

CURRENT ISSUES IN CORRECTIONAL TREATMENT AND EFFECTIVE COUNTERMEASURES

*Somboon Prasopnetr**

I. PRISON OVERCROWDING

Prison overcrowding is one of the major issues currently faced by many countries in Asia and Pacific region. In Thailand, for example, nearly 200,000 inmates are in prisons with a total capacity of only 80,000 persons. A sharp rise in the inmate population occurred between 1996 and 1999 when numbers doubled from 100,000 to 200,000. Among today's inmates, 25 percent or 51,039 inmates are involved in court processes or petitioning appeals. Another 11 percent are detained during the course of police investigations. Among the convicted inmates, 30 percent committed light offenses and have sentences of not more than two years. Other countries in Asia also have the same prison overcrowding problem, but may be different on the degree of seriousness. In some countries in the Caribbean Sea, the number of prisoners rose over 200 percent while the number of those in Western Europe is over 120 percent in recent years.

Problems as a result of prison overcrowding have been numerous. Prison overcrowding not only causes lack of space and facilities to accommodate prisoners, but also a host of other problems for prison administration. It causes strain on staff and effective administration. It impedes the vocational training and other correctional programmes. In some places, inmates have to wait upwards for three months on a waiting list to be admitted into educational or vocational programs because the number of inmates is too great.

In many prisons, many inmates are unemployed and have nothing to do.

Proper classification and separation cannot be practicable in an overcrowding prison. If classification is to work properly, there must be some spare capacity in a prison so that inmates may be allocated according to their security rating and their treatment needs. Thus, under the overcrowding conditions it is impossible to implement any effective ways of rehabilitation of inmates. The job of just keeping large number of inmates in prison is in itself occupies all the prison officers' time and energy. Furthermore, the wide spread of contagious diseases in such circumstance is inevitable and the U.N. Standard Minimum Rules cannot be applied. These lead to the violation of human rights and dignities.

Prison overcrowding also causes tension and stress among inmates. There are many research studies supporting this notion. McCain et.al¹, for example, indicated that high degrees of sustained crowding have a wide variety of negative psychological and physiological effects, including increased illness complaint rates, higher death and suicide rates and higher disciplinary infraction rates. Nacci et.al² also revealed that high density is associated with high rates of assaultiveness with the relationship being strongest in institutions housing young adults.

* Deputy Director-General, Department of Corrections, Thailand.

¹ Q. McCain, V.C. Cox and P Panlus, Effect of Prison Crowding on Inmate Behavior, University of Texas, 1980.

115TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

The causes of prison overcrowding is complicated and varies from nation to nation. The fact is that more people have been sentenced to imprisonment but there are not enough places in prison. This has resulted in prison overcrowding. The enormous number of people admitted to prison may be the result of an increase in crime, war on drugs, effective police and prosecution operation, and tougher sentencing. In some countries there is an unjustifiably large number of crime categories, such as drugs, in the criminal law for which long term imprisonment is a form of punishment. Thus, 60 percent of the inmates population may be sentenced for drugs related offenses. Moreover, the insufficient use of alternative forms of punishment which could be applied instead of imprisonment is another factor. In some countries, if such measures have been implemented, most judges still look toward punitive forms of punishment by using imprisonment.

In the United Kingdom and the United States of America, many non - custodial measures or alternatives to imprisonment have been widely used, the details of which are as follows:

1. Absolute and Conditional Discharge. This measure will be used for those who do not deserve to be punished or to be put under probation. For conditional discharge, the offender must not violate the conditions fixed by the court for not more than 3 years.
2. Binding Over. Instead of punishment the court may order the offenders to make a contract with a fixed amount of money which will be forfeited in case they do not come to court on the appointment.

3. Fines. This is another measure of punishment which the court can use instead of imprisonment when it is deemed fit.
4. Probation. Under this measure, the offenders will be released but they, have to follow the conditions fixed by the court and must be under the supervision of probation officers for not less than 1 year and not more than 3 years.
5. Suspended Sentences of Imprisonment. In case the court will imprison the offenders for not more than 2 years, suspended sentences of imprisonment may be used from 1 - 3 years.
6. Committal to the Care of a Fit Person, In case the offender is less than 17 years, the court may commit him to the care of a person who is deemed fit until he is 18 years old in order to avoid the bad environment which he is confronting.
7. Remission and Release on Licence or Parole. For those who are imprisoned for more than 1 month (except those who serve life sentences) they will be eligible for release after 2/3 years of their sentences have been served. Parole may also be granted by the Parole Board to those who have already served 1/3 of their sentences. But for those who serve life sentences, the Minister of Home Office is empowered to grant parole after discussing with the Lord Chief Justice, the judge who considers the case and the Parole Board.³
8. Community Service. This measure generally involves public service for nonprofit organisations. It usually involves the performance of unpaid

² P. Nacci, H. Teitelbaum and J. Prather, Violence in Federal Prisons: The Effect of Population Density on Misconduct, National Institute of Justice, 1977

labor by the offender in an attempt to pay a debt to society, with assignments ranging from cleaning litter from roadsides and performing lawn maintenance on government facilities, to janitorial work in churches or schools, to building parks and playgrounds, repairing public housing and serving as a volunteer in a hospital or rehab center. The communities undoubtedly benefit from the thousands of hours of free labor, and the city government saves money by not having to jail some offenders.

9. **House Arrest, Home Confinement or Home Detention.** This measure requires the offender to remain within the confines of the home during specified times and to adhere to a strict curfew. Additional conditions, such as restrictions on visitors and the prohibition of drugs or alcohol use may also be stipulated. The offender is normally allowed to leave only for work and reasons such as grocery shopping, community service assignment and doctor appointments. However, the success of house arrest programs has been bolstered by the use of electronic monitoring devices which will enhance the level of supervision directed toward each offender. Electronic monitoring uses telemetry devices to keep track of an offender's whereabouts.

10. **Day Reporting Centers.** These are non-residential locations at which offenders must appear, daily to participate in programed activities

and to work out a schedule detailing their activities outside the center. Offenders are also required to maintain frequent phone communications with center staff and to submit to random drug and alcohol testing.

11. **Residential Community Corrections.** These include halfway houses, pre-release centers, work furlough and community work centers, community treatment centers and restitution centers. Residents may live either part-time or full-time at such centers, depending on other conditions set forth by the court. These types of centers may be used as an alternative to sending an offender to jail or prison or may be a transitional stop for offenders just released from incarceration, to determine if they are ready to return to society.⁴

Apart from the lack of front-end options such as probation suspensions of prosecution and other forms of alternatives to incarceration, the lack of back-end options such as parole, pardon or sentence remission is also another factor for prison overcrowding. The insufficiency or the lack of back-end option to release inmates from prisons may be due to limited opportunity for early release or release on bail, or substituting imprisonment for a more lenient punishment. In Thailand, for example, there are many restrictions for parole application especially for those who are drug traffickers. Royal Pardon cannot be implemented as frequently as it used to be. Part of the factors for this restriction is the hardening attitude of the public including criminal justice personnel

³ Home Office The Sentence of the Court: A Handbook of Courts on the Treatment of Offenders, (Her Majesty's Stationery Office, London, 1978) p.p. 9-26 and p.p. 38-54

⁴ Norman A. Carlson, Karen M. Hess and Christine M. H. Orthman Corrections in the 21st Century: A Practical Approach, (An International Thompson Publishing Company, U.S.A., 1999) p.p. 157-163

towards crimes and offenders which is reflected in the demands for the use of more harsh punishment.

The most easy solution to prison overcrowding is obviously to build more prisons, but it is very expensive and is not the right way to solve the problem. However, many countries use this method by building more prisons year by year. Some countries may use similar methods by converting unused facilities or expanding current prisons in order to have more capacity. It is not surprising that more and more prisons have been built in Asia and the Pacific for the past decade. This solution presupposes the notion that the institutional treatment of inmates is the only effective measure to solve the crime problem. But it has been long proved that this is not true. The more we built new prisons, the more imprisonment will be used. In order to alleviate the problem, more alternatives to incarceration must be used, especially for those who are first time offenders or commit minor offences. Moreover, bail should be granted more for unconvicted offenders and imprisonment must be used as the last resort and for those who are habitual or professional criminals only.

At the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Vienna on April 2000, the Penal Reform International Organisation introduced a 10 point plan to reduce imprisonment. These points were as follows:

1. Inform public opinion

Increasing use of imprisonment is often blamed on public demand for punishment. Yet the public are often misinformed about how the system operates and will support effective non-custodial measures.

2. Improve access to, and co - ordination within, the criminal justice system

Increasing public access to the police, courts and prisons engenders public confidence and transparency. Co-ordinating and streamlining the work of the criminal justice agencies assists both efficiency and compliance with international human rights standards.

3. Invest in crime prevention and crime reduction

Problem solving partnerships between the police, other public agencies, businesses and communities can produce effective plans to reduce the risk factors which lie behind much crime drug misuse, family difficulties, school failure, unemployment.

4. Divert minor cases from the criminal justice system

Many cases can be effectively dealt with outside the formal criminal justice system.

5. Reduce pre-trial detention

In some countries as many as 75% of the prison population may be awaiting trial. Alternatives such as bail and regular reviews of cases can reduce pre - trial detention.

6. Develop constructive alternatives to custodial sentences

Courts need sentencing options that are effective and not just a *'soft option'*: without alternatives, imprisonment as a punishment of *'last resort'* becomes commonplace.

7. Reduce sentence lengths and ensure consistent sentencing practice

Sentencers need guidance to deter inconsistent sentencing practices.

8. Develop, special arrangements for youth offenders that keep them out of prison

Children in conflict with the law (under 18) should be diverted from the criminal justice process. A term of imprisonment should be strictly a measure of resort and for the shortest appropriate period of time.

9. Treat rather than punish drug addicts and mentally disordered offenders

Courts should be able to order treatment for those whose crimes are often committed to feed their addiction. Prison is not a suitable institution for mentally ill people.

10. Ensure the system is fair to all

Imprisonment impacts disproportionately on the poor, the dispossessed and minorities who face discrimination outside. Monitoring should take place at every stage of the criminal justice system to ensure that discrimination does not take place and that the efforts to reduce imprisonment suggested in this plan are made in respect of all members of the community.

In my opinion, the first recommendation on informing public opinion is very important. The public's demand for harsh punishment leads to longer sentences imposed by the courts and opposition to any kind of leniency in punishment. Thus, informing the public about the advantages of non-custodial measures is necessary. However, recommendations concerning cooperation from the courts to reduce pre-trial detention and to use more alternatives to prisons may long be expected in some developing countries. On the other hand, a law is needed to provide sentencing options for non-custodial measures and to require judges to use such alternatives unless there is an exception according to the law. Short term sentences should not be allowed to be imposed on inmates, rather

probation or other measures of community-based corrections should be implemented.

In sum, the problem of prison overcrowding can only be alleviated by using more alternative measures to incarceration especially for those who are not habitual or professional criminals. Building more prisons is not an answer to the problem. In this connection, the amendment of the law to require judges to use such alternatives in case there is no exception is necessary especially in some countries where judges are prone to use only imprisonment as a main measure of punishment. Furthermore, making the courts responsible for speedy trial and expanding various forms of alternatives to imprisonment is also recommended. Lastly, the public should be well informed of the disadvantages of short-term sentence which will have bad effects on the offender rather than good ones. He has to lose his job, social status and family. Moreover, he may have the tendency to commit more crimes in the future as a result of having an opportunity to learn the criminal career from his friends during incarceration. In this connection, the public should be informed of the advantages of community-based correction which have lower costs than incarceration while the offender's work, social status and family are not contaminated. This will reduce the public attitude of using only imprisonment in some countries.

II. IMPROVEMENT OF PRISON CONDITIONS

It is recognized that inmates are human beings and they deserve to be treated with dignity and respect so that they can be resocialized to become more responsible people. In this respect, the improvement of prison conditions is very important for the rehabilitation process of the inmates. Overcrowding, lack of hygiene, un-sanitary

115TH INTERNATIONAL TRAINING COURSE
VISITING EXPERTS' PAPERS

conditions, HIV and other infectious diseases, should not prevail in the prison. Inmates should be ensured the adequacy of medical and other services should be the same as outside including living condition. Furthermore, they should be provided with individual assistance and opportunities to develop their own potential with a view to reintegrate as normal citizens. Therefore, contacts with the outside world are an essential part of their reintegration into society.

Many countries in Asia and Pacific Region are now confronted with the issue of prison conditions. Prisons in these countries have been built for many years and usually are overcrowded. Thus, prison conditions in many countries in this region continue, to fall short of the United Nations and other acceptable standards. These problems are the main obstacles of the fulfillment of the Standards.

The United Nations Standard Minimum Rules for the Treatment of Prisoners constitute a landmark in the process of prison condition reform. They have had a significant impact on the law and practices of many countries in the regions. However, there are some problems related to the implementation of the U. N. Rules.

The major problem is overcrowding. Prisons in Asia, in general are overcrowded. This issue directly affects the prison condition and the implementation of the U.N. Rules. When more people are being sentenced to imprisonment accompanied by a decrease in the number of places in prison, the result is prison overcrowding and a deterioration in living conditions in prisons. Overcrowding may contribute to higher levels of violence and increase spread of illness such as AIDS, Tuberculosis and other infectious diseases. Classification of prisoners cannot be carried on because there are no places to

segregate them. This problem also affects both institutional management and official satisfaction. Thus, under these circumstances any standards cannot be applied.

The social context is also important. For example, prison officials are generally affected by the public, social and political attitude. Particularly in the developing countries where aggressive feeling still prevails in the community, the group of old and unprogressive prison staff are mostly affected. It is impossible to pension them off and to recruit young progressive ones. The idea of arranging training courses for the old guards to assume new roles in progressive prison administration is found uneffective. Therefore, the aim to promote progressive treatment following the Standard Minimum Rules will need a rather long time to achieve. The administrators of prisons have to accept means of gradually helping old staff to pension off sooner and to replace them with new young progressive recruits.

Related to the problem of overcrowding is the lack of financial resources of many countries to upgrade the prison conditions. The lack of financial resources to build a new and modern prison to replace the old one. There is also a lack of funds to facilitate the implementation of modern correctional programs.

The fourth problem is the implementation of the U.N. Rules which may be too expensive. In many countries, not all of the Rules are applicable in all places and at all times because of the great variety of legal, cultural, geographical conditions and wealth. It seems to me that, if the Rules are too expensive, it is difficult for the poor countries to implement. In these countries the U.N. Rules may be overlooked owing to the shortage of budget to improve the living standards of inmates

and also to build standard prisons. Under this circumstance, the implementation of any standard rules cannot be expected. Prison is only the place to detain criminals while deteriorated living conditions are neglected.

The most important problem for the U.N. Rules implementation is the lack of mechanisms to encourage and enforce country members to follow. It has only paper - based reporting mechanisms which are not effective. Thus, every country should be encouraged to have supervisory mechanisms and regular inspection at national and local levels. Such mechanisms should be used by both governmental and non - governmental organizations.

From my conclusions, prison conditions are very important for prisoners' rehabilitation and human rights. They should be treated as normal persons, so their living conditions must not be different from those outside. To achieve the objective, many problems have to be eradicated.

1. The problem of prison overcrowding must be solved by using more non - custodial measures or alternatives to imprisonment or community - based corrections especially for those who are not habitual or professional criminals.
2. The U.N. Standard Minimum Rules for the Treatment of Prisoners and Related Recommendations and other Standards should be trained to all prison staff including the administrators and the new recruits in order to gain cooperation for the implementation as much as possible.
3. The improvement of prison conditions should be regarded by the

Government of each country as a major problem of development. In this connection, financial support should be granted to the concerned organisations for such matters. In most developing countries, prison or correctional work has been neglected or regarded by the Government as least important. This will surely impede the improvement of prison conditions since the budget will not be allocated.

4. Since the U.N. or other standards may not be suitable for all countries according to the difference in legal, cultural, geographical conditions and wealth as having been stated above, all countries should have their own suitable standards by using the U.N. and other standards as the framework. In fact, we cannot deny that there is no unique standards which can be used by all countries in the world.
5. In order to ensure the implementation of such standards or the improvement of prison conditions, all countries should be encouraged to have supervisory mechanisms and regular inspection by both governmental and non-governmental organisations at national and local level. The inspection organisations should be independent and can inspect at all times without informing beforehand. After the inspection, a report should be submitted to the related organisations for their remedies. Opening prisons to inspection and outside scrutiny promotes transparency and accountability and so better ensures that prison rules are put into practice and that prisons are safer places for all concerned.

III. FOREIGN PRISONERS AND PRISONER TRANSFER TREATIES

Foreign prisoners incarcerated in other countries, is now becoming one of the most crucial issues facing correctional administrators all over the world. The increasing tourism industry, migrating for job opportunities, and the changing economic and political regime have increased the number of people travelling and working abroad. As a result, the numbers of people involved in crime related to drugs, illegal entry, credit card fraud etc., have increased sharply. These offenders are arrested and incarcerated abroad and have to face cultural differences as well as unfamiliar food and living conditions in foreign prisons. Moreover, they frequently face the difficulties in communication with prison officers and other prisoners as well as lack of qualified lawyers and inadequate medical care. Foreign prisoners, on the other hand, cause economic and administrative burdens for prison administrations in many countries.

One of the most effective methods to solve the problem of foreign prisoners is the prisoner transfer treaty. Although the treaty itself does very little in solving the problem of prisoners while they are in foreign countries, it does allow these prisoners to return home to serve the rest to their sentences. At present, there are many countries engaged in these treaties, both by multilateral and bilateral treaties.

A. Multilateral Treaties

For multilateral treaties, a group of countries join together to make an agreement on transfer of prisoners. They agree to follow the same conditions and procedures. There are many groups of countries participating in multilateral treaties on transfer of prisoners. The Council of Europe Prisoner Transfer Treaty is an example. It has many countries, not

exclusively for members of European states, that participate. The Organization of American States (OAS) Prisoner Transfer Treaty is another example that involves all countries in the North and South American continent. This treaty is different from other treaties in that the initial request for transfer can be started by either the sentencing state, or by the administering state.

The oldest cooperation in the enforcement of foreign penal judgement was among Arab countries. However, prisoner transfer treaties among them entered into force in 1985.

The Arab prisoner transfer treaty does not require the consent of the sentenced person for this transfer. The transfer is allowed if the following conditions are met;

- a) the sanction imposed involves deprivation of liberty, the minimum term of which, to be served is no less than six months;
- b) the penalty has been imposed for an offence for which extradition may not be granted;
- c) the offence is punishable in the prisoner's home country with imprisonment of no less than six months;
- d) both the sentencing and enforcing states agree to the transfer⁵

Perhaps the biggest number of countries involved in prisoner transfer treaties is the prisoner transfer treaty of the British Commonwealth countries. This treaty links upwards of 35 countries in all parts of the world. The prisoner transfer treaty among African countries involves 15 countries. Although the treaty provides for the extradition of both accused and

⁵ Richard D. Atkins (ed) Prisoner Transfer Treaties: A Practical Guide, International Legal Defense Counsel, Philadelphia, Pennsylvania U.S.A. 1995

convicted offenders, it is also applied to the transfer of prisoners.

B. Bilateral Treaties

In case there is no available multilateral treaty, individual countries have to approach other countries for negotiating bilateral treaties. Thus, conditions and procedures for transferring prisoners of each country may differ from another treaty depending on the negotiation of the parties. Thailand, for example, has negotiated separate treaties with many countries. Each treaty is unique. The first treaty of prisoner transfer between Thailand and the U.S.A., was signed on October 29, 1982 and became effective afterwards. Today, Thailand has already signed treaties with many countries. The treaties that have been ratified and come into effect are the treaties with these respective countries:

- France ; effective in 1985.
- Spain ; effective in 1987.
- Canada ; effective in 1988.
- United States of America ; effective in 1988.
- Italy ; effective in 1990.
- Sweden ; effective in 1990.
- Great Britain ; effective in 1991.
- Finland ; effective in 1992.
- Portugal ; effective in 1994.
- Austria ; effective in 1994.
- Germany ; effective in 1996,
- Poland ; effective in 1999.
- Denmark ; effective in 2000.

To date, 230 foreign prisoners incarcerated in Thai prisons were transferred to their home land, and 5 Thai prisoners were transferred back to carry out their sentences in Thailand.

According to the Thai Legislation of Procedure for Cooperation between States in the Execution on Penal Sentences. B.E. 2527 (1984), the general principle of

prisoner transfer is based on:

1. A person sentenced in the territory of one party may be transferred to the territory of another party.
2. A transfer of prisoners should be effected in cases where the offense giving rise to conviction is punishable by deprivation of liberty by the judicial authorities of both the transferring state and receiving state.
3. The offender is not sentenced in respect of an offense under the law of Thailand:
 - 3.1 against the internal or external security of the state;
 - 3.2 against the monarch, his consort or his sons or daughters; or
 - 3.3 against legislation protecting national art treasures.
4. The sentence imposed on the offender is one of imprisonment, confinement or any other form of deprivation of liberty in any institution.
 - 4.1 for life;
 - 4.2 for an indeterminate period on account of mental incapacity, or;
 - 4.3 for a fixed period of which at least one year remains to be served at the time of the request for transfer.
5. The offender has served in the transferring state any minimum period of imprisonment, confinement or deprivation of liberty stipulated by the law of the transferring state; (For life sentences, he has to serve 8 years and for other sentences, he has to serve 4 years)
6. The judgment is final and no further legal proceeding relating to the offense or any offense is pending in the transferring state;
7. The transferring and receiving states and the offender all agree to the transfer. In transferring the prisoner, all expenses will be met by the receiving state.

C. Problem of Prisoner Transfer Treaties

There are many advantages of prisoner transfer treaties. First, they facilitate the social reintegration of the prisoner by permitting persons convicted of a crime in one country to return to complete their sentence in their familiar living and cultural conditions. Prisoner transfer treaties also remove an economic and administrative burden for prisons in many countries. Taking care of foreign prisoners causes a lot of prison administration problems in term of communication with prisoners and provision of food and medical care. Prisoner transfer treaties, however, have some difficulties in implementing. This is due to the difference between the law and penal sanctions of the participated countries. Some sentencing states, for example, may have severe punishment for drug offences while the administering state has less severe punishments. In such cases, prisoners may be transferred to administering countries just simply to be released earlier because the receiving state is empowered to enforce the rest of the sentence according to its law. For example, a prisoner in the U.S.A. will be eligible for parole after 1/3 of his sentence has been served while in Thailand he has to serve 2/3 of his sentence. In another case, prisoners were transferred to convert the sentence term in court of the administering countries. The Council of Europe suggests that if the sentence imposed was longer than or different in nature from the sentence which could be imposed for the same offence in the home country, it would be adapted to the nearest equivalent sentence which was available under the law in the home country without being longer or more severe than the original sentence. Two potential difficulties can be seen with this approach. Firstly, the foreign prisoner will not know the length of his sentence until transfer and therefore may find it difficult to decide whether or

not to apply. Secondly, it is probable that in some cases the period already served in the foreign country will be equal to or greater than the converted sentence in the home country with the result that the transferred prisoner would be immediately released. This is likely to undermine confidence in the integrity of the transfer scheme and may even be seen as interfering with, or criticising, the criminal justice system of another country.⁶ While there are some difficulties related to the implementation of the treaties, prisoner transfer treaties bring about international cooperation and understanding and should be promoted to expand to countries worldwide.

Bibliography

1. Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, Canberra, 1992.
2. Home Office, The Sentence of the Court: A Handbook of Courts on the Treatment of Offenders, (Her Majesty's Stationary Office, London, 1978)
3. Norman A. Carlson, Karen M. Hess and Christine M.H. Orthman, Corrections in the 21st Century: A Practical Approach, (An International Thomson Publishing Company, U.S.A., 1999)
4. P. Nacci. H. Teitelbaum and J. Prather, Violence in Federal Prisons: The Effect of Population Density on Misconduct, (National Institute of Justice, U.S.A., 1997)
5. Q. McCain, V.C. Cox and P. Paneus, Effect of Prison Overcrowding on Inmate Behavior, (University of Texas, 1980)
6. Richard D. Atkins (ed.), Prisoner Transfer Treaties: A Practical Guide, (International Defense Counsel, Philadelphia, Pennsylvania, U.S.A., 1955)

⁶ Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, Canberra, 1992 p.p. 3-4