benefit from this approach. An objective assessment of non-custodial programmes is the best way to determine their success or failure in any one system. In this respect, staff training for the management, implementation and assessment of non-custodial supervision is a vital component.

However, it should be remembered that in evaluating resources and programmes, no value tag can be placed on the human values/ethics that are inherent in the alternative treatment of offenders.

B. Real Targets

Against the background of the principles stated above, the Group proceeded to discuss some real targets which can be realized by the commitment of all countries. The eventual realization of these real targets would further promote the diversion of offenders from the present incarceration based practices at various stages of the criminal justice process. Besides being alternatives, these real targets would add some check and balance to current practices that impede quick diversion.

1. Pre-trial Stage

Pre-trial stage incarceration should only be ordered if absolutely necessary. A real meaning should be given to the 'innocent until proven guilty' concept. Incarceration for purposes of investigation should be a last resort measure. With advances in technology and forensic science, speedy investigation of offences should be the norm so that offenders do not need to be in custody while evidence is gathered and examined. Efficiency in investigation will reduce the need to incarcerate offenders for long periods at that stage.

The reasons for investigative detention should be transparent and open to scrutiny. In this respect, legal representation should be available to the suspect at the hearing of the application for detention. As stated in Chapter Ⅱ, investigative detention is usually not for a long period so speedy bail procedures should be introduced for release from pre-trial detention. For example, the law can mandate that an application for bail should be disposed off by the relevant authority within 24 hours of its filing or as soon as possible. Another step would be to decentralize the power to grant bail as in the example of Papua New Guinea, discussed earlier in this paper. A simple application for bail in the prescribed form can be introduced where even the suspects' family, relatives or counsel are given the right to apply for bail on the offender's behalf.

As part of strengthening bail procedures to ensure that offenders do not abscond/disappear during the investigation stage, the conditions of bail can be expanded. Suspects can be required to report at regular intervals to the investigating authority or sureties of good standing can be stipulated as part of the bail requirements. Where appropriate, bail conditions can be stringent, even if they appear punitive in nature, so long as the incarceration of the suspect is avoided. Bail release with electronic tagging (monitoring) is an effective measure to reduce pre-trial detention and prevent offenders from absconding.

Similarly, detention of the accused after indictment should only be made on very exceptional grounds. The law should set a specific time limit for the detention period at the pre-trial stage so that the object of a speedy trial is realized. As a general rule, bail should be given to all offenders upon indictment. Reasons for pre-trial detention should be clear, perhaps the only reason for justifying pre-trial detention would be the real possibility of further re-offending by the offender or the existence of evidence that the offender would abscond. As in the investigative stage, provisions relating to the granting of bail should aim towards the quick and effective processing of release on bail. The amount of bail bonds should be flexible so that it is affordable to each offender and sufficient to secure his attendance at the trial.

Outside the formal structure of arrest and/or indictment, there should exist a summary mechanism for the disposal of cases at the police stage. Most minor crime can be dealt with by dispositions such as caution, discharge, administrative fine, compound and compensation/restitution. Furthermore, instead of restricting offence processing activities to the police and local authorities, other agencies like the customs and immigration departments can be given the power to deal with offenders who violate the respective laws.

Offenders like drug addicts/abusers, the mentally disturbed and traffic violators can be immediately put on special treatment programmes outside of the penal system as a form of categorized diversion. Guarantees for the due protection of human rights of such offenders should guide the formulation of these treatment programmes.

2. Sentencing Stage

As stated earlier, the courts have to be provided with a wide variety of non-custodial alternatives. The severity of the offence and the resultant harm to victim and society can itself be graded so that the public and the courts are better informed of the suitability of non-custodial measures.

After indictment and before sentencing, victim-offender mediation should be attempted to achieve an amicable resolution of the crime. Perhaps, a start can be made with crimes which are personal to the victim,

for example causing hurt, assault or theft of property.

Warnings and verbal sanctions are sufficient punishment for most minor crime. A record of such warnings can be made and the offender informed about it as a signal to the offender that such an opportunity may not be available upon re-offending. With this record, warnings and verbal sanctions will not be taken as an easy let-off.

The scope of a fine as a sentence can be widened as for example fines for property or economic crime which take into account the monetary gain made by the offender. Fines may also be imposed to reduce the length of incarceration where a prison sentence is deemed necessary. To reduce imprisonment of fine defaulters, a day fine system of payment or payment of fine by instalments is one solution.

Confiscation of the proceeds of crime or expropriation orders can be made to deprive offenders of the profits of crimes. Upon confiscation, such proceeds can be used to compensate the victim as restitution.

Community-based treatment can start at the sentencing stage with orders like binding over, community service, probation orders, and compulsory day attendance centres. Under these orders, offenders are released back into the community under the protection and guidance of parents or relatives or, in the more serious cases, a social worker or professional probation officer. Fixed amounts of money can be made a condition of such orders so that pecuniary punishment follows in the case of breach. As for community service, the court orders offenders to perform paid/unpaid labour in public institutions like schools, hospitals or local authority projects. For parity in the use of these non-custodial measures, it is imperative that such measures are available nationwide.

In all sanctions ordered at the sentencing stage, provisions should be made for the appropriate orders of compensation/restitution to the victim.

Special courts to deal with offending within the family/domestic situation, drug offenders, juveniles and traffic offenders can provide specific non-custodial sanctions for such offenders. For example, fixed hours of counselling and education programmes can be prescribed besides conditions like the suspension of licenses, regular reporting to the police and compliance with restraining orders. For juvenile offenders, special training schools/reform schools should be established with the avowed aim of rehabilitating such offenders.

Suspension of sentence/suspension of execution of sentence and the practice and promotion of these options in the participant's countries has been discussed earlier.

3. Post-Sentencing Stage

Measures at this stage should accommodate the early release of offenders from prison. Besides the remission for good behaviour, a well managed parole system is the best avenue for early release and supervision of the offender within the community. Parole Boards should play a proactive role in the release and management of parolees. The involvement of the community, particularly the offender's family, in the parole process should be encouraged so that the offender is sufficiently supported in the community. Eligibility for parole should be spelt in clear terms where the parole procedure and parole decision-making are transparent. Wherever possible, the victim should be allowed the opportunity to participate in the parole deliberations. The offender himself, his counsel, his family and even the victim should be given the opportunity to apply for parole subject to assessment by the Parole Board.

For the more difficult cases, parolees should get the support of professional halfway houses to enable them to adjust to residence and daily living in the community. Local voluntary bodies should be sensitized to the needs of offenders leaving prison so that the net for community rehabilitation is widened. Without community participation, parole can be a demanding programme on the probation authority. It requires commitment, finances and time to make it work.

A variation of the usual remission for good behaviour is earned remission. A prisoner's conduct and desire to participate in prison programmes would enable him to earn a longer remission. Remission is a useful programme to reduce prison overcrowding while encouraging discipline among inmates.

A more effective form of early release being introduced is the work release to integrated employers based upon the through care concept. In this measure, employers who are prepared to give job opportunities to prisoners to work under the supervision of the prison authorities can eventually get the early release of prisoners into their work establishment. Employers and the prison authorities work hand in hand to monitor the work aptitude and discipline of the prisoners. This partnership gives employers a chance to assess the suitability and conduct of prisoners who are still in the custody of the prison administration. Offenders, on the other hand, are motivated to get a real opportunity to secure employment upon their release.

Prisons and the community should work together for the early release of offenders to encourage the positive reintegration of offenders into society. Pilot projects of mutual cooperation can be started for those offenders convicted of less serious crimes. An example is the pilot project under study by the Department of Corrections, Thailand where offenders will be allowed to work on weekdays outside the prison and return to detention on the weekends (weekend detention scheme). If programmes like this prove successful, they can be extended to all categories of prisoners. Likewise community/family participation in prison activities should be encouraged, provided of course that such participation does not compromise on security.

The reconciliation of offender and society should not cease just because the prison gates have been shut on the offender.

V. RECOMMENDATIONS AND CONCLUSION

Community-based alternatives including intermediate sanctions can take many forms and can be used simultaneously for any one offender. It should be made clear that the full use of community-based alternatives does not mean that offenders are getting a lenient punishment. To quote from our Visiting Expert from Singapore, Ms. Chomil Kamal, well organized and result-oriented community-based alternatives are definitely not seen as a let-off from the traditional incarceration emphasizing system. To illustrate this, Ms. Chomil Kamal went on to say that in her experience, there are offenders who prefer a prison sentence to being placed on probation and supervision that compacts the offender's release into the community. Cultural and social progress is also indicative of the better treatment of offenders worldwide, with non-custodial measures at the forefront.

Based on all our discussions, we make the following recommendations which reflect our common platform for the promotion of non-custodial measures.

A. Recommendations

1. Mission Statement

All criminal justice systems should incorporate a clear mission in their sentencing policies that advocates the extensive use of non-custodial measures. This has to be achieved by adopting a holistic approach involving the offender, the victim and society. In doing so, countries should pay heed to their social, cultural and criminal policy situation. Wherever possible, the rights of offenders at all stages of the criminal justice process should be guaranteed by legislation, such as to reduce incarceration as an easy alternative to other modes of treatment.

2. Public Awareness, Political Will and Education

Real change can only come about by public acceptance of the rationale for the wider use of effective non-custodial measures. Re-socialization of offenders requires public awareness of the need to rehabilitate and reintegrate offenders. Public perception that an offender is a social-outcast must be replaced with an informed appreciation of the plight of offenders. To bring about this change, political will should be present at all levels of society. Policy makers and politicians, who have better access to the mass media, should be the agents for standard setting in the better treatment of offenders. Continuous multi-layered campaigns by public and private bodies can promote the use and benefits of non-custodial measures. Such campaigns, coupled with other forms of education, can bridge the wide use of non-custodial dispositions with an equally receptive public.

3. Organizational Framework

Non-custodial treatment like rehabilitation programmes can only flourish within an effective framework

that streamlines such treatment. Criminal justice systems must pay attention to the detailed management of the release and rehabilitation of offenders in society. Some areas that should be looked at are:

i. Comparative availability of alternatives at each stage of the criminal justice system.
ii. Maximum utilization of community services.
iii. Integrated and cooperative network between voluntary sectors and public community-based services.
iv. Periodic review of domestic laws to ensure non-custodial alternatives are viable.
v. Transparency/accountability in the non-custodial process at all levels.

4. Implementation

Countries must be committed to set a timeframe for the implementation and assessment of non-custodial measures. The model of non-custodial alternatives in other countries can be modified/adapted to the domestic situation. The role of all agencies involved in implementing non-custodial alternatives should be clearly defined. Priority should be given to manpower, funding and staff training to create professional and responsive community-based treatment programmes. Victim redress and alternative offence resolution mechanisms, offender classification, categorized treatment and broad-based community participation should be developed as some of the key components of alternative treatment.

5. Research and Study

Research and study are essential to ensure that non-custodial measures work and continue to remain relevant. The objectivity of research and study is the best method for monitoring non-custodial alternatives. Systematic evaluation of alternative treatment programmes on evidence-based practice provides vital information as to the efficacy of these programmes. Nationwide use of non-custodial measures and all related matters can be comprehensively assessed thereby ensuring uniformity of practice. Reliable data can facilitate the proactive search for new alternatives. An evidence-based practice approach enables the use of alternatives to withstand public scrutiny.

B. Conclusion

The Tokyo Rules were an integral part of our Group discussions. Likewise, all countries should use the benchmark of The Tokyo Rules as the standard setting for the promotion of alternatives. An easy strategy would be to infuse small incremental changes in the social, justice system to eventually blend in non-custodial alternatives. Socio-economic inequalities should be addressed to strengthen community-based programmes. Effective alternatives can complement the ultimate aim of criminal justice policies i.e. the reduction of crime in society. Consequently, obvious and lasting improvements will be seen in the persistent problem of prison overcrowding.

We leave this paper with the hope that society, which may invariably be responsible for the offending within it, should galvanize itself to progressively search and successfully apply alternatives to imprisonment for the better treatment of offenders.