

## **GROUP 3**

### **INFORMATION SHARING IN MULTI-AGENCY COOPERATION**

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## **I. INTRODUCTION**

Group 3 was composed of 7 members from 6 different countries. By consensus Mr. Benjamin C. Cutay Jr was elected as Chairperson, Mr. Thiago Ferreira Olivera as Co-Chairperson, Mr. Tashi Phuntsho as Rapporteur, and Mr. Jeffrey Mala Mesa as Co-Rapporteur.

The group's topic for discussion was "Information Sharing in Multi-Agency Cooperation". Discussions commenced on 22 January 2016, after a steering address by the Advisor, Professor Satoshi Minoura. The Chairperson then assumed the lead and set a tentative discussion schedule for the related sub-topics as follows:

1. 22 January 2016: Types of offenders who benefit from Multi-agency Cooperation.
2. 25 January 2016: Information Analysis of offender and information sharing.
3. 28 January 2016: Information Analysis of offender and information sharing.
4. 1 February 2016: Problems of Legislation.
5. 2 February 2016: Problems of Legislation.

## **II. SUMMARY OF DISCUSSION**

### **A. Types of Offenders and Offences Who Benefit from Multi-Agency Cooperation**

#### **1. Types of Offenders**

*Discussion: Various types of offenders receive treatment from Criminal Justice Agencies. Define what types of offenders are fit for Multi-Agency Cooperation*

The discussion surrounded what types of offenders should be subjected to treatment within multi-agency cooperation. The majority of the representatives (Bhutan, Brazil, Kenya and The Philippines) agreed that all types of offenders, irrespective of their age, gender, race and criminal history, should be included in multi-agency cooperation, as the treatment facilitated a greater assurance of reintegration into the community.

There was a noted concern (Japan and PNG<sup>1</sup>) for all offenders with special considerations such as juvenile and elderly offenders, offenders who are physically impaired and those that abused stimulant substances. These were viewed as special situations that would benefit from multi-agency cooperation, particularly as the recidivism rate among such offenders is very high in their respective countries.

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<sup>1</sup>Papua New Guinea

2. Types of Offences

*Discussion: Analyse the various types of offences committed that are fit for Multi-Agency Treatment*

There was agreement that multi-agency cooperation should render treatment for all types of offences (Brazil, Kenya and The Philippines), for misdemeanours, petty misdemeanours and violations (Bhutan). Recidivism was prevalent in offences such as substance abuse, larceny/robbery, and if not addressed properly the offender may continue to affect themselves and the people around them (family, neighbours, community at large), even to the extent of leading possibly to his/her death. For this reason, particular offences with high recidivism rates should be primarily treated (Japan and PNG).

3. Types of Support

*Discussion: What types of support are available to offenders through multi-agency treatment?*

Multi-agency cooperation support services are made available through various agencies' collaboration, and when an offender commences or receives treatment, the success of keeping them from reoffending may depend largely on the type and form of support they had during the process of reintegration.

Crime is committed for a variety of reasons but largely due to lack of housing, employment, skills, mental impairment or substance addiction. Once this is recognized, the support programmes are made to address these situations with the aim to prevent recurrence of offending, and the multi-agency cooperation ensures this support as per their needs. Support may be in the form of:

1. Job Assistance
2. Housing Assistance
3. Medical treatment
4. Psychiatric treatment
5. Educational programmes
6. Rehabilitation clinics for substance abuse
7. Social benefits
8. Any other assistance for offender treatment.

The information sharing in this regard is most useful as it enables the respective agencies to establish information-based programmes which will or may effectively support offenders in their required situations.

**Best Practice:** All offenders, irrespective of the offence committed, should be treated through multi-agency cooperation in information sharing. The recidivist should be primarily addressed, and the support assistance for such offenders is primarily essential in starting a successful treatment.

**B. Information Analysis of Offenders and Information Sharing**

1. Information Which Should Be Shared among the Agencies.

*Discussion: What kinds of information are necessary for the effective implementation of multi-agency cooperation?*

Multi-agency cooperation is best explained as cooperation between agencies working in partnership for a common concern (reduction of recidivism) in pursuit of a common goal, using their collaborative expertise and resources.

To that end, the representative discussion was unanimous that a mutual working relationship and effective information sharing should be observed by the multi-agency collaborative partnership which would ensure the successful implementation of the treatment programmes.

The respective criminal justice systems may have bounds (legal or regulatory) within which respective agencies can acquire or provide information concerning an offender. Therefore, information may be given

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when needed, and then only in measured proportion and relevance as per an agency's role and responsibility. An example is given by Japan; information on a juvenile collated by a Family Court Probation Officer may be acquired by the organizations for the treatment of juvenile offenders. (When a juvenile reoffends, the previous social investigation report will be used in the trial and the respective organizations involved in the treatment of juveniles.) However, information for an adult will be restricted to a degree after the trial.

It was interesting to note how personal information is approached and is treated in various countries. Most can distinguish personal information to be *sensitive/personal* as opposed to *general/personal*; the former being subject of stringent protection, and the latter more easily accessed. Although the Japanese Personal Information Protection Act distinguishes sensitive information such as personal criminal records from general information, even general information is strictly controlled by law as well as in practice.

Importantly, however, it was confirmed that sharing of private personal information in some countries in the nature of (but not restricted to) personal bank account details (financial privacy), communication privacy (telephone calls, text messages, emails, photographs, written correspondence/articles) and sensitive personal health related matters (HIV AIDS, Tuberculosis) is strictly regulated and requires either a judicial warrant or the express written consent of the offender for it to be accessed and shared. Juvenile information and its access are also stringently regulated in keeping with the child's best interest.

Recognizing all the above, it is agreed then that the following categories of information may be shared among agencies for offender treatment:

1. Offender's biographical data.
2. Nature of the offence.
3. Offender's history of previous offences.
4. General health and mental conditions.
5. Behaviour and conduct while in a correctional facility.
6. Behaviour and conduct while in residential community.
7. Education and skills training/level.
8. Employment history.
9. Offender's compliance with previous court orders or sentences.
10. Circumstances and environment of the victim, and any compensation or civil commitment condition to which the offender is subjected to pay by the Court.

This information is found to be necessary for the offender's treatment/rehabilitation process at its respective stages involving the respective agencies. To share or acquire this information, the government agencies must observe the protocol and courtesy of a formal request in writing to each other for it. Information can also be acquired through a shared database like the NCIS<sup>2</sup> (The Philippines), the CCIS<sup>3</sup> (Bhutan) and the NCCPIP<sup>4</sup> (PNG). In every instance that the file transfers may occur (privacy restrictions notwithstanding), thereafter where necessary to ensure the operation of the process.

## 2. Sphere of Information

*Discussion: Each Criminal Justice Agency holds different amounts of information on one (1) offender.*

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<sup>2</sup>National Crime Information System.

<sup>3</sup>Crime and Criminal Information System.

<sup>4</sup>National Court Criminal Process Improvement Programme.

*Consider not only how his/her information should be handled in the criminal justice process, but also how much the private sector needs such information to provide effective cooperation.*

Within the criminal justice process, the personal information of an offender must be shared freely between involved government agencies, and all propriety must be observed by each in doing so, given the responsibilities and discretion they are bounded by under the law.

Situations often arise where information must be shared with private agencies, who are also involved in the treatment of offenders. How much information they are entitled to will depend on the nature of their particular treatment service/facility, and it must be confined to what their requirements are, based on what is necessary.

Information sharing with private agencies should be done with great sensitivity toward the offender's personal privacy, considering the discussion above. While government agencies are bound by a legal duty to apply an offender's information in the proper circumstances for their treatment, private agencies may operate outside of legal periphery which may lead to loss of confidentiality and trust where the danger of information misuse may occur.

It follows then that, the type of personal information that needs to be shared with a private agency must be what is necessary for that particular treatment/rehabilitation programme and without prejudice to the offender where the misuse of an offender's personal information outside of this purpose (treatment) may result in legal action for privacy violation.

Private agencies are also subject to compliance with the formal written request protocol, as government agencies are.

### 3. Problems in the Handling of Offenders' Personal Information

*Discussion: Much information that is handled in the criminal justice process is offenders' personal information. How should criminal justice agencies disclose the information collected by one agency to other agencies, including other government bodies and the private sector?*

There is a concern that the personal information stored in databases of criminal justice agencies is susceptible to being hacked/illegally accessed. Such large volumes are competently stored and, considering the frequency of its use by respective agencies at similarly frequent intervals, the problems cited are:

1. Privacy principles.
2. Unlawful practices or misuse of data, insecure practices.
3. Risk during data retention associated with data theft and network security threats.
4. Loss of drives or using portable drives while storing and carrying information.

Notwithstanding the above, it is recognized that all stakeholders and agencies have the right to access information to effectively implement programmes based on their respective roles, but to work in collaboration with each other, the following recommendations are proposed:

1. Appoint designated data handlers with SOP<sup>5</sup> to prevent unauthorized access and disclosure.
2. Timely exchange of information.
3. Information should be what is necessary, proportionate, relevant, accurate, and secure.
4. Share with consent wherever necessary.

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<sup>5</sup>Standard Operating Procedures.

5. Frequent scrutiny regarding use of information provided should be carried out.
6. Integrated IT systems like the NCIS in the Philippines or the collaborative database of criminal justice information of Japan is recommended for information sharing.

The victims' perspective also needs to be considered here. This party's information was valuable overall in terms of restorative justice and mediation, all commensurate with the Probation and Volunteer Probation Officers' treatment of the offender. Consideration should be given to the burden placed on victims when they are forced to relive the trauma by relating it repeatedly to different agencies during the criminal justice process; the physical and psychological stress combined would be too taxing and insensitive.

To spare the victim, the initial interviewing agency should share information provided by the victim as required to other government agencies in the process; victim information provided to private agencies must be necessary to the particular treatment programme/facility. Further, the interviewing agency should follow up on the victim over time as their circumstances might have changed enough to capably handle treatment processes like speaking to the offender about the offence and expressing their feelings.

**Best Practice:** Information should be shared among all agencies concerned with the treatment of offenders, in proportion to their roles. Information given to private agencies is qualified for all purposes, and the personal/sensitive information is subject to consent or a warrant. Formal written requests are to be observed, and all data should be competently secured in databases. Victim information is valuable, to be obtained once and shared to agencies through the process. The victim can be a significant participant in the treatment process of the offender.

### C. Problems of Legislation

*Discussion: What is the extent to which offenders' personal information must be protected by laws when criminal justice agencies and the private sector engage in multi-agency cooperation?*

Legislation that pertains to agencies' functions and roles in multi-agency cooperation and privacy laws is fundamental in most countries (Japan, Kenya, the Philippines, Brazil and PNG); however, not all agencies in Bhutan have a definitive legal basis, especially probation-oriented services. The group agreed that there ought to be distinct legislation that links all agencies into a multi-corporate function of information sharing, working in tandem instead of at random.

Further, better coordination among the agencies would make a better working atmosphere with a culture of trust, cooperation, mutual understanding and commitment towards the common desired goal, the treatment of offenders to reduce or prevent recidivism. This could be advanced by:

- a. Enacting laws or MOUs<sup>6</sup> in countries that define agencies' roles and their legal basis.
- b. Ensuring that agencies understand their own functions and purposes, and operate more efficiently, especially data collation.
- c. Ensuring that agencies have a better understanding of each other's functions and roles, and how they are linked through multi-agency cooperation.
- d. Regular meetings of the multi-agency cooperative for better cognizance.
- e. Establishing better professional rapport between agencies.
- f. Better sharing of information between the agencies
- g. Need to tackle institutional problems that prevent effective coordination.

All the participants agreed, when privacy is a concern, some information that can be disclosed is

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<sup>6</sup>Memorandum of Understanding.

handled as stated as above. Information that cannot be shared freely among the agencies include,

1. Bank account information
2. Communication privacy information
3. Fiscal information
4. Serious health conditions

Consideration turned to when an offender is seeking employment or housing in the private sector, how much of his/her information can be protected from a potential employer/tenement? It is a difficult scenario.

To begin with, the stigma of being avoided because of criminal history is a reality in every country. Disclosing criminal history, especially if it was violent or aggravated in nature, may jeopardize chances for employment or other opportunities. On the other hand, an accurate report of his/her prior history (e.g., theft of a bike, not murder) may alleviate any anxiety a potential employer may have had, and lead to the offender's employment. This is consistent with the positive reaction that honest disclosure will assist in furthering any opportunity. In the end, it was observed that while the offender had the right not to disclose his/her criminal history, the employer also had the right to protect his/her business and reputation — thus, the necessity to know as much as possible about an individual, offender or not. It is the contest of balancing the offenders' interests against the employers' interests.

A strategy that may strike this balance is that of completing a Statement of Purpose (the Philippines) where an offender submits his/her history and other information, which the employer uses in good faith only. Interestingly, when an employer has employed an offender, he now becomes held to protecting the offender's history absolutely; failure to do so will result in legal action for privacy violation if that information was misused to the offender's detriment. A related experience (Japan) is that where an offender is employed with a company, only the CEO is given the offender's information and no one else in the company knows, so that the information provided is protected and secure.

**Best Practice:** Healthy working rapport must be established among partner agencies to promote efficient and effective treatment of the offender. Specific legislation to this end would be ideal to link them all. Private companies must exercise absolute discretion about the offender who is seeking employment, housing, etc.

### III. CONCLUSION

The group after deliberate discussion came up with the Best Practice approaches for every topic discussed, and their collective summation is the best way to approach information sharing in multi-agency cooperation.

In summary, all types of offenders and offences will benefit from multi-agency cooperation, treatment and support. In order to achieve this, the sharing of both the offender's and victim's information among the agencies involved in the criminal justice process is important, simultaneously acknowledging that information privacy should always be observed wherever necessary.

To give emphasis to multi-agency cooperation, it would be practical to enact legislation that links each agency, thereby establishing a legal structure and basis to operate within. To complement the work of multi-agency cooperation, the community as a whole, both public and private, must treat offender information with sensitivity and due discretion when engaging with them. In the end, this goes to ensure that offenders are reintegrated as members of the same community.