
REPORTS OF THE COURSE

GROUP 1

PRACTICAL MEASURES TO ALLEVIATE THE PROBLEM OF OVERCROWDING

Chairperson	Mr. Iftikhar Ahmad Rao	(Pakistan)
Co-Chairperson	Mr. Zulkifli Bin Omar	(Malaysia)
Rapporteur	Mr. Peterson Kamunyu Muhoro	(Kenya)
Co-Rapporteur	Ms. Rebecca Ang Santamaria	(Philippines)
Members	Mr. Roy A. Murillo	(Costa Rica)
	Mr. Masamitsu Fujioka	(Japan)
	Mr. Hiroshi Kubo	(Japan)
	Mr. Naokuni Yano	(Japan)
Advisers	Prof. Yuichiro Tachi	(UNAFEI)
	Prof. Hiroshi Iitsuka	(UNAFEI)
	Prof. Mikiko Kakihara	(UNAFEI)

I. INTRODUCTION

The group was assigned to review, analyze and discuss the problem of overcrowding in correctional institutions and to come up with suggestions on considered remedial measures. We analyzed the concept of 'overcrowding' and explored issues related to it. Briefly the group outlined these issues as:

- the official correction capacities authorized by each country,
- the available single cells verses dormitories accommodation,
- the periodical peaks and lows experienced by correctional institutions over a given period,
- and the variations between one prison and another caused by the application of allocation and classification criteria.

Members of the group generally agreed that overcrowding exists in correctional institutions in many countries. They were also of the view that overcrowding in correctional institutions brings with it management problems that make it difficult to implement effective treatment programs.

The group therefore adopted a three-tier approach to deal with this topic thus;

- To review the actual overcrowding situation in each participant's country.
- To critically examine the possible causes, and
- To offer possible countermeasures

In discussing this topic, the members agreed to extensively make use of :

- ◆ Individual Presentation Papers already submitted during the plenaries.
- ◆ Review existing materials and literature relevant to this topic. Consult the experience and opinion of the advisers that have been attached to the group.
- ◆ Lectures by the visiting experts and faculty members.

Right from the start the group agreed to adopt a working definition of overcrowding as a situation where the correctional institution holds or accommodates prisoners or offenders over and above the statutory capacity or the conventionally accepted space per prisoner. Overcrowding

may also be viewed from the perspective of the limitations it causes to effective implementation of treatment programs.

The formula applied to calculate levels of overcrowding is :

Average Daily Population in Prison proportional to the available capacity per hundred percent (ADP/CAPACITY (100 %)).

II. ACTUAL SITUATION OF OVERCROWDING

A. Introduction

The participants in this group reported varying levels of overcrowding in correctional institutions in their respective countries.

In brief, the level of overcrowding is as here outlined. Japan has a population of 126 million. It is also recorded as having the lowest number of prisoners per 100,000 population. The prison population is currently (-17.1%) below the available capacity i.e. prisoners versus the available space stands at 82.9%. On the other hand in this group is a representative from Kenya where there is 150.4% overcrowding, followed by Pakistan at 127.5%, Philippines by 56.4%, Costa Rica at 20.4%, and Malaysia 4.8 %. The last two are noticeable for the low levels recorded.

The following Tables reflect the overcrowding situation and the proportion of convicted and unconvicted prisoners.

TABLE ONE

Comparative Levels of Overcrowding in Prisons

Country	Population In Millions	Prison Capacity	Number of Prisoners	No. of Prisoners/ 1000,000 Population	Percentage of Overcrowding
Costa Rica	3.6	4,296	5,173	143.7	20.4%
Japan	126.0	63,625	52,715	41.8	(-17.1%)
Kenya	28.5	14,000	35,058	123.0	150.4%
Malaysia	23.0	23,884	25,029	108.8	4.8%
Pakistan	126.81	34,700	78,938	62.2	127.5%
Philippines	68.6	45,000	70,383	87.2	56.4%

Table two attempts to find out the status of the prisoners held in custody in correctional institutions i.e. convicted or unconvicted. In all the countries, convicted prisoners account for more than 70% of the total prison population. For example Costa Rica has 80%, Japan has 82%, Kenya has 74%, Malaysia has 71% and the Philippines has 62%. The general trend therefore is one where the overcrowding situation is as a result of holding more convicted offenders

relative to the available space. It is only in Pakistan which has 22.4% of convicted offenders.

115TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

TABLE TWO

Comparative Levels of Convicted and Unconvicted Prisoners Relative to Overcrowding

Country	No. of Prisoners	Convicted Prisoners	Unconvicted Prisoners	Percentage of Overcrowding
Costa Rica	5,173	4,906 (80%)	1,245 (20%)	20.4%
Japan	52,715	43,464 (82%)	9,251 (18%)	(-17.1%)
Kenya	35,058	25,974 (74%)	9,084 (26%)	150.4%
Malaysia	25,029	17,676 (71%)	7,353 (29%)	4.8%
Pakistan	78,938	17,697 (22.4%)	61,241 (77.6%)	127.5%
Philippines	70,383	43,486 (62%)	26,897 (38%)	56.4%

B. Actual Situation of Participants' Countries

1. Costa Rica

(i) During the last few years, Costa Rica has shown a growth in the penal population and this phenomenon has caused a problem of overcrowding. It has however been fairly alleviated because several new prisons were constructed a few years back. In 1999, the average rate of overcrowding was 20%, but in some institutions the percentage reached 80%.

(ii) Causes

Overcrowding in Costa Rica is caused by the tendency of long term sentences, delays in trials, and the inappropriate use of non-custodial measures.

a. Tendency of long term sentences
The average length of a sentence of imprisonment has been increasing yearly. In 1999, the percentage of convicted prisoners who have been sentenced for

Year	Population In Millions	Penal Population	Number of Prisoners	Number of Convicted Prisoners	Number of Unconvicted Prisoners	Prison Capacity	No. of Penal Population/ 100,000 Population	No. of Capacity/ 100,000 Population	Percentage of Overcrowding
1997	3.4327	5,747	4,922	4,420 (70%)	1,327 (30%)	3,029	167.4	88.24	62.5 %
1998	3.4964	6,187	5,026	4,929 (74%)	1,258 (26%)	3,899	177.0	111.51	28.90%
1999	3.5587	6,202	5,173	4,957 (75%)	1,245 (25%)	4,296	174.3	120.72	20.40%

Ref.: Statistic Department, Minister of Justice

RESOURCE MATERIAL SERIES No. 57

more than 16 years went up by 12%. During the same year, imprisonment was used in more than 90% of the cases. This was probably because of the public and pressure for more and more punishment. The legal reform of 1998, maximum statutory length of penalty was extended from 25 to 50 years and this has contributed to increasing the average length of sentence.

b. Delay in Trial

Currently the average period of trial from prosecution until sentencing is about seventeen months. This is due to the shortage of public prosecutors and judges.

c. Inappropriate Use of Open Penal Centers and Conditional Release.

In the last three years, the percentage of prisoners in closed centers is more than 85%. This figure seems to indicate that

there is excessive utilization of closed imprisonment by the penitentiary system.

2. Japan

(i) In 1999, there were 67 prisons and 7 detention houses (excluding the juvenile classification homes and the juvenile training schools.). The percentage of accommodation rate in 1998 was 82.9 percent. Correctional institutions as a whole in Japan are not overcrowded.

The acknowledged number of offences has increased consistently for the last ten years. The accommodation rate of penal institutions has been rising every year and some penal institutions like female prisons or prisons for those convicts who do not have advanced criminal tendency have been experiencing problems of overcrowding. This is a trend that raises some concern to the administration of penal institutions and is to be watched in future.

Year	Population In Millions	Number of Offences	Number of Prisoners	Number of Convicted Prisoners	Number of Unconvicted Prisoners
1996	125.86	1,812,119	49,414	40,515 (81.99%)	8,899 (18.01%)
1997	126.17	1,899,564	50,897	41,868 (82.26%)	9,029 (17.74%)
1998	126.49	2,033,546	52,715	43,464 (82.45%)	9,251 (17.55%)

Year	Prison Capacity	No. of Prisoners/ 100,000 Population	No. of Capacity/ 100,000 Population	Percentage of Overcrowding
1996	64,770	39.3	51.5	-23.7%
1997	64,404	40.3	51.0	-21.0%
1998	63,625	41.7	50.3	-17.1%

Ref: White Paper on Crime 1997 - 1999

115TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

(ii) Reasons for No Overcrowding in Japan

Generally, overcrowding may be caused by delay in investigations, inadequate use of non-custodial measures and others, but Japan does not have these problems.

a. Strict Observation of Law

The Code of Criminal Procedure requires police and public prosecutors to handle one case within the confinement period of 23 days or less at the investigation stage. This restriction of period is observed strictly by them. Also at the trial period, cases requiring long trial periods have been limited to only brutal or complicated cases. The ratio of cases whose trial periods were within three months exceeded 70 % in the courts of first instance in 1998. The ratio of cases that took more than one year in the trial period was only 1.7 %. These figures have not changed much in recent years.

b. Adequate Use of Bail

Japan has a bail system after the initiation of prosecution. The number of defendants who were released on bail in the courts of first instance was about 16 % in 1998. Though at first sight this figure seems to be low, this is because the number of bail requests was not so high. Realistically more than half the number of the requests for bail were accepted by the judge before the first trial date.

c. Effective Use of Non-custodial measures

As for the non-custodial measures, there are such measures as disposition of petty offences at the police stage, suspension of prosecution at

public prosecutors stage, and suspension of execution of sentence at trial stage. These systems are being utilized accordingly. For instance, the rate of suspension of prosecution of criminal code offence was 34.9 % in 1998. The rate of suspension of execution of sentence was 63% for imprisonment with labor and 95.8 percent for imprisonment without labor. The ratio of the number of newly admitted prisoners per the total number of offenders (penal code offenders and special law offenders) received by public prosecutors offices was only 2.06% in 1998. These figures show that many cases are diverted at each stage.

d. Effective Use of Parole

Moreover, at the stage of the execution of punishment, release on parole is effectively used. The rate of release on parole was 58.2 percent in 1998.

(iii) As mentioned above, the number of crimes and the accommodation rate has been increasing in the last few years. We can analyze that one of the reasons for the recent increase of the accommodation rate in Japan is the increase in the number of crimes/prisoners. And the reasons of the recent overcrowding situation in the female or non-advanced criminal tendency prisoners' prison results from the lack of facilities which can accommodate them, while the number of such kinds of prisoners keeps on increasing and the classification is strictly done.

3. Kenya

(i) Overcrowding in prison penal institutions in Kenya has consistently been a problem. The magnitude of this problem however

RESOURCE MATERIAL SERIES No. 57

varies from one penal institution to another. Example: the medium sentence prisons are relatively more overcrowded than others while prisons based in major towns experience more overcrowding relative to those in district rural areas.

As at the week of 18 February 2000,

the average daily prison population was as shown in the following table. Compared with late 1970's and early 1980's the prison population has rapidly risen from 24,239 to 35,058. The overcrowding has been very rapid and steep more than doubling up (from 73% to 150.4%) between 1979 and 1999.

Year	Population In Millions	Number of Prisoners	Number of Convicted Prisoners	Number of Unconvicted Prisoners	Prison Capacity	No. of Prisoners/ 100,000 Population	No. of Capacity/ 100,000 Population	Percentage of Overcrowding
1999	28.50	35,058	25,974 (74.09%)	9,084 (25.91%)	14,000	123.0	49.1	150.4%

Ref: Prison Annual Report

(ii) Causes of Overcrowding in Kenya

The main causes of prison overcrowding in Kenya are the following:

a. Inadequate Finances

Prisons like all other government public institutions are funded from public finances. Like all other public institutions they have to make a strong case to justify their demand for funds and in this they compete with others for the available national funds. This is in spite of the fact that their function and roles are mandatory. With a declining national economy, funds made available to prisons have proportionally been declining at a time when the prison population has actually been increasing. The inadequate finances lead to cut backs on most prison activities. At best, most of the prison programs operate at half or less of their capacity performance levels. This has led to correctional staff focusing more on secure custody at the

expense of corrections and rehabilitation and thus placing constraints on the essential early release measures of remission and good conduct sentence reduction measures. As a result, the length of prison sentence served by inmates is in most cases as per the courts originating orders.

b. Lack of Early Release Measures

The "end line" early release measures that have been effectively utilized elsewhere are lacking or under utilized. The parole program especially is competently capable of down loading prison population by a third or more. It is however unavailable and therefore there is no opportunity to utilize this early release program. This means that the length of sentences served in Kenya is relatively greater.

Prisoners end up staying longer in correctional institutions for periods unrelated to training needs. As mentioned earlier remissions, general pardon and

115TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

other early release measures are applied ad-hoc and therefore only marginally impact on prisons overcrowding.

c. Inadequate Use of Alternatives

The magistrates/courts which have the first jurisdiction and process over 80 % of the criminal proceedings annually sparingly apply non-custodial countermeasures. Ordinarily, the proportion of imprisonment compared with probation orders, community service orders and other supervisory orders are low. The mindset in sentencing is to consider imprisonment as the sentence of first choice. This inevitably creates a very fast build up of prison population. This has been the trend in the last ten years. The occasional mass state pardons do not seem

to have had a lasting impact because barely six months after, the same levels are reached. As such there is presently no cut-off on prison overcrowding in Kenya.

4. Malaysia

- (i). The actual situation of overcrowding in Malaysia fluctuates and the trend shows that the prison population declined from 29,150 in 1998 to 25,019 in 1999. The percentage of prison overcrowding decreased from 32 % to 4.75 %. The main reason for this decline is that in 1998 many foreign prisoners were deported to their own countries and the practice will continue in future.

As of 2 March 2000 there was a marginal increase of the penal population from 25,019 to 25,029 and the percentage of overcrowding rose from 4.75% to 4.8%.

Year	Population In Millions	Penal Population	Number of Prisoners	Number of Convicted Prisoners	Number of Unconvicted Prisoners	Prison Capacity	No. of Prisoners/ 100,000 Population	No. of Capacity/ 100,000 Population	Percentage of Overcrowding
31-Dec-98	22.20	29,150	25,427	22,666 (89.14)	6,484 (10.86)	22,085	131.3	99.48	32.0%
31-Dec-99	22.80	25,019	21,966	19,649 (89.45)	5,370 (10.55)	23,884	109.7	104.75	4.75%
2-Mar-00	23.00	25,029	22,176	17,676 (79.71)	7,353 (20.29)	23,884	108.8	103.84	4.79%

Ref: Malaysia Prison Department

(ii) Causes

a. Lack of Alternative Measures

The main reason of overcrowding in Malaysia is the lack of alternative measures to imprisonment. This is because the public has a very strong influence in favor of imprisonment particularly for heinous crimes.

b. Increase in Number of Crimes

The increase in the number of crimes committed especially

under the Dangerous Drug Act and the Immigration Act aggravate the overcrowding rate. Malaysia is the place of transit for drug smugglers. The steady flow of foreign workers also contributes to the prison population. The foreign prisoners charged under the Immigration Act in 1998 were 5,051 prisoners and as of 2 March 2000 the number of foreign prisoners was

- 5,068.
 c. Slow and Inefficient Administration in the Criminal Justice System

The shortage of judges and magistrates and also the increasing workload causes delay in trials and makes the period of remands longer. The increase of awaiting trial prisoners in Malaysia also creates overcrowding.

5. Pakistan

- (i) There are vastly diverse ways to measure overcrowding. Here the simplest method is used and involves comparing the state set capacity of prisons and the actual number of prison inmates on a given day. If the latter exceeds the former (more than 100%), one could conclude that the prison system is generally overcrowded. Pakistan with a population of 120 million has 76 prisons with a capacity of 34,700 inmates. Against this capacity 81,904, 73,884 and 78,938 prisoners

were housed during 1997, 1998 and 1999 showing an overcrowding of 136%, 112%, and 127% respectively whereas the imprisonment rate per 100,000 population was 68.2, 61.5 and 65.7 in the same order during the above period. The table below presents occupancy rates for the last three years ie 1997, 1998 and 1999. The highest rate of overcrowding has been in the year 1997, which shows 136% overcrowding.

The careful perusal of the table indicates a fluctuating prison population during these three years hence, no special trend setting inference can be drawn. During the 70s the position was not grave, but with rapid changing socio-economic conditions, process of globalization exposure of youngsters to world media and increases in population has resulted in the growth of the prison population. In addition to the above there are a number of other causes of over crowding, which are discussed hereinafter.

Year	Population In Millions	Number of Prisoners	Number of Convicted Prisoners	Number of Unconvicted Prisoners	Prison Capacity	No. of Prisoners/ 100,000 Population	No. of Capacity/ 100,000 Population	Percentage of Overcrowding
1997	120.00	81,904	50,318 (61.44%)	31,586 (38.56%)	34,700	68.3	28.9	136.0%
1998	123.36	73,884	15,777 (21.35%)	58,107 (78.65%)	34,700	59.9	28.1	112.9%
1999	126.81	78,938	17,697 (22.42%)	61,241 (77.58%)	34,700	62.2	27.4	127.5%

Ref: Home Department Government of Punjab, NWFP, Sindh, Baluchistan,

- (ii) Causes of Overcrowding in Pakistan
 a. Delay in Judicial Disposition of cases
 Overcrowding of unconvicted prisoners is a common problem in many countries, however in the present group, Pakistan is

the only country where this problem is more pronounced. The number of unconvicted prisoners have shown a sharp upward trend during the last three years which not only reflects a very low conviction

115TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

percentage, but also indicates slow judicial disposition of cases. The reasons are shortages of judges, magistrates, police, prosecuting officers and above all insufficient court officials who are over worked. The other reasons are postponement of cases, witnesses not available due to all sorts of reasons, lawyers engaged in other courts, incomplete investigations, police officers (due to other multifarious duties) are either not available or not well prepared to face the court and counsel for the accused. The influence of corruption and insufficiency are also considered contributing factors in this regard. Although unconvicted prisoners are eligible to obtain release on bail, inadequate use of bail provisions result in increases in remand population.

b. Lack or Limited Use of Alternative Measures to Imprisonment

This is one of the major contributory factors towards an increase in the prison population. Although we have fines and suspension of sentence as alternative measures to imprisonment, these are not very frequently used particularly in heinous crimes. In fact public perception about the punishment is tilted more towards imprisonment than alternative measures. That is one of the reasons that the courts have sparingly used alternatives. Cases have also come to the notice where a number of fine defaulters are serving prison sentences because of inability to pay.

c. Lack or Limited Use of Early Release Measures and After Care Services

Although we have sufficient early release measures like remission, pardons, parole, treatment program within prisons and after care services, they are far below optimum level. As a result the rate of recidivism is increasing. In fact prisons are considered as nurseries for the training of first timer offenders to turn them into hardened criminals. On the other hand, one school of thought is of the view that the lack or non availability of facilities within prisons or bad prison conditions act as deterrents and results in a reduction of recidivism. But in fact it is the other way round and a very negligible proportion of the prison population fall under this category.

d. Lack of Resources

Financial constraints lead to deficient space and facilities for the prisoners ultimately leading to overcrowding. In Punjab, which is one of the biggest provinces of Pakistan only 10 new jails have been constructed after independence, where as the population has increased tenfold. Hence, due to the non-availability of space for the penal population the overcrowding is not only increasing rather it has already reached an alarming stage.

6. The Philippines

- (i) Generally, the correctional institutions in the Philippines operating under three distinct and separate departments (the Department of Justice, the Department of Interior and Local Government and the Department of

RESOURCE MATERIAL SERIES No. 57

Social Welfare and Development) are experiencing overcrowding problems in their respective correctional facilities. It is pointed out that the capacity of its facilities is not enough to accommodate the increasing number of offenders.

The estimated population of the Philippines in 1999 was 80.7 million. It recorded an average increase of 6% per year. In 1999, the recorded number of the penal population was 70,383 or its equivalent to 87.2 prisoners per 100,000 population. It has an average yearly increase of 9.6%. In 1997, the ratio between the adult and youth population was 86.5% and 13.5% respectively; in 1998, it increased to 91% and 9%; and in 1999 registered a slight decrease to 86.5% and 13.5%. In three years time, the average ratio between the adult and juvenile offenders was 88%

and 12% respectively.

The measurement of capacity in the correctional facilities varies from the kind of treatment and accommodation afforded to them by the three distinct departments. For DSWD, the quarters of youth offenders are of dormitory type wherein each offender is provided with two square meters bed space and another two square meters open space for easy mobility. In 1999, the overcrowding situation in the facilities for youth offenders went up to 21.8%. On the other hand, the Bureau of Corrections under the Department of Justice providing custodial care to convicted national prisoners (3 years above sentence) reported that the average living space for each offender is 1.82 square meters. The overcrowding is however compensated by wide-open spaces for

Year	Population In Millions	No. of Prisoners	Prison Capacity	No. of Prisoners/ 100,000 Population	No. of Capacity/ 100,000 Population	Percentage of Overcrowding
1997	72.60	58,552	43,000	80.7	59.2	36.2%
1998	76.60	64,668	45,000	84.4	58.7	43.7%
1999	80.70	70,383	45,000	87.2	55.8	56.4%

Year	Type of Offenders	Penal Population	No. of Convicted Prisoners	No. of Unconvicted Prisoners	Prison Capacity	Percentage of Overcrowding
1997	Adults	50,558	25,795 (51.02%)	24,873 (48.98%)	36,000	40.4%
	Juveniles	7,994	0	7,994 (100%)	7,000	14.2%
1998	Adults	58,893	37,482 (63.64%)	21,411 (36.36%)	38,000	55.0%
	Juveniles	5,775	0	5,775 (100%)	7,000	-17.5%
1999	Adults	61,857	43,486 (70.30%)	18,371 (29.70%)	38,000	62.8%
	Juveniles	8,526	0	8,526 (100%)	7,000	21.8%

Ref: Bureau of Corrections, DSWD Annual Report

115TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

playgrounds inside the prison compounds. The state of overcrowding is even more serious in district, municipal, city and provincial jails managed by the Department of Interior and Local Government.

(ii) Causes of Overcrowding in the Philippines

a. Slow Administration in the Criminal Justice Process

The table attached herewith shows that the average percentage between the unconvicted and convicted prisoners is 45.3% and 54.7%. The slow administration in the criminal justice process is pointed out as one of the leading causes of the overcrowding problem prevailing in most correctional facilities. The trial procedures are delayed such that the detention of the offender sometimes exceeds the maximum period of penalty for the offense charged.

b. The Economic Crisis

The economic turmoil experienced by the country is one important aspect that contributes to the increase in criminality. The unemployment and the underemployment rate of the country as of January 2000 were 30.5% as against the entire working population. This may explain why crimes against property was so high in the country for many years now (50.6% in adult population and 49.4% in youth population). This number further accounts for the considerable number of detainees who cannot afford to post bail and therefore stay longer in detention cells. The budgetary constraints faced by the government also

hindered the construction of correctional facilities.

III. INFLUENCE OF OVERCROWDING

A. Introduction

As we have seen above, many countries are facing the problem of overcrowding. This is the root cause of many problems experienced in correctional institutions such as deterioration of the living and working conditions of both inmates and correction staff.

B. Influence of Overcrowding on the Prison Administration.

1. Staff

In overcrowded prisons, staff are overworked, their works become more risky, the quality of work goes down and their effectiveness to implement programs designed to rehabilitate offenders is reduced. Furthermore, it causes health problems to staff because they are exposed to unhealthy surroundings. They are also affected psychologically and emotionally.

2. Staff - Staff Relations

In overcrowded situations, staff-staff relationships are also strained, and staff efficiency goes down because the senior officers are over loaded with work while sorting out staff disputes instead of concentrating on correctional training assignments and responsibilities.

3. Staff - Inmate Relations

In overcrowded prisons, security risks increase because the breach of prison rules and regulations is high, gangs are organized and the possibility of prison riots increases. The unfair distribution of favors and corruption creeps in. The chances of

contracting diseases are more in such situations.

C. Slows Down the Correctional Programs.

Classification/segregation of cases according to behavior, age, etc. will be difficult. Every prisoner may not get the opportunity to avail the correctional programs i.e. waiting list increases. As a result, the recidivism rate climbs because not all are put through the correctional system.

On the other hand, management are most likely to experience difficulties in planning, coordinating, implementing, monitoring and evaluating activities of the inmates. Classification will be difficult.

D. May Lead to Violation of Human Rights and Dignities.

The United Nations Minimum Standard Rules describes a model system of penal institutions. To practice human rights and dignities in the penal institutions, it is important to apply the standard of these rules as much as possible. When overcrowding occurs in penal institutions, the application of these rules, especially concerning clothing and bedding, food, hygiene, medical services becomes very difficult to implement.

E. Causes Stress and Tension among Inmates.

Stress and tensions among inmates create an increase in the number of disciplinary cases and will develop disruptive behaviors, which may cause psychological and physiological effects.

IV. CAUSES OF OVERCROWDING

A. Introduction

It is often stated that prison overcrowding is a problem in many countries. This leads to a deterioration of the living and working conditions of both

inmates and correction officers. There are several explanations of overcrowding. Although imprisonment is a minor element of the conventional punishment system, the correctional authorities cannot control the flow into prisons.

Furthermore increase in population, changing economic conditions all over the world, globalization factors and exposure of particularly the young generation to electronic media has also resulted in an increase in the number of crimes and criminality which has ultimately resulted in overcrowding of the penal population.

On the other hand, police and prosecutors in some jurisdictions are often given great discretion in the number of cases to be processed. Thus, the agencies administering punishment, be it imprisonment or otherwise may suffer from heavy overcrowding and increasing work load over which they have no control.

In the following paragraphs the causes which are more critical and are applicable to almost all the countries in general are being discussed in relation to these organs of the criminal justice system.

B. Causes of Overcrowding at the Police/Prosecutor Stage

1. Delay in Investigation and Submission of Indictment

Delay in investigation of cases in which the accused is detained will result in overcrowding of detention houses and prisons. In many countries either the provisions for investigation without detention are limited or are not used effectively and efficiently, thus resulting in more unconvicted prisoners. Similarly the delay in submission of indictment will slow down the process of criminal justice and is likely to result in an increase in the number of unconvicted/under trial prisoners.

2. Non Availability of Provision in the Law for:

- (i) Disposal of Cases by the Police
- (ii) Suspension of Prosecution

In many countries provisions do not exist where cases of petty theft, petty fraud, etc can be disposed of by the police. In fact non disposal of petty cases at the initial stages not only results in overloading the criminal justice system with unnecessary work but also results in increasing the number of unconvicted prisoners.

Similarly on the prosecution side many countries have provisions in the law for the prosecutor to suspend or close the investigation when certain criteria are fulfilled and in some cases purely on discretion, but these provisions are not being applied efficiently. This may result in increases in the number of unconvicted prisoners or detainees.

C. Causes of Overcrowding at the Judiciary Stage

1. Slow and Inefficient Administration in the Criminal Justice Process.

It is clear that delay in the criminal justice process will increase the number of remand prisoners and cause overcrowding. Slow and inefficient administration in the criminal justice process is a major cause to overcrowding at the judiciary stage.

In every country, judges/courts are trying to realize speedy trials. Realistically, however they cannot accomplish this goal because of increasing numbers of cases, inadequate cooperation of parties involved or witnesses. Incomplete investigation, neglect of preparation for trial, difficulties in designating continuous trial date and shortage of judges, public prosecutors, lawyers, court clerks and interpreters also impede on speedy trial.

Additionally, though the authority of

investigation belongs to the police and prosecutors, it is one of the duties of a judge/magistrate to observe that the investigation is carried out. In some countries, observation of investigation by judges (magistrates) is imperfect and causes the extension of detention period.

2. Inadequate Use or Lack of Alternative Measures.

Lack of alternative measures to imprisonment is considered a major factor in causing prison overcrowding situations in many countries. The tendency in these countries is one where imprisonment is utilized by the courts as first option before considering other non-custodial measures. It was observed that in these countries, many alternative measures do indeed exist. It was however noted that their use or application was minimal and they therefore do not affect the levels of numbers sentenced to imprisonment. The preference for the over use of imprisonment was discussed and it came out that generally it is influenced by the already established sentencing practice, prevailing feeling and attitude of people at a given time on issues of crime and in some instances the judicial tradition and precedents that have been set and followed in the past. It is however the case that lack of alternative measures and inadequate use of the available countermeasures have a great influence on levels of prison overcrowding. Any effort to relieve this problem must therefore be directed to this cause of overcrowding.

In some countries the average term of sentence is comparatively long. This can also be one reason of overcrowding.

3. Inadequate Use of Bail.

All the countries discussed have a bail system. In many of them, there are many defendants waiting for trial, even though their offences may be bailable. It is no doubt that this situation deteriorates to overcrowding. This is because defendants cannot pay bailbond due to their poor financial situation or they are not offered the opportunity.

D. Causes of Overcrowding at the Correction/Rehabilitation Stage

1. Inadequate Use and Lack of Early Release Measures

Prolonged incarceration has been used as a traditional way of punishment. Studies however show that prolonged incarceration has brought about negative effects on the well being of offenders. Henceforth, early release measures have been put in place as alternative measures to imprisonment like probation, parole, remission, week-end detention and others. These are made available to attain the objectives of correction/rehabilitation and to solve management problems brought about by congestion in penal institutions. As a result of group discussions, it was found out that although early release measures have been made available in all participant countries, they are not fully maximized and utilized. Some do not have other early release measures as have been practiced by other countries. For example, Malaysia and Kenya do not have the parole system to provide an opportunity to the qualified offender to continue serving his sentence in the community which is less costly on the part of the government and provides ample opportunity to an offender to start a new life. Early release measures have the

advantage of lessening the length that the prisoners spend in correctional institutions. Where early release are also granted but subject to good conduct they operate as subtle inducements for behavior in correctional set-ups which is a necessary pre-requisite to effective training, care and control. The overall effect however is to reduce the number of prisoners and thus reduce prison population levels.

2. Capacity

It is observed that penal capacity in many countries has remained the same without taking into consideration the numbers of those sentenced to prison terms every year. This capacity in most cases is often below the prison's population level. It is felt that if capacity was utilized as an indicator of ideal prison levels at any given time, overcrowding would be avoided as resources required could be made available to accommodate the increased numbers. Low capacity means that the distribution of prisoners to appropriate correctional institutions is not properly done according to the risk and needs assessment criteria. It also means that space and resources are constrained. Transportation of convicted prisoners from one prison to another or unconvicted prisoners from remand homes to the courts are a major occupation for correctional staff. It is considered that prison capacities could be regularly adjusted commensurate with the country's population.

3. Lack of Effective Treatment Programs and After Care Services

It has been observed that the treatment programs at the correction/

115TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

rehabilitation stage are not systematic, complete or suitable to fulfill the individual needs of prisoners. The lack of effective treatment may be due to inadequate classification of the prisoners, mismatched allocation of prisoners into the appropriate prisons and distribution of inmates into the wrong training schedules. This problem is made worse where the correctional staff do not have up to date knowledge, skills and motivation to carry out their duties. This trend has a tendency of releasing prisoners back into the community who are not properly rehabilitated. The community's tendency is predictably to harbor and harden negative feelings of ex-prisoners. It is considered that the creation of appropriate community awareness on treatment programs will be useful to create positive public attitudes to corrections. It is in this connection that after care services are recommended in early release countermeasure.

V. COUNTERMEASURES FOR OVERCROWDING

A. Introduction

Arising from group discussions, it is evident that many countries are experiencing overcrowding in prisons. This has been brought out through the descriptions and graphic data submitted in this paper. It has also come out that the causes of overcrowding are clear when analyzed against the background of criminal justice practiced by each respective country.

It is, however, difficult to prescribe possible countermeasures due to the following:

- The penal philosophy, ideology and policy guiding correctional practice

vary from one country to another. There is no uniformity in the application of aims of sentencing, that is, whether it is outright retribution/incapacitation, deterrence, or correction/rehabilitation.

The correctional policy is therefore found to be influenced by :

- Social/cultural experience of the people, economic development level of the country, and the expectation of the people on what constitutes fair justice.

The impact of countermeasures will also be influenced by the public perception of public security, law and order, and how it is executed by the various agencies of criminal justice. An informed public opinion would appreciate efforts aimed at decongesting prisons. Public opinion is likely to influence the extent to which non-custodial measures are viewed and, by extension, accepted by the community.

B. Countermeasures at Police/ Prosecutor Stage

Because the stage of police and prosecutors is aimed at investigation and prosecution, countermeasures towards overcrowding are comparatively limited. As a whole, for prisoners to get alternatives to imprisonment, investigation and prosecution must be done as quickly as possible.

These countermeasures are as here under:

1. Minimum Detention

Using the investigation with minimum detention of suspects by reducing unnecessary delays. For example, a suspect involved in minor offences may not be arrested/detained. The countries that do not have this provision may consider this option as it works successfully. Furthermore where the suspect is involved in a crime which is cognisable and bailable, the option of releasing him on affordable surety

bond may be considered, after giving due weight to circumstances of the case.

2. Disposal of Cases at the Police and Prosecutors Stage

Disposal of cases at the police and prosecutors stage shall be improved to reduce prison population. This can be discussed under the following headings:

- Disposition of Petty Offences
- Suspension of Prosecution

(i) Disposition of Petty Offences at the Police Stage.

In some countries the suspects/offenders involved in minor offences like traffic violations, petty theft, petty fraud and petty gambling could be subjected to a simplified procedure of terminating their cases. This can work as a countermeasure at the initial stage of the criminal justice system.

(ii) Suspension of Prosecution

This is being practiced very successfully in many countries. In this process the prosecutor is empowered by the law to suspend prosecution before trial and in a few countries like Pakistan and India etc after commencement of trial. We feel that in countries where this provision does not exist, they may consider such provisions in their law.

To achieve benefits from the above two provisions, the confidence of people in the prosecution and police is a prerequisite. Furthermore the process is required to be transparent and officials are required to be accountable for their deeds.

C. Countermeasures at the Judicial Stage

1. Speedy and Efficient Criminal Procedure

(i) Observation of Investigation

When a judge/magistrate views a warrant request, they have to consider whether it is necessary to arrest/detain the suspect or not by considering the merits of the case or the circumstance of the suspect. A judge/magistrate also has to observe strictly the time limitation imposed on investigating agencies. Proper observance of time limitations will reduce the number of unconvicted prisoners.

(ii) Introduction of Arraignment Procedure, and Summary Order Procedure.

In order to reduce the number of trials, some countries have introduced criminal procedures through which cases are disposed of without opening trials. These procedures contribute to reduce the detention period of unconvicted prisoners.

a) Arraignment Procedure is a faster process. For example in Costa Rica, Malaysia, Kenya, Philippines, the defendant and the public prosecutor could get into a mutually acceptable arrangement: the defendant accepts the penal responsibility and the public prosecutor often offers him/her a discount in the penalty. Then the court approves the agreement and does not open trial.

b) Summary Procedure is also useful for speedy criminal procedure. This is the special procedure that imposes a

115TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

certain amount of fine on the defendant without the normal trial. The request of prosecutors and the agreement of the suspect are required before applying this procedure. This procedure is utilized to deal with minor cases well and about 90 percent or more of all cases indicted are disposed of through this procedure in Japan every year.

(iii) Limitation of Detention Period at Trial Stage

Some countries do not have specific time limits of detention periods after prosecution. There were some defendants who had stayed in jail waiting for trial for longer periods than the length of final punishment. For this countermeasure, the law should order a specific time limit for the detention period at the trial stage as well as at the investigation stage. For example in the case of Costa Rica, this measure is applied and has a limit of time 12 months. If the sentence is in appeal, the measure is extended by six months more. If this period expires and the individual does not have the definite sentence, the detention is discontinued.

(iv) Speedy Trial

The judicial goal is to achieve speedy trial. To realize this, judges should hold pre-trial conferences with public prosecutors and defense counsels to identify the main issues of the case. Judges should also determine the length of trial and make arrangements with both parties about the schedule of

trial. To designate plural trial dates will contribute to speedy trial.

Needless to say, speedy trials cannot be realized without the cooperation of public prosecutors and defense counsels.

2. Effective Use of Alternative Measures to Custodial Sentences

(i) Fines

Fines are utilized in all countries of our group and contribute to reduce the number of convicted prisoners. In some developing countries where the economic conditions are poor, there are many prisoners who are sent to jail because they cannot afford to pay the fines. To prevent this, a day fine system or paying the fine by installment is recommended as a solution.

(ii) Suspension of Sentence/ Suspension of Execution of Sentence

Suspension of sentence/ suspension of execution of sentence frees the defendant from punishment. Many countries have this kind of system. These systems are mainly utilized for first time offenders who commit minor offences. In some countries suspension is sometimes accompanied by a probation order. As mentioned before, in Japan execution of sentence is suspended in more than 60 percent of all trial cases and it contributes to reduce the number of convicted prisoners.

(iii) A Drug Court

The rapid increase of drug addicts causes overcrowding too. Drug Court is a new alternative measure incorporated in

countries like Australia and the United States. In Australia they have a program for the offences granted to drug addicts, as alternative to imprisonment and the judge refers to a specific program of treatment and supervision. If the individual fulfills this measure, he/she does not have to go to jail (the sentence is suspended).

(iv) Others

There are some other non-custodial measures as follows:

- House Arrest: the offender must remain within the confines of the home during specified times and adhere to a strict curfew.
- Binding Over: the court orders the offender to make a contract with a fixed amount of money which will be forfeited on him/her in case he/she does not appear for the court appointment.
- Community Service Order: the court orders the offender to perform unpaid labor like cleaning public parks, schools, and hospitals for a specified number of hours in a determined time period.
- Weekend Detentions: the court orders the offender to stay in jail only on weekends.
- Recognizance: this is an alternative measure for the detention of youth offenders in the Philippines. Offenders on trial can be released back into the community with the protection and guidance of qualified parents, relatives or responsible persons in the community on condition of good conduct but under the supervision of a social worker.

3. Reduce Sentence Length

In some countries, reduction of the sentence length is one way to alleviate overcrowding. But the sentencing practice has taken roots in the judicial system of many countries and therefore it is very difficult to change the average length of sentence. So, to change the sentencing practice, it is necessary to win the understanding of the public. Costa Rica has a unique system where the judges have the powers to release juvenile convicts before expiry of their sentence (which can be called as one of the early release measures) after obtaining reports from concerned agencies on behavior and other factors of the convict.

4. Appropriate Use of Bail

After considering the contents of offences, the possibility of destroying evidence or threatening witnesses, judges/court could grant bail if the offence is bailable.

In some countries, there are many defendants who cannot be released on bail, because the amounts of bail bond are so high, even though their offences may be bailable. But the purpose of bail bonds is to make the defendant attend trial. In this sense, the amount of bail bonds should be affordable to each defendant and sufficient to ensure his/her presence for trial.

As mentioned before, lack of information for defendants causes insufficient use of bail. It is necessary to enhance the defense activities in the pre-trial process.

D. Countermeasures at the Correction/Rehabilitation Stage

1. Early Release Measures

(i) Parole

Parole is a conditional release of

115TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

prisoners after serving certain periods of the determined sentence. Eligibility is however conditional on other factors e.g. whether one is a first time offender, a recidivist offender or a risky offender. Modalities for consideration of parole as practiced in Japan is as follows:

- Pre-parole investigation reports prepared by parole/probation officer are submitted to the Parole Board.
- Prisons Superintendent sends application of all suitable prisoners to the Parole Board.
- Contact interviews with a prisoner by the Parole Board.
- Decision to grant parole or not is decided by the Parole Board.
- If the decision is positive the prisoner is granted parole for the remaining period of the prison sentence subject to supervision in the community by a probation/ parole officer.

This countermeasure can be extensively utilized. For example, in Japan the number of paroles were given to 12,948 prisoners (58.2%) in 1998. Revocation cases amounted to 992 or 7.6% for the same period.

- The advantage for this countermeasure is that the Parole Board does not change the length of original sentence given by the court.
- The parolee gets guidance and assistance/support after release from prison and some get residence and daily living allowances from half-way houses run and managed by the non-profit private organization.

- The parolee is expected to observe some laid down conditions as part of his contract to keep within the law.

Parole is a demanding program and creates a lot of overload while processing applications and deciding on each case. It therefore requires personnel, finances and a lot of time to make it work. It is however, a good program because it is accountable and encourages prisoners to live normally in the community.

(ii) Remission

Remission is the reduction of the period to be served by a prisoner. This period is pre-determined e.g. in Malaysia 1/3; Philippines 1/3, Kenya 1/3 and Pakistan 1/3 remission period is provided for by the law. The period of remission may vary from one country to another but generally is a program practiced in many countries. Remission is provided for in the law except in capital punishment or where otherwise stated. Remission can be forfeited in cases of gross misconduct by the prisoner as laid out in the prison rules. Remission is administered by the prison authorities and therefore is not expensive to manage.

It has been found that remission reduces prison custody by up to a third of the length of the sentence. It is a useful program in reducing overcrowding because it is less costly, easy to administer and decision-making is done by the prison administration. It encourages good discipline in the prison setup. In the short term, remission is an effective countermeasure to overcrowding. In the long run, it may create recidivism because there is no follow up or any

supervision.

(iii) Pardons

These are ad hoc decisions to relieve prison pressure by releasing prisoners before their sentence is completed. Such cases are released during national day celebrations or on any other such like occasions. They are effective in reducing prison populations for a time but they are not sustainable. The released prisoners are not subject to supervision and therefore they raise concern for the public. More often, the impact of these general pardons is temporary to the prisons' overcrowding situation. It was noted that pardons are practiced in the Philippines, Malaysia, Kenya, Pakistan, Costa Rica, Japan and many other countries. They do serve a purpose however short lived.

The above countermeasures are considered significant because of their ability to deal with the sizeable number of prisoners if properly managed. These programs are practical and easy to manage and funding requirements are comparatively low. Finally, it is possible to monitor and evaluate the impact of these programs to prison overcrowding situation on an on going basis.

2. Enhanced Resource Allocation

The local and national government should increase the operational budget of correctional institutions so that effective treatment programs can be implemented. Construction, expansion and renovation of facilities are needed to accommodate the increasing rate of penal populations and keep pace with the changing situations such as the proper classification and allocation of offenders (young and adult, convicted

and unconvicted).

3. Improve Effective Treatment Programs and After Care Services

Improve staff competency levels that implement treatment programs utilizing case management strategy. This is a collaborative and multi-disciplinary process that includes assessment, planning, implementation, coordination, monitoring and evaluation of options and services needs by the offenders. This may include the assessment of the offenders' risk, the recognition of needs, the monitoring of their activities and if deemed appropriate, a correctional intervention. Further, counseling integrated with cognitive skills training which touch on topics relative to control of misbehavior is also proven as an effective measure. Open penal systems that utilize the concept of conditional release like parole, probation, suspension of sentence, week-end detention etc. is a good strategy to give pre-release prisoners a chance to prove his worth again to be reintegrated back to society. This minimizes the stigma attached to an offender as prisoner, enhances role performance and regains self-esteem. This system is effective, easy to manage and reduces overcrowding situations in correctional facilities.

The enhancement of after care services should be given full attention by the government as one important measure to reduce the recidivism rate. Networking with non-government organizations, civic bodies and religious groups is also needed to augment the limited budget of the government and to strengthen the after care services in the community.

115TH INTERNATIONAL TRAINING COURSE
REPORTS OF THE COURSE

E. Other Countermeasures

It was felt that in addition to the above countermeasures there is a need to ensure effective coordination amongst the organs of the criminal justice system coupled with decriminalization of behaviors that do not pose a threat or risk to public security. It is also realized that agencies of the criminal justice system need to be made more efficient and compatible with the changing times by providing them with sufficient staff, adequate funds and computerization of records. An efficient criminal justice system can reduce the number of prisoners substantially thus relieving the pressure on prisons.

VI. CONCLUSION

In conclusion, it was felt that weak economies, high unemployment rates, low literacy percentage, high population growth, unfair application of laws, globalization factor and exposure of particularly young generations to electronic media has resulted in an increase in the number of crimes and criminality which has ultimately resulted in an increase in the number of unconvicted and convicted prisoners. This phenomenon has posed very serious problems for the criminal justice system and especially the correction administration. The countries that had never experienced the problem of overcrowding are also threatened because of this phenomenon.

In addition to the actual situation and causes of overcrowding in each participant's country, the causes and countermeasures at each stage of the criminal justice system, that is, police, prosecution, judiciary and correction were also discussed in detail. It was felt that to alleviate the problems of overcrowding in the penal institutions there is a need to have an efficient criminal justice system to ensure speedy trials, wider use of non-

custodial measures and abundant use of early release measures. However it was observed that before introducing new countermeasures it would be appropriate to properly evaluate the same to ensure its success and effectiveness.

It was also felt that governments do not assign appropriate priority to the prison administration at the time of allocation of funds for creating more capacity and to improve/update correctional facilities.

Last, but not the least it was realized that the option of imprisonment as a punishment is being used more often than not in most of the countries, which is one of the major causes of overcrowding. However it was felt that in spite of the above, it is possible to formulate countermeasures that are viable, implementable and practicable which can solve the problems of overcrowding substantially.