

GROUP 3

POST-SENTENCING DISPOSITION AND TREATMENT MEASURES

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I. INTRODUCTION

The group unanimously elected Mr. Lam (Hong Kong) as Chairperson, Ms. Aurea (Brazil) as Co-Chairperson, Mr. Buchane (Namibia) as Rapporteur, Mr. Telefoni (Tonga) and Mr. Wakimoto (Japan) as Co-Rapporteurs (the group structure is indicated above).

The assignment was to discuss matters concerning “post sentencing dispositions, treatment measures and other issues relative to institutional and community based treatments, including entrusting the private sector with the management of correctional programmes”. The agenda was adopted.

In accordance with the agenda, group members unanimously agreed to divide the discussion hereinafter into two: discussions on “post-sentencing dispositions” that can reduce prison population; and “effective treatment programmes” that lower recidivism. Each topic is further subdivided into several categories. Thus the structure of the agenda is as follows:

A. Post-Sentencing Dispositions

- a) Parole
- b) Halfway houses
- c) Work/study release
- d) Remission
- e) Pardon
- f) Other measures related to early release
- g) Other forms of early release

B. Effective Treatment Programmes

- a) Assessment and classification of inmates
- b) Evidence-based treatment programmes
- c) Other effective programmes
- d) Administrative structures
- e) Functions and dysfunctions of correctional programmes

C. Other Issues

D. Recommendations

In addition, though the group’s main concern is the post-sentencing stage, the group agreed that the members would talk briefly about the pre-sentencing stage so long as dispositions in the pre-sentencing stage

¹ Mr. Park left UNAFEI returned to Korea to resume his official duties on 6 June; he did not participate in the discussions after that date.

have significant influence upon post-sentencing treatment of offenders. (In some jurisdictions, the courts' decisions are binding upon specific treatments the prison service can provide; under such circumstances, pre-sentencing dispositions, too, should be considered when debating post-sentencing treatment programmes).

II. POST-SENTENCING DISPOSITIONS

A. Parole

Before discussing parole, early release schemes utilized in participants' countries were discussed. Korea, Namibia and Japan have parole. Tonga has an early release scheme, called 'release on probation'. However, it is not actually practiced. In theory, offenders must serve part of their sentences in prison; the probation officers supervise released inmates and place them under programmes when deemed appropriate. In the Solomon Islands there is no parole; inmates can be released on license, however. In Hong Kong inmates cannot be paroled either; they can be released under RUSS (Release Under Supervision Scheme) or PRES (Pre-Release Under Employment Scheme).

Regardless of the type of early release scheme, participants agreed on the effectiveness of such schemes in general in reducing prison overcrowding. Some participants raised two concerns, however. One is victims' negative attitude toward early release of offenders. The other is the possibility of releasing high-risk offenders. They went on to, therefore, point out the need to scientifically identify inmates appropriate for early release; the issue of false negatives and false positives were debated in this respect.

B. Halfway Houses

Halfway houses are another alternative to imprisonment. Some participants argued that halfway houses, used only for temporary shelters, cannot solve the problem of prison overcrowding; offenders should be accommodated for sufficient time to effectively alleviate prison overcrowding.

However, this argument raised two issues that should be addressed. The first issue is the fact that the public in general do not want halfway houses in their neighbourhoods. A participant from Hong Kong commented in this respect that the locations of halfway houses should be carefully selected. That is, the locations should be close enough to downtown so that offenders can easily obtain jobs; but should be far enough away from residential areas to avoid negative reaction from the neighbourhood. The second issue concerns the effective way to monitor the behaviour of offenders. In halfway houses, unlike in prisons, offenders cannot be monitored well; absconding, drug use, and other forms of misbehaving are likely.

Therefore, the requirements are: 1) clear rules/regulations; 2) statutory supervision/monitoring of residents; and 3) careful location of halfway houses.

C. Work/Study Release

Work/study release can be a countermeasure against prison overcrowding in three ways.

To begin with, under the scheme of work/study release, the authority can place a portion of inmates in the community instead of in prisons.

In addition, recidivism can be reduced; this is because unemployment, a notable risk factor of recidivism, is expected to be avoided due to work release, which helps offenders find jobs after their discharge.

Lastly, work/study release, if combined with an early release scheme, can maximize the effect of reducing overcrowding. In fact, work/study release can be easily integrated with an early release scheme, where the time spent for work/study release is deducted from inmates' original sentences.

D. Remission

The ways of managing remission are different from country to country. For example, a participant from Hong Kong said that inmates were eligible for a one third remission of their original term of imprisonment for good behaviour during their incarceration; according to a participant from Brazil, a certain period of an inmate's incarceration is deducted from his or her original sentence; in Japan, remission, rarely applied and practiced, is considered one of the subcategories of pardon. Korea does not have remission.

Before discussing the advantages and disadvantages of remission in terms of reducing prison overcrowding, the group identified differences between ‘remission’ and ‘parole’.

Table: Comparison between Remission and Parole

Remission	Parole
Automatic	Conditional/Discretionary
Prisoner absolutely discharged	Prisoner must undergo supervision; may be recalled back to prison
No supervision	Aftercare available

(Note: Findings are based upon the discussions.)

A participant from Namibia gave an example of remission in Namibia:

Case: A person is sentenced on 3 May 2009 for an offence of theft to a term of six months.

Sentence without remission

Day of Admission: 3 May 2009 plus six months
 Day of Expiration: 2 Nov 2009
 Day of Release : 2 Nov 2009

Sentence with remission

Day of Admission: 3 May 2009 plus six months
 Day of Expiration: 2 Nov 2009 minus two months
 (= 6 multiplied by 1/3)
 Day of Release: 2 Sept 2009

On the surface of it, remission works in the sense that sentences are automatically and substantially shortened, resulting in the reduction of the prison population. A participant from Hong Kong raised concerns, however, from another perspective. According to his argument, the public consider remission to be too lenient; the public outcry (“miscarriage of justice”) is likely if the sentences are not executed as prescribed. A participant from Japan dissented; remission can be managed in a tough manner. A participant from Brazil dissented, too, from a different point of view; remission can be rehabilitative. In this respect, an advantage of remission was argued: inmates are, remission being in operation, more motivated to change to obtain early release.

Subsequently, the group discussed administrative measures necessary for the practice of remission. Recommendations based upon the discussion for administrative measures were as follows:

- Computerization
 - Computerization with a sufficient data base is recommended; counting of periods/sentences, good conduct and other factors related to remission is complicated: manual calculation is not efficient.
- Monitoring
- Public education
 - Public awareness of remission should be raised; if not, the public will react negatively toward remission.
- Conditions
 - Conditions under which inmates are eligible for remission should be set. These conditions should be designed and tailored: 1) to maximize the effect of reduction in recidivism; and 2) to be motivating incentives for inmates.

E. Pardon

Differences among countries were discussed. Pardon is granted mainly on ceremonial days in Korea; two forms of pardon, i.e. general pardon and special pardon, are practiced, depending upon the inmate and the

nature of the offence. In Hong Kong, only those prisoners with serious health problems or who are suffering from fatal illnesses would generally be released on pardon. In Namibia, pardon is granted by the President, whereas in Hong Kong it would be by the Chief Executive/Governor on the advice/recommendation of the administrative office.

A participant from Japan said that in his country pardons are strictly and conservatively practiced. Subsequent to his comment, the effectiveness in terms of reduction in the prison population was called into question. Some participants gave negative views of pardons; their argument is that pardons are, in careful consideration of the public opinion upon administration of justice, rarely granted; therefore, substantial reduction in prison population is unlikely. Another participant pointed out, however, that an advantage of pardon lies in its flexibility; pardons can be granted even when other measures are inapplicable. In addition, a participant from Tonga said, negative labelling ('stigma') can be removed if pardon is granted; the effect in rehabilitation and smooth reintegration into the community should not be neglected as well.

F. Other Measures related to Early Release

In order for more offenders to be eligible for: 1) parole; 2) release to halfway houses; and 3) work/study release, a participant recommended introducing electronic monitoring for high-risk offenders and urinalysis for drug addicts; offenders considered ineligible for parole, he argued, can be placed under parole if electronic monitoring and urinalysis are introduced to the system.

Another participant dissented, however: experiences in England and Wales show that such measures have actually resulted in 'a revolving door phenomenon', i.e. lots of parolees are re-institutionalized due to technical violations of parole terms.

G. Other Forms of Early Release

Other forms of early release were discussed. However, their applicability was questioned; a scheme specific to one system is not always applicable to other countries' systems. Thus this topic was not much explored.

III. EFFECTIVE TREATMENT PROGRAMMES

A. Assessment and Classification of Inmates

A participant from Namibia shared with other participants the assessment and classification of inmates administered in Namibia; when inmates are admitted, information on each inmate, such as criminal history, medical conditions, family background and so on is collated; inmates are assessed and classified upon the information. A participant from the Solomon Islands said that inmates are classified according to their need for rehabilitation and risk to the community, staff and prisoners; moreover, that country utilizes a systematic classification system; under their classification, inmates are classified into low, medium and high-security inmates. In Japan, a participant argued, the assessment is mainly conducted for the purpose of safe management of prisons; the emphasis has been upon the prevention of escapes, violations of prison rules, "contamination" of criminal tendency and so on. An assessment from the viewpoint of preventing recidivism is now under development.

Other participants likewise touched upon their systems' methods of assessment and classification: overall, the seriousness of the crime committed, types of offences, length of sentences, security risks posed to the staff/prisoners are vital information² for assessment and classification; in some jurisdictions, social workers, probation officers and other officers as well as prison workers are involved in the process.

To put what is in theory into practice, a participant from Hong Kong said that standardized assessment methods, scientifically-proven assessment mechanisms, appropriate and sufficient training for assessment officers and computerization of the system should be considered. He continued to say that there are two types of assessment; one is categorization of inmates (Cat. A, B, C and D) according to security risk levels as identified by types of offences, length of sentences and so on; the other is a risk-needs assessment based

² Note, in passing, that empirical study of recidivism shows major predictive factors of recidivism as follows (Andrews, D. Bonta, J.): history of antisocial behaviour, antisocial personality pattern, antisocial cognition, antisocial associates, family/marital circumstances, school/work, leisure/recreation, substance abuse.

upon scientifically designed tools, which have been developed, standardized and introduced under world-acclaimed Canadian guidance, to assess the risk of prisoners' re-offending and their rehabilitation needs.

A participant from Tonga asked what would happen if an inmate rejects assessment? This would raise ethical and administrative questions as well as implications for the effectiveness of the programmes.

B. Evidence-based Treatment Programmes

Before discussion, the definition of the word "evidence-based programmes (EBP)" was identified. EBP refers to programmes whose effectiveness in reduction of recidivism has been proved through rigorous statistical reviews; well-known examples are skills training, cognitive behavioural therapy and so on.

According to some pieces of research, evidence-based programmes are part of, not the extent of, the penal interventions that can reduce recidivism; some critics even supported the effectiveness of traditional approaches in the probation service.

In order to avoid argument against the evidence-based approach of the existing treatment programmes in different countries, discussion was then focused on the strengths, weaknesses and administrative structures/facilities required of various effective treatment programmes implemented in different countries.

C. Other Effective Programmes

1. Discipline

Participants went on to discuss, for example, disciplinary measures implemented in prison; among others, the principle of discipline training with an emphasis on the 3Ss, i.e., short, sharp and shock,³ was called into question. Some expressed negative views; discipline could be used as an excuse for abuse, retaliation and so on. A participant from Tonga said that discipline is not compatible with religious/spiritual interventions widely practiced there. The Hong Kong participant brought forward that although the effectiveness of the 3Ss discipline training is questioned with reference to some research, the training is adopted in various countries and the result is encouraging (e.g. in Hong Kong, the success rate of Detention Centres with 3S discipline training is over 95% in the past decade). Others supported discipline, however, as it can instil well mannered habits in inmates. A participant from Japan gave an opinion that bridges the pros and cons of discipline; he insisted upon combining discipline with other programmes. According to his opinion, "to be disciplined" paves the way for rehabilitation programmes, i.e., readiness as well as motivation for rehabilitation is expected to be instilled due to good discipline. In addition, clear guidelines/instructions for staff and sufficient staff training were recommended to prevent the abuse of discipline.

2. Family Participation

Participants unanimously agreed upon the importance of family participation; family support helps inmates' smooth reintegration to the community. A participant from Hong Kong commented that: 1) existing visiting facilities with glass shields may distort the meaning of unity, thus, family participation meeting programmes are favourable; and 2) however, the said programmes may also induce negative feelings in those prisoners/inmates who have no family ties. In addition, technical issues were discussed; first of all, how can the system know who are the real parents or other family members?

3. Sports Activities

Obviously, sports activities have little to do with reduction in recidivism, but sports activities as well as other recreational activities, however, are important in the sense that these measures can alleviate inmates' stress in an overcrowded environment.

4. Education/Vocational training

Participants agreed upon the positive effects of education/vocational training in general. Besides, participants argued, participation and performance in education/vocational training can be one of the conditions under which inmates are eligible for remission or parole.

A participant commented, however, that vocational skills taught in prison do not always match the

³ Short: Short detention period; Sharp: Prisoners become sharp in discipline and behaviour after receiving the training, Shock: The shock of detention, with tough disciplinary training.

demand in the market. Vocational skills on demand in the market change from time to time; it is difficult for the prison administration, on the other hand, to change the vocational training available in prison in accordance with the volatile market.

5. Psychiatric/Psychological Service

Psychiatric/psychological interventions were up for discussion; these interventions were, for the purpose of organized discussion, classified into: 1) psychological treatment programmes; and 2) psychiatric interventions for mental illness.

As to the first category, the target groups are subcategorized into violent offenders, drug addicts, sex offenders and so on.

One disadvantage is that these measures cannot be provided to every inmate in need of psychiatric/psychological attention due to the small number of professionals available. Note, however, that group counselling for offenders who share similar problems can be a realistic option whilst man-to-man counselling is out of the question due to limited resources.

6. Religious/Spiritual Services

Some recidivists, due to religious services they received in prison, may change themselves. A participant from Hong Kong shared his experience, saying that he once saw drug addicts stay away from drugs forever due to religious services. A Namibian participant commented that religious facilities and workers are in place in prisons. In Korea, Christian followers have even established private facilities for offenders.

The strengths of religious/spiritual services are as follows: it helps offenders have confidence, a sense of belonging and a motivation to change. These factors, it is argued, eventually contribute to rehabilitation. Cost-effectiveness is another notable strength; obviously no huge investments are required. In addition, even security is maintained because of the prevailing atmosphere of religious peace, a Brazilian participant commented. Another participant said that religious services to offenders sentenced to life imprisonment do work.

Weaknesses, on the other hand, are as follows: in secular nations in which the State is constitutionally separated from the church, the prison service cannot provide religious services to inmates; only volunteers can be involved in such programmes. A Japanese participant pointed out that the constitutional separation of the State and the church in Japan was introduced in view of the pre-WWII practices where one nationally-certified religious sect imposed religious services upon nationals at the cost of their freedom of religion.

A participant from Tonga, where an enthusiastic belief in the Bible is prevailing, said partnership among concerned parties is necessary to implement faith-based community correction; however, in a jurisdiction where different religious beliefs exist, collaborations as found in Tonga are difficult to implement, according to other participants.

7. Aftercare Supervision of Discharged Offenders

A participant from Hong Kong said that there is “through care” for offenders in Hong Kong; “through care” refers to a continuous, seamless and tailor-made treatment provided to offenders in Hong Kong from their admission to correctional institutions. In Tonga, conditional and non-conditional release upon parole is available; when released on condition, offenders are supervised. A participant from the Solomon Islands said inmates are released on license; there is no parole. According to a Japanese participant, programmes that cater to sex offenders, violent offenders and drug addicts are available; these programmes are oftentimes provided on a man-to-man basis.

Subsequently, parole revocations were discussed. A participant argued that parole officers should not be too strict with their clients; in the cases of minor technical violations of parole terms, parole officers are advised to give verbal warnings instead of officially filing petitions of revocations; parole officers should give second chances to offenders. A participant from Japan concurred from a slightly different point of view; filing petitions of revocations, unless carefully considered, will result in prison overcrowding.

The issue of protection of the community was raised, however; a good and carefully calculated balance

between rehabilitation of parolees and protection of the community is expected. This issue is debatable, or rather, controversial. When revocations are strictly applied, prison overcrowding is likely. On the other hand, lax use of revocations will result in fostering of recidivism and arousing negative reactions from the general public that demand community protection.

Next, clarity of terms/conditions was discussed. A participant from Hong Kong said that the rationales of supervision and parole terms and conditions should be clearly explained to offenders. If not, parolees become embarrassed, upset or even angry when placed under aftercare supervision, wondering why supervision is necessary once released from prison. Also, revocation procedures, when dealt in the (quasi-) court proceedings, cannot be defended if the criteria applied for revocations are ambiguous. A Japanese participant dissented; front line probation officers would like to enjoy wide discretion whether to file petitions for revocation and insisted that they deserve such wide discretion because of their expertise in the treatment of offenders. He went on to say that the procedures for revocation should consider the nature of parole and be on a case-by-case basis with wide professional discretion attached. He added, though, that probation officers are always under attack, especially when they decide not to file petitions for revocation, even if these decisions are based upon careful consideration. A participant from Tonga commented in this respect that 'a model of a parole case', rather than criteria, should be set.

Advantages of aftercare are as follows: to begin with, recidivism is prevented due to aftercare. Moreover, reduction in prison population is possible due to early release.

Disadvantages of aftercare are as follows: For one thing, as compared to prison, to implement programmes in the community has administrative limitations, despite the fact that programmes provided in the community are, in theory, more effective than ones provided in prison. Furthermore, high-risk offenders cannot receive aftercare services, which are indispensable for their smooth integration to the community, because high-risk offenders are excluded from early release schemes; high-risk offenders are mainly released upon the expiration of sentences, not upon parole. Lastly, unless carefully considered, revocations oftentimes result in prison overcrowding.

The necessary administrative structure/facilities are: 1) treatment programmes, which should be included in addition to simply monitoring parolees; 2) careful and balanced use of revocations; and 3) aftercare services for those who are released upon the expiration of their sentences (most of them are offenders at high risk of recidivism); though treatment for such ex-inmates will be on a voluntary basis and should not be made compulsory; governmental financial/legal supports are important as well; and 4) continuous care projects for ex-offenders, who are legally out of the criminal justice system, are recommended.

A VE commented that in his jurisdiction discharged inmates are involved in community services; these contributions to the community are these days highly regarded.

8. Social Service Treatment Programmes for Discharged Inmates

Community services were discussed. A participant from Hong Kong said that it can be a kind of social service treatment programme to involve NGOs and ex-prisoners or supervisees to carry out some social services in the community. Likewise, ex-convicts are invited to school seminars to share their experiences, encouraging students to stay away from delinquency.

The Namibian participant said there are no community services for discharged inmates. So did a Brazilian participant.

The strengths of community service are as follows: the public can have confidence in the rehabilitation of offenders due to these projects; also, by having offenders involved in community services under these projects, the negative view of offenders' rehabilitation (stigma, labelling) is expected to be removed.

Weaknesses are as follows: to maintain offenders' motivation to participate in the programme is difficult, especially when applied on a voluntary basis. A participant from Tonga pointed out that some offenders, when placed on community service, would like to go back to prison because of the food, clothing and shelter provided there. In addition, to select offenders appropriate for these programmes is sometimes difficult.

The necessary administrative structures and facilities are: 1) to keep close contact with offenders to motivate them; and 2) to have a close relationship with NGOs.

9. Offenders' Criminal Records

Offenders' criminal records were up for discussion. Some ex-offenders are discriminated against, prejudiced and even ostracized, oftentimes finding themselves unemployed, mainly because of these previous criminal records. Ironically enough, governmental offices do not hire ex-convicts though these offices put emphasis upon a 'second chance for ex-convicts'!

10. Public Education, Campaign and "Awareness Raising" for the Prevention of Crime and the Rehabilitation of Offenders

A participant from Hong Kong said a multi-agency project such as "the Yellow Ribbon Project" in Singapore helps the prevention of crime and the rehabilitation of offenders. In Hong Kong, there was a 'Pioneer Rehabilitation Programme' under which students of secondary schools or some other youth groups would be invited to visit some correctional institutions and share their feelings with prisoners. The project aimed at the enrichment of students'/youths' knowledge of the consequences of crime.

A Singaporean example was discussed. In Singapore, there is a quasi-private organization that helps the Prison Service provide rehabilitation programmes, implement vocational training and sell prison products.

IV. OTHER ISSUES

A. **Evaluation Measures of Programmes**

All agreed that evaluation is an important measure in reviewing the effectiveness of the treatment programmes implemented.

Items necessary for evaluation were discussed. Possible items were as follows:

- Recidivism;
- Cost-effectiveness;
- Success rate (i.e., to what extent the target population have achieved the desired goals. For example, how many juveniles continued education after discharge, how many offenders obtained employment after having completed vocational training?).

Evaluation is multi-faceted. Evaluation is viewed from the two perspectives:

- Macro: Programmes' effectiveness regarding outcomes/results;
- Micro: Each offender's progress.

Also, the timing of evaluation was also discussed:

- Evaluation is conducted at the time of discharge/completion of the said programmes;
- Evaluation is conducted later enough to gauge the effectiveness of the said programmes.

Subsequently, methodology was discussed.

Firstly, a standardized method of evaluating the changes of offenders' behaviour/attitudes is required.

Secondly, a participant pointed out that "offenders' satisfaction" should be included in evaluation because most evaluations are actually conducted from the view point of the Authority, not from that of offenders. A participant from Tonga said that they ask (ex-)offenders to complete a questionnaire on programmes to understand the effectiveness; he also said that employers, too, are required to answer questionnaires on the performance of ex-convicts. In this respect, however, how accurate/honest/comprehensive answers the authority can obtain was called into question. Sometimes offenders' family members can be good/accurate sources of information about the offenders.

Thirdly, who conducts evaluation is another issue that should be addressed. Actually, there has been research on crime/criminals in which the authority entrusted the evaluation to a third party (academics).⁴

⁴ "Liverpool Desistance Study" by S. Maruna, L. Porter and I. Carvalho is a notable example.

Sometimes it is an appropriate option to entrust evaluation to a third party because: 1) findings are independent of the Authority, i.e., are neutral, objective, and thus more accountable; and 2) the cost is expected to be reduced.

Strengths of evaluation are that: 1) the Authority can understand the effectiveness/ineffectiveness of the said programmes; 2) the quality of the programmes is also maintained; and 3) the Authority can show the effectiveness of the programmes to the finance department as well as the public.

Weaknesses of evaluation are that: 1) the definition of success, depending upon the viewpoints, could be ambiguous. And standards of evaluations are not easily set; 2) the authority to conduct evaluation is not always rendered.

Possible solutions are: 1) to invite a third party to conduct evaluation to obtain unbiased results cost-effectively; 2) to utilize measures/standards widely accepted in conducting evaluation.

V. RECOMMENDATIONS

This group discussed effective countermeasures against prison overcrowding, dividing the topic into two, i.e. post-sentencing dispositions and effective treatment programmes.

It is agreed that all post-sentencing dispositions and effective treatment programmes discussed were effective in tackling the overcrowding problem in penal institutions. It is recommended to develop and endeavour in the following areas:

- Acquisition of support from government policies;
- Exploration of resources;
- Soliciting of public acceptance of and support for rehabilitation of offenders;
- Comprehensive and matching strategies between post-sentencing dispositions, treatment programmes and publicity campaigns, i.e., there should be a comprehensive and matching strategy to ensure the post-sentencing dispositions, treatment programmes and publicity campaign adopted are correspondent and in line with the aims of reducing overcrowding problems in penal institutions and rehabilitation of offenders.