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## GROUP WORKSHOP REPORTS

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### **GROUP 1**

#### **EFFECTIVELY INCORPORATING REHABILITATIVE PERSPECTIVES INTO PENALTIES AND CASE DISPOSITIONS**

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### **I. INTRODUCTION**

During the 174th UNAFEI International Seminar, it was noted, through the diverse discussions, that many countries are still using the criminal justice system as a way to punish, more than to guarantee the rehabilitation of the offenders and to avoid recidivism. After almost 30 years since the adoption of the "Tokyo Rules" by the United Nations General Assembly, many countries are not adequately using all instruments for non-custodial measures. Moreover, in many of these countries the judiciary and other decision-making institutions do not sufficiently consider the individual risks and needs of the offenders or their rehabilitative perspectives.

Although it has been demonstrated that prison is not necessarily the best solution for rehabilitation and prevention of reoffending, and it less cost-effective than non-custodial measures, it is still the preferred disposition in cases of criminal sentencing in many countries.

The main purpose of this group workshop was to discuss the reasons as to why in most of our jurisdictions it is preferable to use custodial instead of non-custodial measures, to suggest possible solutions in order to effectively use non-custodial measures in sentencing and to explore effective policies and practices to incorporate rehabilitative perspectives into dispositions and sentencing.

There are several non-custodial and rehabilitative measures which are considered as important mechanisms, as well as effective modes of treatment of offenders, in order to emphasize rehabilitation. Moreover, several challenges, both legal restrictions and difficulties of implementing non-custodial measures, and how to overcome those problems, were discussed. The following aspects were studied by comparison of the legal systems and practices in the countries represented in the group.

## II. ISSUES AND CHALLENGES

### A. Current Situation of Incorporating Rehabilitative Perspectives into Penalties and Case Dispositions

It was identified that most countries have adopted some kind of non-custodial measures, but some of them use basically suspended sentence and fine as alternatives to prison. Others have many alternative dispositions, as summarized in the Table 1.

**Table 1 Types of non-custodial measures in the participating countries**

	Non-Prosecution	Suspension of proceeding	Suspended sentence	Fine	Community work	Restriction of rights	Health treatment	Community fine	Restorative justice
Brazil	✓	✓	✓	✓	✓	✓	✓	✓	-
Côte d'Ivoire	✓	✓ (transaction)	✓	✓	✓ (not implemented)	✓ (judicial review)	-	-	-
PNG	✓	✓	✓	✓	-	-	-	-	-
Thailand	✓	✓	✓	✓	✓	✓	✓	✓	✓
Japan	✓	-	✓	✓	-	-	-	-	-
Sri Lanka	✓	✓	✓	✓	✓	-	✓	✓	✓
Kenya	-	-	✓	✓	✓	✓	✓	-	✓

When considering the issuance of non-custodial measures in their jurisdictions, most of the countries have several considerations and criteria to be used, mainly as follows: personal background, criminal history, type of crime, repentance and related individual circumstances. The views of the victims or their consent to the non-custodial measure is important; for example, in domestic violence cases, in some jurisdictions, the victims' views are considered by the authorities.

Most of the members of the group believe that, in their countries, there is satisfactory information collected about the offender during investigation or criminal procedure. However, for some countries, the willingness of offenders to give such information could prove difficult, as some systems principally use direct interviews with the offender and do not have special tools or human resources to collect personal information about the offender, for instance, from his community or work.

In the case of juvenile offenders, most of the countries do consider rehabilitative perspectives and provide treatment for them, such as training schools for juvenile rehabilitation. The members of the group agreed that rehabilitative perspectives are vital principles for treatment of juvenile offenders. However, in the case of adult offenders, rehabilitative perspectives are still not the major consideration in sentencing or case disposition. Besides the adoption of the Tokyo Rules, some of the countries also have national laws or guidelines imposing rehabilitation as a factor or as the aim of the penal system. In reality, decision-makers do not take this into consideration much, and they still give much value to punishment and retribution.

The mindset of the authorities about the advantages and importance of the use of non-custodial measures, the absence or inefficiency of the probation service and the pressure made by the society in order to send offenders to prison as retribution still represent the reality in most jurisdictions.

Prisons in many countries are overcrowded and, instead of preventing recidivism, they are places where offenders learn more about crimes and are integrated into criminal organizations.

## **B. Legal Impediments and Practical Challenges**

In most countries, statutes place a limitation on imposing non-custodial measures for some types of crimes or maximum penalties, or exclude their use in “grave crimes” (or crimes with violence and drug trafficking). The lack of some non-custodial measures in some countries (such as restriction of rights and community service) was identified as a legal impediment that limits the consideration of rehabilitative perspectives in case dispositions.

One of the biggest obstacles identified is the attitude, both from the public and the authorities, towards the use of non-custodial measures in the pre-trial phase, as well as non-custodial sentences/measures in final case dispositions. This mindset can be attributed to the following reasons:

- a. framing of sentencing laws that place an emphasis on custodial measures;
- b. the belief of the authorities that pre-trial detention is the best method to ensure court attendance;
- c. the belief that pre-trial detention is the best way to ensure non-interference in the investigation and to ensure public safety and security;
- d. the media influence on the general public and the pressure on prosecutors and judges to mete out custodial sentences/measures;
- e. the belief that custodial measures are the best to protect the community; and
- f. prison being seen as the most effective punishment and means of deterrence to would-be criminals.

The lack of analysis by authorities of the individual risk and needs of the offender is identified as a practical challenge for rehabilitation.

In most countries, the different criminal justice players each have a role that they play, and information is often not shared between the various agencies. The lack of synergy between the agencies does not provide a true picture of the offender, affecting the offender’s rehabilitative prospects.

## **III. POSSIBLE SOLUTIONS TO PROMOTE THE INCORPORATION OF REHABILITATIVE PERSPECTIVES INTO PENALTIES AND CASE DISPOSITIONS**

*Law and Policy Review* – the revision of laws and offender-treatment policies should be considered where needed in order to create more options for meting out non-custodial measures that achieve rehabilitation and avoid recidivism. Introducing the importance of using imprisonment as a last resort might also help change the mindset of authorities. The

possibility of decriminalizing certain offences, such as the use of drugs and instead of incarcerating the addict they are offered treatment in drug rehabilitation facilities through the health care system (and not by criminal justice), is also a measure that would focus more on rehabilitation and that could be considered by some jurisdictions.

*Alternatives to pre-trial detention* – it was agreed that, in some cases, instead of pre-trial detention, the possibility of non-custodial measures, such as a judicial review to impose restriction of rights (e.g. impounding passports, house arrest, imposition of curfews, electronic monitoring), bail or bonds, could be considered. The use of pre-trial judicial hearings to collect testimonial evidence can also be effective in avoiding pre-trial detention as a way to prevent the manipulation of testimony and to ensure the availability of credible testimony at trial.

*Use of evidence such as statistical data* – Evidence-based methods on the benefits of non-custodial measures should be collected and provided to the community and authorities. The prison-overcrowding and reoffending statistics should be published continually, and evidence illustrating the effectiveness of the use of non-custodial and custodial measures should be shared.

*Identifying individual needs* – It was identified that the creation or improvement of probation services might help to identify best individual solutions for rehabilitation instead of, or complementary to, imprisonment. After identification of the individual needs, a better rehabilitation programme or treatment can be designed specifically for each offender in order to prevent recidivism. For the reintegration of offenders into the community, it is important to have an aftercare system to promote offenders' reinsertion into the labour market. This can be done by having skills training and helping offenders to find jobs, accommodation and also by giving social or psychological support to the offenders and their family members.

*Promote awareness and the benefits of the use of non-custodial measures* – Generally, there is a need to promote awareness of the effectiveness of non-custodial measures to prevent reoffending and rehabilitate ex-offenders, as well as awareness of the fact that non-custodial measures have a lower cost to society (budgetary considerations), in comparison to incarceration.

- a) Encourage judicial officers and practitioners to use more non-custodial measures by raising their awareness about the advantages of non-custodial measures through the use of statistics, training seminars, among others.
- b) Keeping the media accountable and encouraging the media to report responsibly, especially on criminal justice matters, is also fundamental for the acceptance of non-custodial measures and the incorporation of rehabilitative perspectives into penalties.
- c) Creating public awareness of the importance of rehabilitative perspectives of non-custodial measures is fundamental. This can be done by providing information to the general public on the advantages of non-custodial sentences. Further, promoting the acceptance of ex-offenders back into the community helps to avoid reoffending. The public can also be involved in projects supporting the offenders, such as the volunteer probation officer programme in Japan and the Yellow

Ribbon Project in Singapore; such efforts can also contribute to changing the mindset of the general public.

*Creation of synergy* – The creation of synergy between the criminal justice chain and the criminal justice authorities (police, prosecutors, judges, correctional and probation officers) would also help to foster attitudinal change in case dispositions.

#### **IV. CONCLUSION**

Statistics prove that non-custodial measures are more effective in offender rehabilitation, community reintegration and preventing recidivism. Non-custodial measures are more cost-effective in both monetary terms and rehabilitative aspects than custodial measures. The creation and strengthening of synergy within the criminal justice sector chain will enhance the effectiveness of incorporating rehabilitative aspects in penalties and case dispositions.