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# EXECUTIVE SUMMARY OF THE WORKSHOP

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## Executive Summary of the Workshop on “Strategies and Best Practices against Overcrowding in Correctional Facilities”

### I. Introduction

Workshop 5 of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice was held in Salvador, Brazil, on 16 April 2010. The Workshop focused on the topic of “Strategies and Best Practices against Overcrowding in Correctional Facilities”, as mandated by the General Assembly resolution 63/193 of February 2009.

The Workshop was organized by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI). In order to make organizational and substantive preparations for the workshop, the organizer hosted three preparatory meetings in January 2009 (Tokyo), September 2009 (Tokyo), and April 2010 (Salvador), just prior to the Workshop.

The Workshop, held within the framework of Committee I of the Congress, was chaired by **Dr. Sitona Abdella Osman**, Alternate Representative, Sudan, and assisted by a Moderator, **Professor Dr. Dr. h. c. Hans-Jörg Albrecht**, Managing Director of the Max-Planck-Institute for Foreign and International Criminal Law, Germany, who facilitated the discussion throughout the Workshop. In addition to the Rapporteur of Committee I, **Mrs. Maggie Jackson**, Attorney-General's Department, Australia, the Workshop had as its Drafter **Dr. Tapio Lappi-Seppälä**, Director of the National Research Institute of Legal Policy, Finland.

The work of the Workshop consisted of four presentations and three panels: Strategies for Reduction of Prison Populations through Diversion, Informal and Restorative Justice and Alternatives to Pre-trial Detention; Strategies for Reduction of Prison Populations at the Sentencing and Post-sentencing Stages; and Strategies for Securing Support for Reduction of Prison Population, followed by interaction with the floor. The selection of the topics of the presentations and the panels, contained in document A/CONF.213/16, was made in accordance with the issues and elements contained in the Discussion Guide of the Congress (A/CONF.213/PM.1) and the reports of the regional preparatory meetings for the Twelfth Congress (A/CONF.213/RPM.1/1, A/CONF.213/RPM.2/1, A/CONF.213/RPM.3/1, and A/CONF.213/RPM.4/1).

### II. Proceedings of the Workshop

#### A. Opening

The Workshop was opened by the Chairperson on the morning of 16 April 2010. This was followed by an introductory statement by **Ms. Claudia Baroni**, a representative of the Secretariat, who referred to the negative impact of overcrowding in correctional facilities and stressed the importance of addressing prison overcrowding in a comprehensive and multisectoral manner. After her statement, there was welcoming statement from **Mr. Masaki Sasaki**, Director of UNAFEI, who emphasized that the workshop will pursue the subject matter through a practice-oriented, comprehensive and integrated approach, addressing possible efforts at the legislative level and all stages of the criminal justice process, including the rehabilitation of offenders, instead of simply focusing on the causes and countermeasures within the prison settings.

## **B. Presentations**

The first presentation was intended to show the audience the current situation of overcrowding in correctional facilities and its impact on human rights and the administration of criminal justice. The second presentation analysed the causes of the overcrowding. The third presentation was intended to facilitate the audience's understanding of the overview of the measures to prevent overcrowding and alleviate its impact, which were elaborated in the three panels following the presentations. At the end of the presentation session, a joint presentation took place to present the specific situations in middle and low income countries.

### **1. Presentation on “Current Situation of Prison Overcrowding”**

In his speech, **Mr. Rob Allen**, the Director of the International Centre for Prison Studies, King's College London, presented the current situation of prison overcrowding around the world. At the beginning of his presentation, he introduced, with several stunning pictures, the devastating consequences of overcrowding in correctional facilities e.g. death caused by insufficient air, the spread of tuberculosis, and rioting. He pointed out the difficulty in measuring overcrowding because there was no universal agreement on how much space should be allocated for each inmate. Using the database of the International Centre for Prison Studies on occupancy level, the best available proxy measure of overcrowding, he showed the occupancy rate of countries all over the world, some of which exceeded 300 percent, although he pointed out that prison capacity may be designated in an arbitrary manner. He argued that while high rates of over-occupation were not necessarily linked with high rates of imprisonment, they were related to high proportions of pre-trial detainees in prison populations.

### **2. Presentation on “Causes of Prison Overcrowding”**

The second presenter, **Dr. Tapio Lappi-Seppälä**, explored the causes of prison overcrowding and listed the following factors: excessive use of pre-trial detention; punitive “tough on crime” policies; lack of alternatives to imprisonment; rigid sentencing systems; restrictive and rigid early release practices and rigid revocation procedures; high reoffending rates, resulting from missing or inadequate in-prison and community rehabilitation programmes; and criminal justice systems adopting tasks that could be better managed by social, health and other services. He also pointed out that more general structural and cultural factors such as public fears and concerns over safety and security, public pressures, media impact, socio-economic equality and security, and political culture also affect prison overcrowding. At the end of his presentation, he introduced a promising Finnish example of prison population reduction as a result of political will, without any notable effects on national crime rates.

### **3. Presentation on “Countermeasures against Prison Overcrowding”**

The third presenter, **Professor Dr. Dr. h. c. Hans-Jörg Albrecht**, argued that overcrowding problems were associated with problems of governance, a weak economy and factors inherent to the criminal justice system. He emphasized that projection of the prison population was important and information systems were essential for that purpose. Although it was obvious that reduction of admission to prison and in the length of the stay was effective in reducing prison populations, the constituency for prisons was narrow, specialized and not influential, and implementation of those measures was difficult. He discussed the following measures for preventing overcrowding: prison construction and amnesty are effective in the short term, but avoid dealing with the causes of overcrowding; impact assessment when introducing new sentencing legislation is an essential element in good governance; prison litigation could become a means to and a part of prison reform; community sanction and parole were successful in reducing prison populations, but revoking them might increase such populations. Finally, he called for well-designed and longitudinal research to identify the reasons for success and failure of these measures and to propose measures policy makers should take.

### **4. Joint Presentation on “Specific Situations in Middle and Low Income Countries”**

The fourth presenter, **Mr. Elias Carranza**, Director of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), explained the current situation in the Latin American and Caribbean countries, in some of which the incarceration rate had doubled

or tripled since the 1980s and 1990s. He emphasized that inequality of income distribution had great impact on crime and on prison overcrowding. He stressed that crime prevention and criminal justice policies should be accompanied by policies to reduce this inequality. He introduced constructive cases in Costa Rica and the Dominican Republic, which took a holistic approach to addressing overcrowding, including training of prison personnel and improving prison conditions.

The fifth presenter, **Dr. Nsimba Masamba Sita**, Director of the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI), explored the relationship between Human Development and overcrowding in correctional institutions in African countries. He pointed out that there was a negative correlation between them, with a few exceptions, and argued that overcrowding in low Human Development Index countries is mainly the result of prolonged pre-trial detention caused by inefficient criminal justice procedure.

### **C. Panels**

#### **1. Panel I on “Strategies for Reduction of Prison Populations through Diversion, Informal and Restorative Justice and Alternatives to Pre-trial Detention”**

This panel was intended to explore effective and efficient measures to reduce overcrowding in correctional facilities at the pre-adjudication stage. As previous presenters mentioned, large numbers of inmates under pre-trial detention is one of the dominant contributors to overcrowding, especially for developing countries. Possible measures to reduce pre-trial detention are to reduce admission to detention facilities and length of detention through diversion, informal and restorative justice, alternatives to pre-trial detention and speedy trial. **Mr. Rob Allen** moderated this panel and six panellists made presentations.

The first panellist, **Dr. Kittipong Kittayarak**, Permanent Secretary for Justice, Ministry of Justice, Thailand, introduced offender treatment reform in Thailand. From 1996 to 2000, there was a sharp increase in prisoner numbers, the largest proportion of whom were drug-related offenders. As a reform initiative in response to overcrowding, the Thai government introduced the following measures: a drug diversion scheme accompanied by compulsory treatment programmes; restorative justice interventions for juvenile offenders; and enhancing the scope of probation work. Several lessons were drawn from the implementation of these measures. First, to convince the public and policy makers, political dialogue, such as campaigning, is important. Second, co-ordinated management of the dual track diversion scheme, voluntary and compulsory treatment programmes, is needed. Third, community participation is essential to support the programme as well as to persuade drug addicts to undergo the programme. Fourth, a foundation including a legal framework, capacity building and budget allocation is important to make these reform efforts a sustained enterprise. In conclusion, he emphasized that, being sustainable, these measures should be effective in preventing recidivism and promoting re-education and social protection; reducing overcrowding is not the primary purpose.

The second panellist, **Ms. Elinor Wanyama Chemonges**, National Coordinator of the Paralegal Advisory Services, Foundation for Human Rights Initiative, Uganda, presented strategies used in Uganda to reduce the prison population. Specific intervention included: the use of alternative dispute resolution, such as traditional justice mechanisms, Local Council Courts, and dispute resolution by family and religious leaders; weeding out cases in which there is no possibility to proceed; institutionalization of pro bono services to encourage faster case disposal; dispute resolution within the formal justice system before commencement of formal trial; legislation in supporting use of incarceration as a last resort; and legislative and policy amendments allowing lower courts to handle cases, which quickens case disposal. She argued that the Paralegal Advisory Services programme which addressed overcrowding in police cells and prisons, as well as delays in the criminal justice system, had been successful.

The third panellist, **Mr. Clifford Wayamuka Msiska**, National Director of the Paralegal Advisory Service Institute, Malawi, made a presentation on the success of paralegal services in reducing the numbers of pre-trial detainees in Malawi. He argued that a practical, affordable and effective legal aid

delivery scheme should be established, especially for the poor, who need not only legal representation, but also advice on bail or appeal, and support for mediation. Because the government cannot provide legal representation in every case, prisoners should be empowered to represent themselves and paralegals can assist them in applying the criminal law and procedures appropriately in their own cases and getting out of prison as soon as possible. Paralegals also facilitated screening the remand caseload, which contributed to the reduction of overcrowding. He stated that paralegal advisory services succeeded in reducing the prison population by over 5,000 and diverted over 80 percent of juveniles out of the criminal justice system.

The fourth panellist, **Mr. Toshihiro Kawaide**, Professor, Graduate Schools of Law and Politics, the University of Tokyo, described countermeasures against prison overcrowding at the pre-trial stage in Japan. He listed the following factors that eased overcrowding at the pre-trial stage: restriction of the use of pre-trial detention, including limitation of the period of detention before prosecution; speedy trial procedure for minor offences, where, with the defendant and defence counsel's consent, trial is simplified and sentence is restricted to imprisonment with suspension of execution or fine; moderate use of pre-trial detention; diversion in the phase of prosecution under the discretionary power of prosecutors; and *de facto* restorative justice practice, where prosecution is suspended as a result of compensation by the suspect.

The fifth panellist, **Professor Dr. Dr. h. c. Hans-Jörg Albrecht**, discussed three types of approaches to reduce pre-trial detention, and its length; criminal procedure reform such as restriction of conditions of pre-trial detention; introduction of alternatives to pre-trial detention such as electronic monitoring; and improvement of case management to reduce case-backlogs and mandatory assignment of defence counsellors. He pointed out that these measures could be effective, but long-term effect should be evaluated to detect whether there were causal relationships.

The final panellist of Panel I, **Sir David J. Carruthers**, Chairman of the New Zealand Parole Board, described the restorative justice process. He stated that there were many different types of restorative justice processes. In New Zealand, a restorative justice process for juveniles was introduced in 1989, and the number of custodial institutions for juveniles had dropped from 18 to four. Recently, restorative practice was increasingly used not only in the criminal justice system but also in the education system, and in workplace disputes and other types of community disputes. He argued that overwhelming research showed that restorative justice significantly contributed to the reduction in the use of imprisonment. Several research studies pointed out that restorative justice had the effect of reducing reoffending and also increasing victim satisfaction. Restorative justice methods introduced in school had succeeded in reducing expulsion and exclusion from school by 30 percent and eventually contributed to preventing crimes.

## 2. Panel II on “Strategies for Reduction of Prison Populations at the Sentencing and Post-Sentencing Stages”

In this panel, measures to alleviate overcrowding in correctional facilities at the sentencing and post-sentencing stage were discussed. The possible measures are: appropriate sentencing such as those based on sentencing guidelines and pre-sentencing reports, which can reduce the number of admissions to prisons; early release through parole and other measures, which can reduce the length of imprisonment; and institutional and community rehabilitation programmes, which can reduce reoffending of released prisoners. **Professor Yvon Dandurand**, Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy, moderated this panel and four panellists made presentations.

The first panellist, **Dr. Ela Wiecko Volkmer de Castilho**, Member of the Federal Public Prosecution Service and National Council on Criminal and Penitentiary Policy, Brazil, presented the Brazilian experience in introducing alternatives to imprisonment. Although the use of alternatives to imprisonment had been increasing steadily since 1987, it did not reduce the Brazilian prison population. She argued that the major contributors to this situation were: punitive culture; a common sense

understanding that imprisonment was the only effective response to certain crimes; and Brazilian law, which prescribed imprisonment for about 1,600 offences and restricted the possibility of replacement by alternative penalties. She underlined that to make alternative measures successful in reducing incarceration, the following actions were necessary: to reduce the punitive paradigm through global and coherent effort; to limit the number of prisoners detained in prisons; to apply the restorative paradigm not only to minor offences but also other type of offences; to amend laws to enlarge the possibility of application of alternative measures; and to implement the rights of equality and non-discrimination in Brazilian society.

The second panellist, **Ms. Maria Noel Rodriguez**, Director of the Programme on Woman and Jail, United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), introduced two strategies discussed at the Latin American and Caribbean Regional Preparatory Meeting for this Congress, in which ILANUD actively participated. The first strategy was to determine the maximum capacity of correctional facilities. There were three initiatives related to this: Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, approved by the Inter-American Commission on Human Rights, which established minimum standards for accommodation and stated that occupation over the maximum capacity should be prohibited by law; the standard proposed by the Latin American Standing Committee of the International Penal and Penitentiary Foundation, which recommended that an impartial body should determine the maximum capacity of each prison; and the project of Buenos Aires, Argentina, where an inter-ministerial body determines the maximum capacity of each institution. The second strategy was increased use of alternative measures to imprisonment. She described the practices in Uruguay, where 10 percent of the prison population was released in 2005 because of serious overcrowding. The early release was followed by individualized after-care such as provision of food coupons, transportation tickets and job training. Of the released inmates, 25 percent were returned to prison; this percentage is much lower than the average after usual release. At the same time, the use of house arrest was widened for pregnant women, handicapped people and elderly people and a sentence redemption system through work and study was established.

The third panellist, **Mr. Soh Wai Wah**, Director of the Singapore Prison Service, described a holistic rehabilitative approach adopted by Singapore prisons to rehabilitate offenders and to reduce prison population through prevention of recidivism. Since 2000, Singapore has experienced a sharp improvement in recidivism and prison population. He argued that this could partly be attributed to its holistic approach to rehabilitation. In this approach, every prison officer took on the role of a personal supervisor to the group of inmates in the cells under his or her charge and ensured that they attended suitable rehabilitation programmes. There was a systematic in-care programme where prisoners went through four phases - Admission, Deterrence, Treatment and Pre-release. Recognizing that aftercare for ex-offenders was critical for successful reintegration, the Singapore Prison Service formed an alliance with several other government and non-government agencies to help rehabilitate ex-prisoners. This alliance was called the CARE Network and comprised social welfare agencies, including the ministry responsible for welfare, the association for ex-prisoners, and a body for narcotics prevention volunteers.

The fourth panellist, **Ms. Christine Glenn**, Parole Commissioner of Northern Ireland and Immigration Judge, emphasized that parole and the managed early conditional release of a prisoner was one strategy to tackle prison overcrowding and also contributed to rehabilitation of offenders. She underlined that parole was for public protection at its heart and also a part of human rights engagement. Parole could be effective at tackling prison overcrowding and improving behaviour in prison, although it was not a reward for that. She stressed that parole was not a soft option even though it could be seen as one by public, media and victims. She listed the key factors of risk assessment and the main indicators of risk: past behaviour and convictions; motivation for and attitude towards offending; access and proximity to victims; preparedness to use weapons; disinhibitors such as alcohol and drugs; and situational triggers. Then, she described risk management strategies, which consisted of external and internal strategies. The external strategies were to reduce triggers and



opportunities of offending through restrictive conditions such as curfew, electronic tagging, prohibition of access to particular places and people; and to be delivered through external limits and controls such as mandatory drug testing and attendance of a sex offender programme. The internal strategies were to be delivered through rehabilitation programmes such as victim awareness and anger management, and restorative justice. In making risk assessment, protective factors should be considered, which includes factors derived from offenders themselves, their family and their community. In conclusion, she stressed that although there were no “no risk” decisions, with robust information and supervision, parole was an effective tool in managing overcrowding and in contributing to rehabilitation.

### 3. Panel III on “Strategies for Securing Support for Reduction of Prison Populations”

Panel III was aimed at discussing the strategies to secure the understanding and support of the public and other stakeholders for the measures discussed in Panel I and II. Every detained offender returns to society sooner or later by bail, probation, parole, expiration of sentence, etc. If society is not ready to accept offenders, it will become an impediment to his or her reintegration and will increase the possibility of his or her reoffending. In addition, rehabilitation programmes and other interventions for offenders that the government, especially those of developing countries, can offer are limited because of the lack of financial and human resources. NGOs, individual experts and communities can provide these resources and sometimes have better expertise in the specific fields than the government. Lastly, as discussed in the presentations, public fear of crime and punitive “tough on crime” policies are one of the factors that cause overcrowding. To implement alternative measures to detention and imprisonment, the understanding of the public and policy-makers is essential. **Dr. Tapio Lappi-Seppälä** moderated this panel and five panellists made presentations.

The first panellist, **Dr. Kittipong Kittayarak**, introduced the Thai experience in running alternative programmes. First, he mentioned the initiative aimed at introducing alternative measures against drunk driving through a nationwide comprehensive campaign. Probation was the least known agency, he argued, and convincing policy-makers to advocate probation and allocate financial resources was key to the success of probation. The “Drink-Don't Drive” Campaign was implemented to make probation work more visible to the public. The campaign included community services by drunk drivers, which were specifically tailored to sensitize them to reform their behaviour and to satisfy the public view that the treatment of these offenders should not be too lenient. Celebrities from popular TV shows have been involved in the campaign. Second, he emphasized the essential role of community participation. In Thailand, Volunteer Probation Officers provided linkage between probation officers and community members. Another measure to facilitate community participation was the Community Justice Network, which was piloted in 2003 and is based on Thai tradition. It established partnership between state and community and was responsible for community justice issues such as crime prevention, alternative dispute resolution, aftercare and reintegration. Third, he underlined the importance of the legislative framework in making the reform initiative sustainable and the sharing of the research outcome with the public.

The second panellist, **Mr. Soh Wai Wah**, presented Singapore's collaboration with the community to reduce recidivism through the Yellow Ribbon Project (YRP), which was a nation-wide initiative with the aim of creating awareness in the public of the message of “unlocking the second prison”, to make the public conscious of its role in the rehabilitation of ex-prisoners. Several activities were organized to champion the YRP in Singapore, such as the annual 'Wear-A-Yellow-Ribbon' activity; the YRP Run; and the Yellow Ribbon Art Exhibition. He emphasized that the real ambassadors of the YRP were the ex-prisoners themselves because involvement of ex-prisoners gave a human face to the perception of ex-prisoners. After six years of championing the YRP, on average, about 38 percent of the population had worn a yellow ribbon on their shirt for a day. About six percent of the population had participated in a Yellow Ribbon event, on average. There had been an increase by 13 times in the number of volunteers involved in rehabilitation activities.

The third panellist, **Dr. Nsimba Masamba Sita**, explored the reasons for the success and failure of implementation of alternatives to imprisonment in Africa. First, the outcome depended on the

effective involvement of the local community at the pre-trial and post-trial stages. This facilitated effective social rehabilitation and reintegration of inmates. Relatives, friends, neighbours and local authorities should be involved in this process to reach a restorative outcome. The second aspect was a shift from punitive and retributive logic to compensatory, conciliatory and therapeutic logic. Restorative justice had already been used in practice, but needed to be better documented and folded into the mainstream criminal justice system.

The fourth panellist, **Ms. Christine Glenn**, showed a video from the Parole Board for England and Wales used to promote its activities. She told of her experience at a victim's conference where a victim said to her that parole was “black arts” because the victim had no idea how parole decisions are made and who makes them. She emphasized the importance of educating the public and key stakeholders, such as victims and judges, and explaining to them Parole Board activity so that the use of parole can be facilitated. For that purpose, the Parole Board employed various programmes such as inviting judges, ministers and other influential people to observe hearings for parole decisions and developed a website. The video, which was shown at the Workshop, was made to show what the Parole Board does.

The fifth panellist, **Dr. Mario Luis Coriolano**, Vice President of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), focused on responsibility and accountability in respect to prison overcrowding. He argued that inhumane situations in prisons were caused by those at different levels of decision-making, such as those involved in public policy, organizing institutions and sentencing. He underscored that the important thing was how to limit the rate of imprisonment and who is to initiate the reduction of the prison population and ensure the sustaining of such initiatives. He noted that some policies promoted by politicians resulted in increasing prison populations because they did not replace imprisonment with alternative measures but added to the number of imprisoned persons. He also stressed the importance of independent bodies to monitor prisons and independent defence counsels in improving the human rights of detained people. He argued that the capacity of each institution should be defined by law or superior regulations. He emphasized that it is important to detect who is responsible for accounting how many people should be kept in a prison. With respect to the activity of SPT, he stated that co-ordination with other stakeholders is important and all relevant bodies should be on the same track.

#### **D. Interaction with the Floor**

After Panel I and Panel III, the chairperson invited the floor to make comments and ask questions. After Panel I, Interventions were made by the representatives of **Italy, Morocco, the Russian Federation, Azerbaijan, Brazil and the Dominican Republic**, and the observers for the **Friend World Committee for Consultation and Penal Reform International**. After Panel III, interventions were made by the representatives of **Canada, Brazil and Algeria**, the observers for the **International Commission of Catholic Prison Pastoral Care**, and an individual expert. They presented their respective national strategies to reduce overcrowding, such as increased access to justice, correctional programmes, increase of prison capacity and legislative reform; referred to the benefit of increasing the use of alternatives to detention and imprisonment; and emphasized the importance of focusing on access to justice and restorative justice.

#### **E. Closing**

At the end of the workshop, **Mr. Masaki Sasaki** made closing remarks, where he indicated that UNAFEI planed to further disseminate the outcomes of this workshop. This was followed by remarks by **Professor Dr. Dr. h. c. Hans-Jörg Albrecht**, who identified the following as conclusions emanating from the discussion.

- Overcrowding in correctional facilities is: a serious obstacle to implementing standards and instruments related to human rights; a serious risk to delivering services, inter alia rehabilitative services; and a violation of human rights.
- Crime is a social problem and can not be solved by criminal law alone. Good policy is social

policy.

- Imprisonment should be a last resort.
- The most effective countermeasures against overcrowding vary depending on the current situation and criminal justice system of each State.
- Measures against overcrowding should be comprehensive. There is no one single bullet that can solve the problem.
- All alternative measures should be carefully designed and evaluated.
- It should be defined how many people can be detained without violating human rights.
- In the case of pre-trial detention, provision of legal aid, including paralegal services, is effective. It requires spending, but various research studies demonstrate that provision of legal aid is less expensive than detaining a person in prison.
- Measures against overcrowding cannot succeed without raising awareness among the public.
- Although there are many blueprints, models and ideas about how to tackle and prevent overcrowding and implement policies, overcrowding has remained a serious problem for decades. However, practices presented in this Workshop can be implemented and succeed in solving this problem.

After these remarks, the Workshop was closed by the Chairperson on the afternoon of 16 April 2010.