

GROUP 2

ADMINISTRATION OF PENAL INSTITUTIONS

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I. INTRODUCTION

The United Nations Standard Minimum Rules (UN SMR) for the Treatment of Prisoners sets out what are generally considered as good principles and practices in the treatment of prisoners and the management of institutions.¹ However, since its adoption by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955, most, if not all countries, still have some difficulties implementing the basic rules laid down by the UN SMR.

Given this background, the group was assigned to discuss the current situation/practices of the prison administrations of each participating country, analyse the issues/problems confronting their prison administrations, and endeavour to find ways to overcome difficulties in the application of the UN SMR. The group agreed to include in its discussions the following aspects of prison administration as subtopics: accommodation, separation of inmates, provision of medical services, information to prisoners, contact with the outside world, discipline and punishment, grievance mechanisms, prison incidents, inspection and community participation.

In keeping with the preliminary observations of the UN SMR that the rules enumerated therein are “not intended to preclude experiment and practices, provided these are in harmony with the principles and seek to further the purposes [...]”², the group considered measures outside of the UN SMR to solve the problems/issues confronting the prison administrations of each participating country.

II. PRISON ADMINISTRATION

A. Current Situation

Except for the Philippines, the administration of prisons of the participating countries is centrally-administered either through the Ministry of Internal Affairs, Ministry of Internal Security, Ministry of Justice or the Police Department.

In the Philippines, local jails are managed and supervised by the Department of the Interior and Local Government through the Bureau of Jail Management and Penology (BJMP) and the Provincial Government while national prison institutions are managed and supervised by the Department of Justice through the Bureau of Corrections (BuCor). Juvenile institutions are supervised by the Department of Social Welfare and

¹ Preliminary Observations 1, United Nations Standard Minimum Rules for the Treatment of Prisoners.

² *Ibid*, Preliminary Observations 3.

Development through the Bureau of Child and Youth Welfare. However, the executive department prepared a draft proposal integrating all national prisons and all provincial, city and municipal jails and consolidating the functions of the Bureau of Corrections and Bureau of Jail Management and Penology under a new bureau to be known as the Bureau of Correctional Services under the Department of Justice. The bill is currently pending in Congress.

As regards privatisation of prisons, Korea enacted the “Law of the Establishment and Operation of Private Prisons in January 2000”. The law was enacted to reduce the financial burden while alleviating prison overcrowding and enhance the effectiveness of rehabilitation. The first private prison in Korean Correction history will be opened in 2005. The role of correctional staff in private prisons can be limited by the contract with the Ministry of Justice. In general, the correctional corporation should keep suitable manpower for reception, management, rehabilitation and other correctional service.

Japan recognizes the need to reorganize the correctional administration in order to maximize the functioning of institutional operations and the treatment of prisoners. In this connection, the Corrections Bureau has decided to contract with a private company to construct an institution with a 1,000 capacity by employing the Private Finance Initiative (PFI) scheme by 2007. Discussions are still going on as to what extent the private sector can perform prison functions.

Malaysia and Thailand are studying the possibility of introducing privately managed prisons while Vanuatu and Egypt are not interested in having private prisons due to present government policy.

B. Problems and Countermeasures

The main problem of prison administrations is the inadequate budget allocated to the prison service. In some countries, an adequate budget for prisons is given the least priority. Given such condition, the prison service suffers to a certain extent as prison management tends to focus more on the security aspect rather than on rehabilitation of prisoners.

To address the problem of inadequate resources, the group considered reorganizing the prison structure to economize expenditure of funds. It also considered outsourcing certain corrections services to the private sector (e.g. provision of food), subject to the situation of the market.

Concerns were raised for having private prisons since imprisonment can be considered as an infliction of pain which must be carried out only by the State. However, severe overcrowding in many countries requires living space to be provided in a relatively short time. In this regard, some form of private initiative may be considered inevitable. Nevertheless, most of the participants agree that the main functions of prison service such as custody, security and discipline should remain with the government.

The basic function of imprisonment was discussed among the participants. As stated in the UN SMR 58, it was agreed that the basic function of prison is to protect society against crime and to rehabilitate prisoners to be law-abiding citizens. Therefore, prison is expected to play multiple roles in managing prisoners. They include maintaining the safe custody of prisoners, providing welfare to prisoners, protecting community safety, providing guardianship and social services.

III. ACCOMMODATION

A. Current Situation

Thailand and the Philippines do not have single cells except for disciplinary punishment. They have dormitory style accommodation. The sleeping area for each inmate in Thailand is fixed at 2.25 sq. m. while Korea provides each inmate with an average area of 1.7 sq. m. The Philippines does not provide a fixed space for each inmate.

Egypt, Korea, Vanuatu and Japan have both single and group cells³ while Malaysia has single cells and dormitory style accommodation.

³ A “group cell” means a cell that accommodates three to six inmates, while a “dormitory” means a living space that accommodates more than twenty inmates.

B. Problems and Countermeasures

Prison overcrowding creates difficulties in the observance of the UN SMR. Except for Vanuatu, all the members of the group share a common problem of accommodation due to overcrowding. The problem of overcrowding can be attributed to, among others, a dramatic increase of drug offences, old/lack of facilities, frequent use of imprisonment as a penalty and non-custodial measures not being fully utilized as an alternative to imprisonment.

In Malaysia, old prison institutions lack ample space for the exercise of prisoners. Overcrowding in Malaysia results in a shortage of water supply, in-fighting among the inmates and commission of homosexual acts.

In Malaysia and Japan, a single cell is made to accommodate more than one inmate. The Philippines, Malaysia and Thailand transfer inmates to less congested prison facilities. In effecting the transfer of inmates, the prison authorities have to consider certain factors: the transfer should not cause problems to other institutions; residence of inmate's family, rehabilitation programme being undertaken by the inmate, etc.

Full utilization of the early release schemes, amendment of penal laws providing long-term sentences and transfer of inmates to less congested facilities subject to certain conditions (e.g. transfer should not create problems for the receiving prison), were some of the measures considered to reduce the prison population.

To reduce the stress level of the inmates due to overcrowding, prison institutions should provide more recreational activities such as inviting well-known entertainers to perform during weekends.

IV. SEPARATION OF INMATES

A. Current Situation

All the participating countries observe separation of male inmates from female inmates, juveniles from adult offenders and high risk prisoners from low risk prisoners.

Japan, Korea and Egypt have separate institutions for unsentenced and convicted inmates. The Philippines and Thailand provide separate correctional institutions for drug offenders where they are provided with appropriate treatment and rehabilitation programmes.

B. Problems and Countermeasures

Thailand, the Philippines and Malaysia cannot provide separate facilities for unsentenced and convicted inmates due to overcrowding and lack of facilities. However, they are placed in specific sections in the same facility.

In Malaysia, separation of inmates cannot be fully implemented in certain areas of the prison facilities such as the dining hall and place of work. Certain rules on separation of inmates are likewise relaxed after taking into account the security risk involved.

The presence of transsexual inmates creates problems in prison institutions due to the difficulty in determining their gender. Malaysia identifies the gender through legal documentation. In Thailand, Japan and Malaysia, transsexual inmates are incarcerated in a specific section separate from other inmates.

V. MEDICAL SERVICE

A. Current Situation

The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.⁴

⁴ Art. 24, UN SMR.

All the participating countries provide basic medical treatment to the inmates in a specific area inside the prison. Many countries have medical doctors present during the daytime. In other cases, sick inmates are assisted by medical assistants.

Japan and Thailand have separate medical prisons for specific medical treatment. In all countries, referral is made to a hospital outside the prison in the event that the prison hospital cannot provide the specific medical treatment. In Malaysia and Egypt, referral is limited to government hospitals. In the Philippines, Thailand, Korea, and Vanuatu, an inmate may be allowed to be treated at a private hospital at his/her own expense. In both cases, the inmate has to be escorted by prison guards.

In Thailand, the Ministry of Public Health provides a medical service card to an inmate who has a permanent address and residence registration. The Korean correctional authority is planning to introduce national insurance to be used for inmates as medical coverage.

B. Problems and Countermeasures

Except for Egypt, the participating countries face the problem of a lack of medical service staff. In some countries, inmates sometimes overuse or take advantage of the free medical treatment provided by the prison.

In countries where there is a lack of medical staff, discussions must be conducted with the Ministry of Public Health or medical associations with a view to providing adequate medical staff. Most of the participants agree that it is possible to have a medical prison as practiced in Japan and Thailand. Malaysia is studying the possibility of contracting with private medical doctors for prisons. Although not considered in the other participating countries, there is a possibility of contracting private companies to provide medical care in prison.

VI. INFORMATION TO PRISONERS

A. Current Situation

In all countries, every newly-admitted inmate is informed of the prison rules and regulations, rights and privileges and daily schedule of the prison.

Thailand, Malaysia, Korea, Philippines and Japan conduct orientation on the prison rules and regulations to newly-admitted convicted inmates in a separate section. Japan and the Philippines fix the period of orientation at fourteen and sixty days, respectively.

Illiterate inmates are informed orally on the prison rules and regulations. In Egypt, prison staff have to remind the illiterate inmates on a daily basis of the prison rules and regulations.

B. Problems and Countermeasures

Most countries are facing an influx of foreign inmates which causes problems on imparting information to prisoners. Prison institutions in Thailand, Malaysia, Philippines and Vanuatu may contact the embassy concerned for interpretation/translation services. Japan usually relies on in-house interpreters/translators and volunteers. Inmates who speak the same language may be requested to interpret the prison rules and regulations for the newly-admitted convicted foreign inmates.

In order to overcome the problem, the group agreed on the use of audio-visual aids as a means of informing inmates of the prison rules and regulations, in addition to strengthening the current practices.

Transfer of sentenced foreign prisoners should be considered especially in countries where there are a large number of foreign inmates.

VII. CONTACT WITH THE OUTSIDE WORLD

A. Current Situation

All the participating countries allow prisoners to communicate with their family, friends, counsel, diplomatic or consular representative, etc.

Vanuatu, Egypt, Malaysia, Korea and the Philippines allow inmates to be visited at the weekend. Thailand and Japan do not have scheduled visitation on weekends. Korea, Philippines and Thailand allow the system of conjugal visits. Malaysia and Egypt allows a woman prisoner to visit her convicted husband under escort.

Korea is now implementing the video visit system wherein a family member who resides in a place far from the institution of confinement of an inmate can communicate with that inmate through the Intranet system installed in the prison located in the prisoner's family hometown. Inmates and their families respond positively to the system.

Both Thailand and Korea allow the inmates to receive e-mail from their families by using the prison e-mail address. In 2002, Thailand launched a pilot project which allows convicted inmates in certain prison institutions to send and receive e-mail messages. A prison staff member censors the messages. An inmate who wants to reply has to first write the message and the prison officer-in-charge will then send the message for him/her. In Korea, convicted inmates are not allowed to reply via e-mail. They must reply by ordinary mail. In both countries, inmates are not allowed to access the Internet.

Vanuatu, The Philippines, Korea and Thailand allow inmates to make telephone calls under the supervision of prison officers. In Vanuatu, an inmate is allowed to make phone calls in an emergency. In the Philippines, an inmate who demonstrates good behaviour earns one telephone call to an authorized individual every ninety days. In such a case, the telephone conversation is monitored and cannot exceed five minutes. In Thailand, a convicted inmate uses a phone card bearing only five numbers for outgoing calls. In Thailand, phone calls are recorded while telephone conversations are monitored by the prison officers in Korea.

B. Problems and Countermeasures

Security problems could arise when prisoners contact someone from outside the prison especially when the person on the receiving end cannot be fully identified during the telephone conversation. In order to control this problem, participants agreed that prison officers should strictly monitor the phone conversation.

Sometimes visitors bring prohibited articles, especially during contact visits. In Thailand, Egypt, Malaysia and the Philippines, a body search is performed on the visitors and inmates. In Vanuatu and Korea, a body search is conducted on the inmate after the visit.

Mobile phones brought by the visitors may cause problems as they can be used by the inmate to communicate illegally with others. Recently, the new technology of mobile phones allows recording of conversations and taking pictures. In many participating countries, visitors are requested to refrain from carrying in mobile phones to the visitation area; however, they can still be brought in. In order to counter the problem, countries install security lockers where mobiles can be deposited. Metal detectors may be installed in order to detect prohibited articles from being brought in to the visitation area.

VIII. DISCIPLINE AND PUNISHMENT

A. Current Situation

Japan, Korea, Malaysia, Thailand and the Philippines have a collegial body in each prison institution which hears and decides cases involving violations of prison rules and regulations⁵. In Egypt, the prison or deputy warden decides on the punishment to be imposed on the inmate. In Vanuatu, the officer-in-charge of the prison decides on the case of the inmate. Each participating country gives the inmate an opportunity to defend himself/herself and punishment imposed on the inmate is based on the law or prison regulations.

In Japan, an inmate is assisted by a prison staff member during the hearing of the case while the Philippines allows the inmate to have a witness/es.

Reprimand or forfeiture of certain privileges may be imposed on an inmate in Malaysia, Vanuatu, Korea and Thailand. In addition, the Philippines and Thailand impose a reduction or deprivation of Good Conduct Time Allowance while Malaysia imposes a reduction in stages, forfeiture of remission and a restricted diet.

⁵ Japan has the Inspection and Investigation Committee for Discipline, the Philippines has the Board of Discipline while Korea and Thailand both have Committees for Discipline.

The Philippines may change the security status of the inmate to the next higher category⁶ while Thailand may downgrade a prisoner's class.

Except for Malaysia, solitary confinement as a form of punishment is considered as a last resort. In all countries, solitary confinement is carried out only after the medical prison officer has certified that the inmate is fit to undergo such punishment. The maximum period for solitary confinement in Thailand is three months, two months in the Philippines, Korea and Japan, twenty-one days in Malaysia, fifteen days in Egypt and fourteen days in Vanuatu. In practice, however, all countries impose a lesser period for solitary confinement. Its duration depends on the gravity of the offence.

Whipping⁷ is practiced in Malaysia for prisoners who commit aggravated prison offences such as escape or attempted escape, destruction of prison property or possession of drugs or weapons. The maximum number of strokes is twelve. A medical officer must certify that the inmate is medically and physically fit to be caned. Male prisoners who are more than fifty years old and female prisoners are exempted from this form of punishment.

In all the participating countries, appeal from the decision of the adjudication board is not available but an inmate may file a complaint with authorities either within or outside the prison.

B. Problems and Countermeasures

Some of the participating countries expressed reservations on the effectiveness of solitary confinement as a form of punishment, especially where the prison is overcrowded. In an overcrowded prison, to have a single room might be considered a privilege by some prisoners. However, each participant agreed that there is a strong psychological effect of solitary confinement and should, thus, be considered as a last resort. In regard to whipping, although its legality is guaranteed by law, the question of human rights was expressed by some members of the group.

To ensure transparency of the adjudication process as well as the accountability of the collegial body/prison authorities, the group considered adopting some features of criminal trial proceedings such as the composition of the disciplinary panel, the right to counsel and appeal to authorities outside the prison institution. In Korea, at least one representative from the community sits as a member of the Disciplinary Board.

The participants discussed the possibility of an inmate being assisted during the hearing of his/her case. Assistance may be provided either by a lawyer, fellow inmate or a prison officer. All countries expressed reservations on having an inmate represented by a lawyer. A lawyer might only cause difficulties in the disciplinary procedure. Japan, Malaysia, Egypt, Vanuatu and Korea did not completely agree with the option of having an inmate assisted by a fellow inmate due to the concerns of objectiveness and security.

The group agreed on the importance of the role of an independent tribunal such as the tribunal of the execution of the penalty/sentence in Costa Rica. The tribunal acts on cases/appeals filed by a prisoner, prosecutor or victim against a decision of the prison administration. The penalty imposed by the prison administration is suspended while the case is pending with the tribunal. The Judge of the Execution of the Penalty can either vacate or modify the penalty imposed by the prison administration. The importance of having a "controller of legality" is both to ensure the fundamental human rights of the inmate and the legality of the decision of the prison administration. The decision of the "controller of legality" must have a binding effect on the prison administration.

Some form of mediation may be considered in case of conflicts between prisoners as one of the alternative measures to disciplinary action as this can ensure peace and stability in prison.

⁶ In the Philippines, inmates committed at the national prison institutions are classified according to their security status - maximum, medium and minimum while Thailand classifies its inmates as excellent, very good, good, medium, bad and very bad.

⁷ Whipping is a form of punishment with a rattan inflicted on the buttocks of the offender (Rule 131[4], Prison Regulations 2000).

IX. GRIEVANCE MECHANISMS

A. Current Situation

In all countries, an inmate is given the right to air his/her grievances against the prison administration or any of its officers/staff either within or outside the prison administration system. It may be made orally or in writing depending on the level of authority of the person or body to which the complaint or petition is made. An inmate may seek remedy outside the prison administration either through judicial or other administrative bodies. In all the participating countries, judicial action may be initiated by an inmate against the prison administration and any of its officers/staff.

In Egypt, an inmate can file a complaint to the Prison Director or General Attorney while an inmate in Malaysia can air his/her grievances to “visiting justices”⁸ or the officer-in-charge of the prison. In Vanuatu, the chairperson of the committee composed of prisoners brings general complaints such as food and accommodation to the Superintendent or Inspector of the Prison. A personal complaint by an inmate in Vanuatu may also be filed with the Public Solicitors and Ombudsman officers who visit the prison regularly.

In Japan and Korea, a petition may be made by an inmate to the Minister of Justice or the visiting officer authorized by the Minister to inspect the prison. In both countries, an inmate may request an interview with a warden.

In the Philippines, each national prison institution has an Inmates’ Complaint, Information and Assistance Centre (ICIAC)⁹ which receives and acts on complaints, requests for information and assistance of inmates. An inmate may choose to file his/her complaint or petition with the Director or Assistant Directors of the Bureau of Corrections or directly to the Secretary or Undersecretaries of Justice.

In Thailand, a prisoner can make a request or file a complaint with the Prison Director or Director General of the Department of Corrections. Each prison in Thailand has a red box wherein an inmate can place his/her complaint. Only the Prison Director can open the red box. In addition, Thailand has a Grievance Section under the Office of the Inspectorate which is responsible for all prisoners’ complaints.

In the Philippines, Thailand and Korea, complaint may also be made to the Human Rights Commission or the Office of the Ombudsman. In Vanuatu, after the introduction of the Public Solicitors and Ombudsman officers, the number of complaints decreased.

In all the participating countries, a judicial action may be initiated by an inmate against the prison administration and any of its officers/staff.

B. Problems and Countermeasures

In Korea, the creation of the Human Rights Committee increased the number of complaints as inmates bring to the attention of the Committee even small issues which can be considered in the corrections office. From November 2001 to June 2003, out of the 458 cases filed against the prison administration, only 29 cases were given recommendations while the rest were dismissed or rejected.

Inmates sometimes abuse or misuse the process afforded to them by not using the proper channels for filing complaints. Oftentimes, wrong information is given to non-government organizations and the media.

The group discussed the importance of having different types of grievance mechanisms in penal institutions. It is necessary to maintain a good personal relationship between prisoners and staff, so that most of the prisoners’ complaints could be made orally to the officers. If inmates are not satisfied with the handling of the complaint, they should make an official written complaint. There should be more than one process for prisoners to write complaints, preferably including independent agencies from the penal administration to ensure transparency.

The group agreed that the increase in the number of complaints shows that the inmates have confidence in the grievance mechanism. It also diffuses conflict in the prison and shows an increased awareness of the

⁸ The system will be explained fully in “Community Participation”.

⁹ It is composed of prison staff and is directly under the Office of the Superintendent.

inmates of their right to air their grievances.

X. PRISON INCIDENTS

A. Current Situation

The two most serious prison incidences faced by prison administrations in all participating countries are suicide and escape.

Malaysia had five incidences of escape in 2002 and one in 2003. In Thailand, the number of escapees in 2003 was 61, or 0.03% of the prison population. Fifty-five of the inmates escaped from outside the prison while the other six inmates escaped from inside the prison. In the Philippines, there have been an increased number of escapes by detention prisoners. In Korea, escape rarely occurs: one case of escape occurred last year while the inmate was undergoing treatment in a private hospital.

Suicide of inmates rarely occurs in the prison institutions of all the participating countries. In Malaysia, the prison administration recorded six suicides of inmates in 2002 and one in 2003.

B. Problems and Countermeasures

1. Escape and Suicide

The group considers the incidence of escape and suicide as serious problems of prison administration even if they seldom occur. The group agreed that there should always be a balance between the security of the prison and rehabilitation of prisoners. These two aspects of prison administration should be taken into consideration in order to avoid prison incidents.

Escape creates security concerns in the community, thus diminishing public confidence in the penal system. Suicide gives the impression that prison conditions are poor and inmates are not treated well.

Security lapses or negligence by prison officers, lack of good physical security systems and the close relationship of prison officers with the inmates were among the reasons cited for the escapes.

Malaysia cites lack of staff to conduct security inspections and lack of cooperation of the inmates themselves during investigations as the problems encountered by its prison administration in its efforts to reduce the incidence of escape.

To prevent or reduce the incidence of escape, Malaysia, the Philippines and Thailand, aside from imposing the appropriate disciplinary action, have tightened up security measures, conduct more frequent inspections and continue to foster discipline among the inmates. Japan added that providing humane prison conditions and improvement in the treatment of offenders will be better measures in preventing prisoners from escaping or attempting to escape from prisons.

To address the problem of suicide, Malaysia uses blankets that cannot be easily torn and conducts frequent searches of cells to look for articles that might be used in committing suicide. All unlawful item/items that can invite a suicidal act by a prisoner such as ropes, sharp items and blankets that can be easily torn are confiscated.

In Japan, inmates who are diagnosed with a particular high risk of suicide are placed in a special cell where a camera is installed to monitor their activities. Japan suggested the necessity of counselling. The provision of information on prison life can also reduce the tension of imprisonment.

A more strict and sensitive prison officer will be assigned to blocks/workshops to guard prisoners who are prone to attempting suicide. A prison officer that is found guilty of negligence should be held liable.

Counselling sessions should be increased for prisoners who have a high tendency of committing suicide.

The group agreed to review existing security measures, improve prison conditions and promote better relationships between the prison staff and prisoners to prevent further occurrences of serious prison incidents.

2. Bribery of Prison Officers

Bribery of prison personnel is a common problem in Malaysia, Thailand and the Philippines. In Japan, Korea, Egypt and Vanuatu, bribery rarely happens in the prisons. In many countries, bribery usually involves giving special treatment or allowing inmates to have prohibited articles inside the prison such as cigarettes and cellular phones.

In all countries, a prison officer found to have committed bribery will be held criminally and administratively liable. It could result in the removal from office of a prison officer.

Low salary, inadequate welfare benefits and weak ethics were cited as the main reasons why prison officers commit bribery. Instilling good ethical values in the prison officers, aside from increasing their salary and benefits, was considered in order to prevent or reduce bribery in prisons.

XI. INSPECTION

A. Current Situation

There are two types of inspection - internal inspection which is conducted by the prison administration, and external inspection which is conducted by independent bodies or persons from outside the prison service.

All of the participating countries conduct regular internal inspection of their prison institutions and services to ensure that the institutions are administered in accordance with existing laws and regulations and to bring about the attainment of the objectives of the penal system.

In Egypt, the Prisons Department has an Inspection Section composed of specialists in prison administration - high ranking police officers, doctors and psychologists - which inspects prisons under the supervision of the deputy of the Authority Manager. The result of the inspection is reported to the Authority Manager.

In Korea, inspection is conducted regularly by the central organization, regional correctional headquarters and Ministry of Justice. In the Philippines, the Secretary of Justice conducts announced and unannounced inspections/visits of national prison institutions.

As stipulated by law, a senior officer entrusted by the Minister of Justice of Japan has to visit once every two years prisons with less than a thousand prisoners. For prisons which have a capacity of more than one thousand prisoners, inspection is performed once every year. Regional correctional headquarters have to inspect prisons once every two years. Consequently, each prison is inspected at least once a year. Judges and prosecutors are also entitled to visit prisons.

In Thailand, the Minister of Justice has the power to appoint a Prison Commission to inspect and examine the prison administration and give advice to prison officials. The Commission consists of not more than five members appointed from the judiciary, Ministries of Education, Agriculture and Cooperatives Finance, Foreign Affairs and a medical officer and public prosecutor.

In Malaysia, the Commission on Human Rights and the "visiting justices"¹⁰ conduct jail visits. In the Philippines, the Commission on Human Rights exercises visitorial powers over jails, prisons, or detention facilities. In Korea, the Human Rights Committee, upon receipt of any complaint, conducts an investigation and inspection of the prison institutions.

In Vanuatu, prisons are inspected by the Minister of Internal Affairs or his/her designated representative. As stipulated by law, at least three persons should visit prison institutions at least once a year. The Minister may constitute a Prison Visiting Commission where three of its members shall visit each prison at least once a year.

In Egypt, the Attorney General and prosecutors are entitled to inspect prisons at any time. The Superior Judges of the City Courts can inspect the prison located within their jurisdiction. The head of the Supreme

¹⁰ The role of the visiting justices is discussed in "Community Participation".

Court can inspect any prison in Egypt at any time.

B. Problems and Countermeasures

Some of the officials mandated by law to conduct inspections/visit are not qualified and experienced inspectors and they rarely inspect/visit prison institutions. Sometimes they delegate their responsibility to their subordinates. Further, some of them are not really concerned about the real situation and problems faced by prison institutions.

Visits by judges and prosecutors in Japan are conducted formally and the information is not fully disclosed to them.

In Vanuatu, a constant change of government poses a problem as the new government appoints a new minister.

The group agreed that procedural and substantive matters must be considered in the inspection. Procedural inspection means looking into the procurement procedure for prison supplies, food, etc. Substantive inspection means looking into the compliance by the prison administration with constitution/statutory laws and human rights instruments in the treatment of prisoners.

To ensure transparency, the group recognizes the importance of having a third party to conduct inspection of the prison institutions. In this connection, an opinion was expressed that the inspection team should include at least one member from the community. However, some of the participants expressed reservations on this matter as it could compromise the security of the prison.

The participants agreed that an external inspectorate should be introduced such as Her Majesty's Inspectorate of Prisons in the United Kingdom. It provides independent scrutiny and public assurance and reports in public. The Chief Inspector is appointed by the Home Secretary from outside the Prison Service although some of the Inspectorate staff are seconded from the Prison Service. The Inspectorate inspects for outcomes, not processes. It also inspects against published criteria, and focuses on four tests of a healthy prison, namely safety, respect, purposeful activity and resettlement. The Inspectorate provides infrequent but in-depth inspection. It carries out a five year cycle of full inspections (three yearly for juveniles), together with a programme of short inspections, usually unannounced, in-between to check progress.

XII. COMMUNITY PARTICIPATION

A. Current Situation

In Thailand, the Ministry of Justice created a Correctional Council Board in every province this year. The Board consists of fifteen members appointed from the criminal justice agencies and various public and private agencies for two years. The Director of the Provincial Prison is appointed as the Secretary of the Board. It is responsible for giving advice, policy or guidelines to develop work and recruit resources for the rehabilitation and treatment of offenders. The Board has also the duty to receive a prisoner's complaints relating to the misconduct of a prison staff member.

In Korea, at least one community member sits on the Disciplinary Board. Due to the recent amendment of the Prison Law in 1999, Korean prisons started to invite community members to attend disciplinary hearings in order to secure fairness of the procedure. The members are usually volunteers who do some other activities in prison such as prison chaplain duties or educational activities. Community members can express their opinion during the hearing as usual board members but the final decision is made by the warden.

In Malaysia, visiting justices comprise of people of different professions from the community elected on a yearly basis by the government. A board of visiting justices is assigned to each prison. They are entitled to visit prisons each month and hear complaints by prisoners. The law also allows them to inspect prisons. The comments of the visiting justices are forwarded to the chairman of the board and to the Director General.

B. Problems and Countermeasures

In all the participating countries, community involvement is limited to the implementation of the

inmates' rehabilitation programmes such as religious and educational activities either voluntarily or upon request.

Each participant agreed that the positive attitude and active involvement of the community are indispensable factors in the successful rehabilitation of prisoners. The group agreed that the extent of participation of the community should be left to each country taking into account their own culture and local needs.

It was expressed that community participation should be limited to the rehabilitation aspect of prisoners. Allowing community participation in the other aspects of prison may disrupt the smooth running of the prison administration.

The Independent Monitoring Boards (IMBs) of the United Kingdom, which replaced the Boards of Visitors, is worth mentioning. IMBs are composed of volunteer Board members who regularly visit prisons. While the old Boards operated largely independently, IMBs have a new National Council with the authority to direct Boards rather than just advise, thus, ensuring greater consistency. IMBs have a particular role in the complaints process and are bound by law to be satisfied with the treatment of prisoners, including examination of the complaints records and statistics as well as individual replies. Prisoners may also raise complaints confidentially with the IMB.

XIII. RECOMMENDATIONS

Prison administrations are confronted with issues and problems that hinder the full and effective implementation of the rules laid down by the UN SMR. The group, after taking into account the diverse legal, social, economic and geographical conditions existing in their respective countries, discussed the possible recommendations to the problems confronting their prison administrations. The summary of the group's recommendations include:

- 1) Full utilization of existing facilities by transferring prisoners can alleviate overcrowding of some institutions. However, in order to fully counter the problem of overcrowding, increased use of alternatives to imprisonment is inevitable;
- 2) More recreational activities should be considered to reduce the stress level of the inmates due to overcrowding;
- 3) Separation of inmates is important in any situation and when separate facilities cannot be provided, separate sections should, at least, be considered;
- 4) Dialogues must be conducted with the health department or private medical organizations/associations to improve prison medical services. Every country must ensure that the healthcare of the prison population is at least equal to the medical health service provided to the general population;
- 5) Audio-visual aids should be used in imparting information to prisoners. Prison administrations should consider the use of audio-visual aids in informing the prisoners of their rights, privileges, responsibilities, application of prison rules and regulations and the conditions of their imprisonment. The use of audio-visual aids is especially effective in conveying information to uneducated prisoners as the information is presented to more than one sense (e.g. sight as well as hearing), hence, more information is taken in and better understood and remembered;
- 6) The group acknowledges that maintaining contact with family and friends play an important role in the rehabilitation process of prisoners. There is a need, therefore, to incorporate the latest communications technology such as e-mail and a video visit system. However, these forms of communication must be strictly monitored when necessary;
- 7) Certain basic features of natural justice as in criminal trial proceedings are to be observed in disciplinary proceedings to ensure transparency and fairness. Human rights issues should also be taken into consideration in procedures pertaining to prison disciplinary punishment;

- 8) Adoption of some form of mediation to settle prison conflicts/disturbances. Mediation could have a role in reducing prison tension and building social and conflict resolution skills for inmates;
- 9) Effective prison and inmate management must be employed to reduce prison incidents. Suicide and other prison incidents such as escape, conflicts and disturbances are serious. They are significant issues that must be addressed by prison management. Inmates having a particular high risk of committing suicide, escaping and causing a disturbance must be given greater attention;
- 10) Establishment of independent bodies to inspect prisons may be considered. Prisons, being closed institutions, need an independent body or person from outside who will conduct an independent inspection of all the aspects of prison administration and make necessary recommendations for the improvement of the treatment of prisoners and the effective administration of penal institutions;
- 11) Active community involvement in certain prison affairs must be encouraged to ensure transparency and accountability. The prison administration should disclose as much information as possible in order to gain the confidence of the community; and
- 12) Outsourcing of certain functions of prison administration to the private sector may be considered under certain suitable conditions in order to effectively utilize available resources. In some countries, private companies may be allowed to operate prisons. However, it must be ensured that the rules and regulations for prison management are determined by the government, including disciplinary action.

The Group would like to stress that the recommendations reflected in this paper are not exclusive. Other measures relevant to the effective administration of penal institutions have to be continually explored and additional solutions sought through the experiences and practices of other countries.

XIV. CONCLUSION

There is no single or easy solution to the problems confronting the prison administrations. Prison management must continue to explore and consider measures, both short-term and long-term, in resolving their problems. In this connection, it is important for prison management to initiate and use forward planning, this means that management must not be reactive, its plans and programmes must be based on clearly developed objectives and able to anticipate issues and problems.

To fully realize the objectives of the penal system, changes in the attitude of the people from within and outside the prison must simultaneously take place. Efforts must be directed not only towards improving the attitude of the prison officers/staff and prisoners but also the attitude of policy and decision makers, members of the business sector, academia, media and the individual members of the community. Prison reforms in the administration of penal institutions and the improvement of the treatment of prisoners can only be achieved through the concerted efforts of all the sectors of society.