

REPORT OF THE FOLLOW-UP SEMINAR FOR THE SECOND PHASE OF THE THIRD COUNTRY TRAINING PROGRAMME (TCTP) FOCUSING ON THE DEVELOPMENT OF COMMUNITY-BASED TREATMENT OF OFFENDERS IN THE CLMV COUNTRIES

From 26 to 28 June 2018, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) hosted the Follow-up Seminar for the Second Phase of the Third Country Training Programme (TCTP) Focusing on the Development of Community-Based Treatment of Offenders in the CLMV Countries (hereinafter, the “Follow-up Seminar”). This report summarizes the proceedings, country presentations and general discussions held throughout the Follow-up Seminar.

Proceedings

1. Ms. KAYO ISHIHARA, Deputy Director of UNAFEI, welcomed the participants and announced the opening of the Follow-up Seminar. Further, she recognized the efforts of the Japan International Cooperation Agency, the Department of Probation of Thailand (DOP), and the Thailand International Cooperation Agency (TICA) in organizing and implementing the TCTP with the cooperation of UNAFEI. Noting that the establishment of effective community-based treatment (CBT) in the CLMV countries faces numerous challenges, it is very important to share periodically what each country has achieved and to evaluate progress. To achieve the goal of the TCTP, Deputy Director Ishihara stressed that it is important for all participants, as experts and practitioners, to take the initiative to introduce and develop CBT in their respective countries, making use of the knowledge and insights obtained during the TCTP.
2. Mr. PAYONT SINTHUNAVA, Deputy Director-General of the Department of Probation (DOP) of the Ministry of Justice of Thailand, emphasized the importance of implementing the Tokyo Rules in criminal justice systems in order to rehabilitate offenders in the community with their families and to allow them to become productive members of society. Noting that the first two phases of the TCTP have demonstrated the importance of implementing probation practices in the context of each country with an understanding of the “big picture” in terms of legislative, executive and judicial powers of the state, this Follow-up Seminar presents an opportunity to discuss the progress and challenges of implementing community-based treatment in the CLMV countries, with the goal of full implementation of the Tokyo Rules in the near future.
3. The Visiting Expert, Dr. MANUEL G. Co, Ex Officio Member of the Board of Pardons and Parole and Administrator of the Parole and Probation Administration (PPA) of the Republic of the Philippines, delivered a presentation on “Countermeasures to Supervisees who Commit Bad Conduct”.
4. Country presentations detailing progress made since the first phase of the TCTP were made by the delegations from Cambodia, Laos, Myanmar, and Viet Nam.
5. Lectures were delivered by: (1) Mr. HITOSHI MIYAKE, Principal Examiner of the Kanto Regional Parole Board, on an “Outline and details of punishment and sanctions imposed on persons released on parole and persons under probation with suspension of execution of the sentence” and (2) Deputy Director Ishihara, on the “Legislative Steps for Introduction of Community-based Treatment of Offenders”.

Visiting Expert’s Lecture

6. Dr. Co presented on the topic of dealing with supervisees who violate conditions of probation or parole, considering the question of whether revocation of probation or parole should be considered a failure of the system. In the Philippines, community corrections is implemented through individualized treatment. The PPA supervises and rehabilitates parolees, pardonees, probationers and first time minor drug offenders in the community, and its three vital responsibilities are investigation, supervision and rehabilitation. Post-sentence investigation into the background of each offender

identifies which offenders are suitable for community-based treatment, and those who are suitable are supervised in the community with the support of Volunteer Probation Assistants. Rehabilitation programmes are applied according to a three-pronged approach, including (i) restorative justice, (ii) the Therapeutic Community (TC) Ladderized Program, and (iii) volunteer resource mobilization.

Community-based treatment is a conditional release subject to conditions. While the conditions serve as a substitute to iron bars and prison laws, it is important that conditions are realistic and imposed for the purpose of helping each individual offender conform conduct to a law-abiding lifestyle. In addition to probation and parole, conditional pardons are used as a means to release offenders while maintaining control over their conduct in the community. Control over supervisees in the community is maintained through mandatory and special conditions. Mandatory conditions include the duty to report to probation offices, to reside at the offender's approved residence, and to refrain from committing further offences. Special conditions are designed to encourage offenders to develop as responsible, productive and socially redeemed individuals by requiring them to engage in productive behaviours, *e.g.*, employment, or to refrain from destructive behaviours, *e.g.*, drug use, possession of firearms, or relationships with criminal associates.

If mandatory or special conditions are breached, the PPA may take various actions depending on the nature of the violation. Minor violations of conditions may be addressed by administrative disciplinary protocols, which may include corrective measures imposed at the discretion of Probation and Parole Officers. If a parolee commits another offence while on conditional release, he or she must serve the remaining portion of the original sentence in addition to the term required for the new offence; probationers who reoffend must serve the time for the original and the new offence. Violations of conditions of parole or pardon are evaluated by the Board of Pardons and Parole based on fact-finding and the recommendations of probation officers, and the Board may issue an Order of Arrest and Recommitment to place the offender in custody. At any time during probation, the Court may issue a warrant for the re-arrest of a probationer for violation of any condition. In all cases, it is important to remember that offenders are entitled to the presumption of innocence and other constitutional rights.

In answering the question of whether revocation is a failure of the system, Dr. Co stressed that failure cannot be attributed to the probation officer alone, as each offender is ultimately responsible for his or her own behaviour and faces his or her own family and other problems in the community. The role of probation officers is to serve as gatekeepers of the justice system and to help offenders comply with their conditions. Recalling that the purposes of supervision are to implement conditions, rehabilitate the offender and prevent the commission of further crime, Dr. Co recommended that the participating countries consider the adoption of volunteer probation officer/assistant programmes to enhance offender supervision and rehabilitation through the use of community volunteers and community resources.

Country Presentations

7. CAMBODIA. Like a number of other countries, Cambodia has adopted legislation that addresses community-based treatment but has faced challenges in implementation. The reported challenges include public resistance to the concept and financial constraints that prevented the commencement of a pilot project. These challenges were raised at the Cambodian MOJ's annual congress, and the MOJ committed to further promotion of community-based treatment by disseminating relevant statutes on non-custodial measures to judges, police, prosecutors and judicial police officers of various provinces. The Ministry of Interior has established a committee to address these issues, agreeing that the best way to initiate a trial programme would be to focus on the community-based treatment of juvenile delinquents. In 2019, responsibility for juvenile delinquents will be transferred from the Ministry of Interior to the Ministry of Social Affairs. Under existing law, prosecutors execute the decisions of the court with the assistance of judicial police officers. The delegation plans to raise public awareness of CBT and non-custodial measures through all means possible.
8. LAOS. The delegation from Laos reported having gained useful knowledge during the Second Phase of the TCTP, which was reported to the Minister of Justice. The Criminal Procedure Law contains provisions on re-education without deprivation of liberty, stay of execution of penalty, conditional release, and other CBT-related measures. Currently, however, no ministry has been assigned as the

responsible agency for CBT, so offenders are entrusted to local administration authorities (such as village, district, and community police), mass organizations and other state organizations for rehabilitation, reintegration and recidivism prevention. The village administration system, including village mediation committees, are responsible for handling normal cases and non-violent cases, such as stealing property, traffic violations, battery and other cases resulting in minor damage or those that do not affect society. Applicable laws, regulations and policies will be disseminated to local administrations and the other organizations mentioned above to raise public awareness.

9. MYANMAR. The delegation reported that there is no specific legal framework for CBT, but a CBT framework is applied in drug cases in which police officers take drug users to medical centres for medical treatment. Drug users who refuse treatment are sent to a rehabilitation centre for six months. This process involves the police, the courts, the Ministry of Home Affairs, the Ministry of Health and Sport, and the Ministry of Social Welfare, Relief and Resettlement (MOSWRR). The MOSWRR implements rehabilitation services by Centre Based Rehabilitation, Semi-Community Based Rehabilitation, and Community-Based Rehabilitation Reports on Activities of Rehabilitation. These processes involve interviewing and recording of the biological data of trainees and making assessments based on the use of drugs. The social work practices being carried out include mental and physical rehabilitation, providing vocational training, preparing for reintegration into society and the provision of after-care services. Myanmar is undertaking efforts to raise public awareness in order to educate the public, change the public mindset, promote the use of community corrections over imprisonment, and prevent recidivism.
10. VIET NAM. The delegation from Viet Nam reported learning about organizational structure, qualified staff, facilities, and professional volunteers during the second phase of the TCTP. In January 2018, Viet Nam issued guidance on conditional early release and the application of suspended sentence. In Viet Nam, CBT basically includes conditional early release, non-custodial sentences, and suspended sentences. Vietnamese law emphasizes the participation of the community in offender treatment through many measures such as education and job training, sport and cultural activities, yearly meetings for families of inmates, agreements with the private sector to support offender rehabilitation, and legal support and psychological counselling. Inmates are eligible for conditional early release based on good behaviour. Conditional release decisions are made by provincial people's courts where the inmates are serving the sentence. Offenders serving sentences in the community are subject to supervision and reporting, but they receive vocational training and job-hunting and financial support. To raise awareness of CBT in the community, the delegation recommended measures such as (i) issuing instruction documents, (ii) dissemination of information through the media, especially national television, (iii) conducting national surveys on CBT, (iv) developing mechanisms to reward active participation of people in the community and extending models of funds and clubs for rehabilitation.

Plenary Discussion

11. PROFESSOR HIROYUKI WATANABE (UNAFEI) chaired a plenary discussion, during which the participants shared comments and asked questions regarding their respective systems. Noting that Thailand took 22 years to adopt a fully functional CBT system, MR. SINTHUNAVA (DOP) stressed the importance of setting timelines for the adoption of such systems. PROF. WATANABE raised the issue of dealing with drug crimes in the CLMV countries, whereupon MR. NOUTH (CAMBODIA) pointed out that there is a difference in the way that drug use and possession is viewed in many countries. While drug *use* is considered a medical problem, drug *possession* is viewed as a crime. In jurisdictions where drug possession is aggressively enforced, the result is that even minor possession cases can result in prosecution, and, thus, prison overcrowding. Additionally, while the public may be more accepting of drug users in medical treatment, the public will be much less sympathetic to those who are labelled as criminals. DR. CO (PHILIPPINES) raised the importance of performing drug dependency examinations prior to making probation decisions in drug cases because drug-dependent offenders cannot be effectively treated in the community (without first completing a drug addiction treatment programme at a rehabilitation centre). PROFESSOR TAKUYA FURUHASHI (UNAFEI) enquired into the use of risk assessment in CBT programmes, and it was report that Thailand conducts assessment based on Andrews and Bonta's well-known Risk-Need-Responsivity (RNR) Model, which assesses each offender's (i) risk of reoffending and (ii) dynamic criminogenic needs that can be supported in various ways by government and community resources. Finally, all participants recognized the need to develop

effective strategies to promote public awareness of CBT.

Lectures

12. MR. MIYAKE's presentation addressed the topics of probation supervision in Japan and sanctions for bad conduct. Pursuant to the Offenders Rehabilitation Act, the purpose of rehabilitation is to prevent reoffending and juvenile delinquency and to assist offenders as in becoming self-reliant as sound members of society. The primary measures for offender rehabilitation include (i) instruction and supervision, which guide offenders toward pro-social thinking and living, and (ii) guidance and assistance, which connects offenders with social services to facilitate their rehabilitation and reintegration. In Japan, probation supervision can be applied to juvenile and adult probationers and parolees. Supervision is conducted on an individualized basis, taking account of each offender's age, family situation, etc., and efforts are made to apply the most "appropriate" measures to facilitate the offender's rehabilitation and reintegration into society. For example, if a probationer exhibits self-reliance and other pro-social qualities, probation is no longer necessary or "appropriate". On the other hand, if probation is not effective in a particular case and the probationer's attitude or conduct deteriorates, the continuation of probation may not be appropriate. Probationers and parolees are subject to general and special conditions, and when these conditions are violated, action must be taken in response. For example, probationers are required to reside at a specific address that has been reported to the probation office. If the probationer cannot be found or has changed residences without permission, measures may need to be taken to address the probationer's violation of his conditions of probation (*i.e.*, bad conduct). In such cases, the probation officer will submit a report to the regional parole board, which will determine what action should be taken. If a probationer cannot be found, it may be necessary to suspended probation, which means that the probationer will not be given credit for serving probation for the period during which he or she cannot be found. This effectively extends the probationary period by the number of days the probationer was absent without leave. However, in cases where probation is no longer appropriate due to bad conduct, *e.g.* reoffending or violation of special conditions, probation will be revoked unless the regional parole board finds that special circumstances exist that make it reasonable to continue probation. Probation is revoked by the issuance of a warrant of appearance, and a probation officer may serve the warrant on and arrest the probationer. The probationer is then taken to the probation office, where he or she is interviewed and detained pending the final revocation decision of the regional parole board. If a probationer receives suspended execution of sentence and violates the conditions of probation, the public prosecutor must be informed to process the revocation through the courts.

13. DEPUTY DIRECTOR ISHIHARA presented on legislative and practical strategies for the creation of effective CBT systems. Legislation is necessary because CBT is a constituent element of a criminal penalty which restricts the liberty of offenders. Thus, due process protections must be afforded to provide a check on the exercise of state power. Appropriate laws must address, among others, (i) the conditions upon which CBT can be applied, (ii) who may impose CBT, and (iii) which agency is responsible for conducting CBT. At the same time, the application of CBT must remain flexible, diverse and discretionary because the sanction is imposed in the community where offenders are faced with real-life challenges. Accordingly, input from practitioners on developing workable practices is extremely important. Of course, the enactment of legislation alone is insufficient. To carry out the purpose of the law, the following factors must be present when the law enters into force: an implementing agency, adequate resources, detailed procedures, and the support of relevant stakeholders and the general public. This makes it critically important to conduct adequate "market research" to determine an appropriate timeframe for implementation. In this context, market research is a process to gather information to estimate the number of offenders that will be subject to CBT once the system becomes operational. This requires policymakers to frame the scope of CBT by clarifying the major conditions as defined by law, such as the types of crime and penalties eligible for CBT, the degree to which criminal records and family relations are considered and so on. Each country will need to determine whether judges or administrative bodies will be responsible for deciding which offenders are eligible for CBT. If judges, make such decisions, the law should refer to the factors to be considered; if administrative bodies make such decisions, guidelines should be developed and training should be provided. Additionally, reliable statistics are necessary to plan for the implementation of CBT programmes. Such planning should take "market size" into consideration, for example, by recognizing that CBT in an urban setting is likely to face different challenges and require different resources than

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in suburban or rural areas. After gathering the information necessary to create a roadmap to implementation, stricter conditions for eligibility and limiting the initial scope of CBT are options for accelerating implementation with the expectation of expanding the programme in the future.

Introduction of the Third Phase of the TCTP

14. Ms. TARUATA KLAEWKLA (DOP) introduced the General Information for the Third Phase of the TCTP, reviewing the application procedures, participant qualifications, and the programme schedule. The programme will take place in Thailand from 10–22 December 2018. The primary objective of the Third Phase is to gain practical experience by working with Thai probation officers in the field.

Presentation on Halfway Houses in Japan

15. PROFESSOR HIDENORI OHINATA (UNAFEI) delivered a final presentation on halfway houses. Japan currently has 103 halfway houses, which accommodate discharged offenders and provide aid and guidance necessary for offenders' reintegration. Halfway houses are run by persons approved by the Minister of Justice, and the government provides financial support for their operations. These operations include housing, feeding, and the provision of training and other guidance programmes for residents. Probationers, parolees, offenders released from prison after serving their full terms of imprisonment, and persons released from pre-trial detention are eligible to reside in halfway houses. Upon release, roughly 30% of parolees reside in halfway houses, and the average length of a resident's stay is 79.8 days.

Study Visit

16. At the conclusion of the Follow-up Seminar, the participants visited the *Saishukai* Halfway House in Tokyo's Shinjuku Ward

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