
REPORTS OF THE COURSE

GROUP 1

INVESTIGATION, PROSECUTION, SENTENCING PROCEDURES AND PREVENTIVE MEASURES

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I. INTRODUCTION

The Group, which was assigned to discuss “Investigation, Prosecution, Sentencing Procedures and Preventive Measures”, agreed to conduct its discussion in accordance with the following agenda: Current situations, problems and solutions concerning 1) Definitions and characteristics of sexual offences and other related offences; 2) The legal framework of punishment and treatment; 3) Preventive measures for sexual offences; 4) Inter-agency and international cooperation.

II. CURRENT SITUATION

A. Types and Characteristics of Sexual Offences and Other Related Offences

There are various types of sexual offences and every country has its own definition and forms of punishment for sexual offences and offenders. The Group first reviewed the situation with regard to sexual crime in each participant’s country. It became evident that interpretation of sexual offences as well as the current situation is different in each respective country.

1. Albania

The participant from Albania, Mr. Likaj, said that in his country, child sexual abuse is a big problem, especially in the Roman community, where people are suffering from poverty. The situation was at its worst in 1997, because the government collapsed and many prisoners were released. They abandoned the children and some of them were raped by foreigners. In Albania, a person who has sexual intercourse with a girl under fourteen years old commits an offence, whether the victim consents or not to the intercourse.

2. Honduras

The participant from Honduras, Mr. Villanueva, explained that at least three rape cases, nine domestic violence cases and three interfamilial violence cases are reported daily in two big cities, Tegucigalpa and San Pedro Sula in his country. He said that the cause of these sexual offences is mainly due to insufficient education for children, alcohol and drug abuse. He also said that many cases are not reported to the police, especially in rural areas, mainly due to the lack of transportation and telecommunication system.

3. Japan

The participant from Japan, Mr. Nakamura, explained that the following are the sexual offences provided in the Japanese Penal Code: indecent assault; rape; gang rape; attempts of these offences; causing death or injury by indecent assault, etc. He said that a person who commits an indecent act upon a male or female, or

has sexual intercourse with a female under thirteen years old is punishable whether the victim consents to the acts or not. Then, the participant from Japan, Mr. Ibuki, explained that a person who commits an indecent act or sexual intercourse by taking advantage of loss of consciousness or inability to resist, or by causing a loss of consciousness or inability to resist commits an offence that is punishable. Mr. Nakamura said that the number of reported sexual offence cases showed an upward trend from 1999 (1,857 rape cases and 5,346 indecent assault cases) to 2003 (2,472 and 10,029, respectively) and slightly decreased in 2004 (2,176 and 9,184 respectively). He also said that the clearance rate decreased from 1999 (73.7 % in rape cases and 63.4 % in indecent assault cases) to 2003 (63.5 % and 38.8 %, respectively) and slightly increased in 2004 (64.5 % and 39.8 %, respectively). Mr. Uchida said that one reason for the increasing number of reports is that more and more victims are coming to report their damages, reflecting the public view that women's rights should be respected, and the decrease in the clearance rate mainly results from the sharp increase in the number of cases reported.

Mr. Ibuki said that felonious sexual offences, such as sexual abuse of children in the family, gang rape and consecutive rape cases are widely reported by the mass media and the prosecutors' recommendation of sentence for these cases are becoming severer. He also mentioned that molestation on crowded trains is a characteristic sexual offence in Japan. Mr. Nakamura added that although there were some gang rape cases and serious paedophile cases widely reported by the mass media, they were just a part of a whole range of sexual offences.

4. Malaysia

Next, the participant from Malaysia, Mr. Gan, reported that sexual offences are divided into seven categories, such as rape, carnal intercourse, molestation and incest, under the Malaysian Penal Code. A person who has sexual intercourse with a female under sixteen years of age with or without consent commits an offence. The reported number of sexual offences was approximately 3,938 (1,765 of these were rape cases) in 2004 and 4,137 (1,931 of these were rape cases) in 2005. The rate of occurrence of sexual offences was one per 6,000 people. Mr. Gan stated that due to greater awareness of the victims by the government's promotion and a good criminal justice system, the reported number increased.

5. Myanmar

The participant from Myanmar, Mr. Khin, explained that sexual offences are divided into nine categories including rape in Myanmar's Penal Code. Sexual intercourse with or without consent with a person under 14 years of age is an offence. The number of rapes is not so large. Even in the largest city, Yangon, the number of sexual offences is not more than ten per month. According to him, Myanmar has a good administrative, social and legal system, that's why the number of criminal offences, including sexual offences is very low.

6. Yemen

The participant from Yemen, Mr. Ajaj, explained that the situation of sexual crimes is not as bad as other countries as far as rape is concerned. Although there were approximately 10,000 sexual offences reported in 2004, 4,000 of them were cases targeting children, such as molestation and illegal human trafficking, 5,800 of them were unlawful sexual contacts and exploitation of children; only 20 of them were rape cases, and four rape cases resulting in death. Among those four cases, one of the offenders was from Sudan the other one was a family member of the victim. Since Yemen is an Islamic country, there are many strict rules concerning sexual intercourse or contact with women. For this reason, some acts which are not considered a crime in other countries can be punishable in Yemen, and this fact makes the number of sexual offences in his country about 10,000. He analyzed the reason why sexual offences are not so serious in Yemen as follows: there are customs that if somebody rapes a member of a family, other members of the family will privately take revenge against the offender, so people do not attempt rape for fear that family members of the victim will seek revenge.

B. Legal Framework of Punishment and Treatment

After reviewing types and characteristics of sexual offences and other related offences, the Group members reviewed the current legal framework of punishment for typical sexual offences and treatment for sexual offenders in their countries. They also pointed out the characteristics of each participating country.

1. Legal Framework of Punishment for Typical Sexual Offences

(i) *Albania*

Mr. Likaj described the legal framework of punishment in his country as follows. The commission of sexual or homosexual intercourse with minor children who have not reached the age of 14 is punished by seven to 15 years of imprisonment. If committed repeatedly, it is punished by 15-25 years of imprisonment. If the offence causes death, it is punished with not less than 20 years of imprisonment. The commission of sexual or homosexual intercourse by force with children of the age of 14 to 18 is punished by five to 15 years of imprisonment. If re-committed, it is punished by ten to 20 years imprisonment. Mr. Likaj commented that the punishment works effectively in his country. Some of the participants pointed out that punishment that is distinguished by the victims' age is characteristic and rational.

(ii) *Honduras*

Mr. Villanueva reported that in Honduras, rape is punishable by imprisonment for not less than nine years up to not more than 13 years, re-committed rape is punishable by imprisonment for not less than 15 years up to not more than 20 years, rape resulting in death is punishable by imprisonment for up to not more than 30 years, and incest is punishable by imprisonment for not less than three years up to not more than six years. He commented as follows: if a female is under 12, a person who has sexual intercourse with her would be punished whether the victim consented or not. It seems that in Honduras the minimum length of imprisonment for rape is comparatively long; i.e., not less than nine years imprisonment.

(iii) *Japan*

Mr. Ibuki described the punishment in Japan as follows: Rape is punishable by imprisonment with labour for not less than three years up to not more than 20 years; indecent assault is punishable by imprisonment with labour for not less than six months up to not more than ten years. Rape resulting in bodily injury or death is punishable by imprisonment with labour for life or not less than five years up to not more than 20 years; gang rape is punishable by imprisonment for not less than four years up to not more than 20 years. The maximum can be increased up to 30 years, if the offender is proven to have committed more than one crime. Mr. Uchida said that the execution of sentence can be suspended under certain mitigating circumstances if the term of imprisonment is not more than three years.

All the Japanese participants mentioned that punishment for sexual offenders has become much heavier in the last five years and this tendency reflected the public's expectation for severer punishment, which had risen after the widely reported consecutive felonious gang rape and sexual motive offences against children.

In addition, Mr. Ibuki said that there are some laws for preventing sexual related offences in Japan, such as the Anti-Stalking Act 2000, Anti-Child Abuse Act 2000 and Anti Domestic Violence Act 2001. He explained these acts were enacted to respond to recently occurring social problems. All the Japanese participants agreed that these acts are contributing to some extent to prevent sexual offences, although they are not comprehensive and not specialized for sexual offenders.

(iv) *Malaysia*

Mr. Gan said as for Malaysia, besides imprisonment, most sexual offences warrant the offenders being punished with whipping (with a cane) with not more than 24 whips but with certain conditions. Women, children under 21 years and adults above the age of 50 years cannot be whipped and when whipping is done, it is conducted in the correctional centre and under the supervision and advice of a government medical officer. Whipping is only applicable for possession of firearms and for sexual offences. He emphasized that most Malaysian people support its justice and effectiveness. As for imprisonment, life imprisonment is not provided for rape cases at this moment, but there is a movement in Malaysia which allows them to amend the penal code to include life imprisonment as the maximum punishment for rape cases.

(v) *Myanmar*

Mr. Khin said in Myanmar, rape is punishable by *transportation for life* or imprisonment may extend to ten years and a fine. He added that *transportation for life* meant exile for life, which is a remnant of the colonial age. At present, even if the court sentences a person to *transportation for life*, the defendant will not be actually exiled. It is equivalent to imprisonment for 20 years. He also explained that the average term of imprisonment is from five to ten years in rape cases. If re-committed, the term would be from ten to 20

years. Rape with murder is punished by the death penalty.

(vi) Yemen

Mr. Ajaj explained that rape (ravishment) is punished by imprisonment for not less than two years up to not more than ten years and rape resulting in death is punished by the death penalty in his country. He also reported that the average term of imprisonment is from five to seven years in rape cases and from two to five years in attempted rape cases. The number of attempted rape cases is higher than that of rape cases. He said the statute stipulates that adultery and sodomy are punishable by 100 lashes or throwing stones but after 1990, these types of punishment are not actually practiced due to human rights issues.

2. Treatment

After the exploration of punishment in the respective countries, the Group discussed the treatment for offenders in prisons and the community. Before looking into special training programmes for sexual offenders, the Group started their discussion on the current situation of general treatment for offenders.

(i) General treatment for offenders

Most of the participants said that the main treatment for offenders should be educational programmes in prisons. Mr. Ajaj (Yemen) explained that the prisons have their schools, where educational treatment programmes are given to inmates in order to provide them with basic learning skills. Although most of the participants were aware of the importance of training programmes in prisons, except for Japan, the participants admitted a lack of such programmes. For example, in Myanmar, Mr. Khin explained that in his country, if the offenders were under 16, as stipulated in the Child Law and the Suppression of Prostitution Act, they will sometimes be sent to juvenile schools where they could receive training programmes. However, not many juveniles are sent to juvenile schools, they are normally sent back to their home under the supervision of their parents or guardians.

Having examined the backgrounds of the lack of proper treatment for inmates, Mr. Villanueva (Honduras) stated that in his country the budget of the correctional department is insufficient, and this is also the cause of the bad living conditions of prisoners. He emphasized the importance of improving the living conditions of prisoners to give them effective treatment.

(ii) Special treatment for sexual offenders

All the participants, except those from Japan, reported that they have no special treatment for sexual offenders in prison or in the community. Mr. Gan (Malaysia) mentioned that the Malaysian government and most of the public emphasize the importance of preventive measures of crime and do not have so much interest in treatment for offenders, he said.

Mr. Ajaj (Yemen) pointed out that although his country has no special programme, the re-offending rate is not so high. He thought that this is because the sentence for sexual offenders is generally harsh. Furthermore, he observed that there are some sex offence cases in which the offenders make out-of-court settlements with the victims or their families. These cases are not disposed through the criminal justice system. In these cases, the chiefs of the tribes to which the victim or the offender belong decide the compensation for the victim. If the offender is too poor to compensate the victim, the community will pay it instead of him. This custom results from their belief that problems in a certain community should be solved by themselves.

Upon the request of the other participants, the Japanese participants explained the outline of the special treatment programmes based on cognitive behavioural therapy that will be implemented in September 2006, conducted by correctional officers in prison and by probation officers in the community and is based on programmes already introduced in the UK and Canada. The main contents of this programme are as follows: risk assessment of sex offenders; group sessions based on cognitive behavioural therapy; understanding the process of sexual crime, the distortion of recognition of offenders and the feelings of the victims; and learning how to deal with their impulse to commit sexual crimes.

As it relates to treatment, Mr. Likaj (Albania), admitted that there is no special treatment programme for sexual offenders but the Government of Albania provides special treatment for victims, such as

psychological care programmes. He also said that there are many shelters, including one called the Linza Shelter, supervised by the Ministry of Justice and Ministry of the Interior, where victims of sexual and trafficking offences can seek help.

C. Preventive Measures for Sexual Offences

1. General Preventive Measures

The discussion continued focusing on preventive measures. The Group unanimously agreed that educational programmes, raising awareness of the public to avoid being victims of sexual offences, are important and they are actually practiced in participating countries. These kinds of programmes should target women and children who are regarded as potential victims of sexual offences.

Mr. Ajaj (Yemen) reported that the government published a journal about sexual crimes to prevent people from being harmed in 2002 and the police and the Ministry of the Interior started an educational programme for people under 20 in 2005. Mr. Villanueva (Honduras) added that in his country, the police give lectures about how to escape from sexual offenders (twice a year because of a lack of resources) and NGOs distribute pamphlets about sexual offences to the community, in which the ways to avoid sexual harm are described. Mr. Likaj (Albania) said that the government educate children to protect themselves from sexual offences and being trafficked not only through lectures in schools but also through TV programmes in his country. Furthermore, Mr. Uchida (Japan) reported that in some areas, the police, if requested, give parents information concerning suspicious persons and sexual offences or other sexual motive offences in their community, via email. On the other hand, Mr. Khin (Myanmar) explained that his country has no special preventive measure for sexual offences except for the one under The Anti Trafficking in Persons Law, because the occurrence of sexual offences in Myanmar is not as serious compared with other countries.

Apart from the above mentioned awareness raising programmes for potential victims of sexual offenders, the Group agreed that harsh punishment could be a preventive measure to prevent offending. In this context, a Japanese participant remarked that Japan made a recent amendment to its Penal Code to punish gang rape more severely than rape committed by one offender. For a similar reason, the Malaysian government is seriously considering the introduction of life imprisonment for rape cases, which is likely to happen in the next few years. Mr. Gan (Malaysia) also mentioned that whipping is definitely effective in preventing sexual offences in his country.

2. Preventive Measures of Recidivism

As for preventive measures of recidivism, the Japanese participants explained that prisons have to provide information about prisoners who have committed violent sexual offences targeting girls under 13 to the police which have jurisdiction over their area of residence, when the offenders are released. The police, using this information, supervise the ex-offenders and try to prevent them from re-offending. Mr. Uchida (Japan) stated that the special treatment programmes for sexual offenders mentioned above, are also a kind of preventive measure against recidivism.

D. Interagency and International Cooperation

1. Interagency Cooperation

All participants stated that they have interagency cooperation, especially in the field of sexual crime prevention and offender's treatment, mainly by sharing information about sexual crimes and sexual offenders.

For example, Mr. Khin (Myanmar) said the Myanmar Women's Affairs Federation coordinates with the Ministry of Social Welfare, Relief and Resettlement and send victims or offenders to the stipulated places for medical treatment or training for reintegration and rehabilitation in his country. As for Yemen, Mr. Ajaj reported that the Ministry of the Interior cooperate with the Ministry of Education and the SANAA University to study preventive measures of sexual offences. Mr. Villanueva stated that in Honduras, the Catholic Church and international NGOs, such as Covenant House and the Save the Children Fund, are acting together for the prevention of crime by briefing each other. Mr. Likaj (Albania) stated that the police are cooperating with prisons by sharing information about sexual offenders released from prison. Also, the police collaborate with schools by providing sexual crime education to children.

The Japanese participants explained about interagency cooperation in Japan as follows: police officers and public prosecutors closely share information about sexual offenders in the investigational procedure; public prosecutors give correctional officers or probation officers information about sexual offenders so that the correctional officers or probation officers can appropriately treat the offenders; the prisons notify the release date and address of the sexual offenders if requested by the police or public prosecutors, and especially in regard to prisoners who have committed violent sexual crimes against girls under 13; the prisons must notify their release information to the police so that the police can prevent further offending.

2. International Cooperation

Mr. Likaj reported that Albania cooperated with Interpol and other neighbouring countries through liaison officers who were stationed in some neighbouring countries to investigate international crimes, including sexual offences. Also, the Albanian criminal police improve their skills through special training for police personnel assisted by ICITAP (U.S.A) and PAMECA (EU).

Mr. Ajaj (Yemen) added that bilateral cooperation between Saudi Arabia regarding the investigation of trafficking in children was recently launched. According to him, trafficking in children is a serious problem in his country, and it took more than five years of negotiation with their counterpart before they actually started the cooperation.

Other participants said they did not have special international cooperation in regard to sexual offences, although some of them had international cooperation in general investigation, through regional agreements such as the ASEAN framework or bilateral treaties.

With regard to sharing information about ex-offenders, including sexual offenders, no participating country has a comprehensive sharing system such as the one being carried out in the EU.

III. PROBLEMS

After reviewing the current situation, the Group began to identify problems concerning the prevention and treatment of sexual offenders, following the order of criminal procedure. Since most of the members were police officers and public prosecutors, they argued there were many problems especially concerning the procedure of investigation and prosecution.

A. Investigation

All the participants agreed that finding out what the offender did by a proper and speedy investigation is essential for the effective treatment of sexual offenders and the prevention of future sexual crimes. Sexual offences are usually committed in locked rooms and cars, on empty streets or in deserted woods, where few witnesses exist. In these cases, securing the testimony of the victim and collecting as much material evidence as possible are very important to identify the criminal and prove the offences. In addition, utilizing criminal records of offenders is sometimes very effective to immediately identify the offender. The Group, with this situation in mind, discussed the problems in the stage of investigation.

1. Unreported Cases

Most of the participants acknowledged that there are quite a few unreported sexual offences in each country, and some of them analyzed the reasons as follows. Mr. Ajaj (Yemen) said that the reason comes from the fact that they have alternative community-based solutions other than the criminal justice system, as he mentioned above. He also added that Yemeni women are reluctant to report the crime because it may disgrace the name of their family. Mr. Villanueva (Honduras) stated that the first response of police officers to victims, which are not necessarily victim-friendly, is one of the causes, as well as the insufficient transportation and communication system, especially in rural areas. He said that male police officers sometimes interview victims in an inappropriate way, which makes it difficult for the victims to talk about the offence. Also, medical checks by male medical officers are a big burden on the victims.

In a similar perspective, Mr. Gan (Malaysia) pointed out that the lack of female investigators who have psychological and psychiatric knowledge, and are specialized in the investigation of sexual offenders, could be a problem. In this regard, some participants questioned the necessity of specialized female investigators. They expressed their views that during the normal training course at the police academy, they could be

given lectures on psychology and male police officers could be equipped with a better understanding of the victim's feelings. A Japanese participant mentioned that in Japan, since the number of female investigators is not so large, not all the victims are interviewed by female officers. In such cases, a female officer stays in the interview room to take care of the victim. The participants agreed, whether or not a special investigation section is created composed of female officers for sexual offences, it is apparently better for female victims to be interviewed by female police officers, especially when they first report the offence.

By contrast, in Malaysia, because of the establishment of a victim-friendly atmosphere, there are many reported cases, some of which are actually not rape, Mr. Gan said. He introduced their efforts to make it easy for victims to file a claim. There are one-stop service centres run by government hospitals for the victims of sexual offences. If a victim visits there and reports their injuries, the centre will report it to the police, and the victim can receive medical checks and treatment in the hospital. The centre has some psychological and psychiatric specialists, who interview and provide aftercare for the victims. Moreover, there are many female police officers who are specialized in sexual crime investigation, and they mainly embark on the investigation. Due to these positive efforts, reported rape cases are sharply rising, approximately 10% a year. However, the increase in the number of cases has created another problem for the police; a heavy workload for the police in his country.

2. Underdeveloped Technology

All the participants agreed that objective evidence to corroborate the testimony of the victim, such as sperm and pubic hair left on scene, are extremely important in sexual offence cases. Investigators have to promptly collect these kinds of objective evidence, submit it to forensic laboratories, and get the data. However, some of the participants said that it is very difficult to implement such investigations due to the lack of forensic laboratories or the underdeveloped technology. Mr. Villanueva (Honduras) reported that it takes too long to obtain the data of DNA profiling because of the shortage of forensic laboratories. Moreover, some participants said they have no facilities for DNA profiling.

3. Insufficient Criminal Record System

There were no participants who denied the importance of an accurate and systematic criminal record system for future investigations. It should be easy to search, of course. The participants from Albania, Japan and Malaysia reported that they have a comprehensive computerized criminal record system and they are working well at present.

Some participants, however, said that the criminal record system in their countries is incomplete and/or not computerized, so it is difficult to trace offenders when they move to other areas. For example, Mr. Ajaj (Yemen) said that because criminal records are manually registered in his country, it is hard for the police to immediately check the suspect's previous criminal record when they arrest him/her.

On the other hand, the criminal record system in Myanmar, even though it is not computerized, is working very well for the time being, Mr. Khin said. An adviser stated that about 20 years ago, criminal records were not computerized either in Japan, but it worked well, too, because at that time, people did not move from one region to another, and this maybe similar to present Myanmar. He also advised the participants where they record manually that they should have a detailed index to the records to facilitate the search.

B. Prosecution

Even if a prompt and appropriate investigation is conducted, it is not sufficient. Prosecutors have to prosecute the offender and ask the court to impose appropriate punishment. In regard to this matter, the Japanese prosecutors, Mr. Ibuki and Mr. Nakamura, indicated the following problems in prosecution according to their experience.

1. Burden of Proof

Mr. Ibuki (Japan) said that it is sometimes very difficult to prosecute sexual offenders because of, as with most countries, the heavy burden of proof imposed on prosecutors. For example, when they prosecute a rape case, prosecutors must ensure that there was no consent to the intercourse between the parties, and the offender committed physical violence or intimidation. Also for serial rape cases, such as where a stepfather rapes his step daughter several times, it is difficult to specify the exact dates of the incidents.

2. Securing the Victims' Testimony

Many victims of sexual offences are reluctant to give testimony at the trial. In some cases, however, especially when the defendant denies his offence, the victim's testimony is necessary. Mr. Nakamura (Japan) highlighted that in those cases, a Japanese prosecutor must make a serious effort to convince the victim to give testimony in court. At this point, all the participants recognized that all criminal justice personnel should be aware of protecting victims from secondary victimization which could happen through the criminal justice process.

C. Sentencing

The Group proceeded to a discussion about the problems at the next stage of the criminal justice process; sentencing.

1. Harshness of the Punishment

As a Visiting Expert, Dr. Bill Marshall (Canada) stated in his lectures that a longer term of imprisonment does not effectively prevent a person from re-offending and is quite costly. The Group discussed whether the sentences given in the respective countries were effective. With regard to the harshness of the means of punishment, Mr. Gan said that Malaysian punishment (imprisonment and whipping) must be the harshest one and this is effective. Some Japanese participants pointed out that a longer sentence leads to overcrowding in prisons, and according to a study, persons who received a sentence with suspension of execution had lower recidivism rates compared to those who received a longer sentence. Therefore, we have to examine the effectiveness of longer sentences once again.

Similarly, the Group also discussed whether "suspension of the execution of sentence" is applicable for sexual crimes in each country. The Group found that only in Japan, is a suspension of the execution of sentence applicable in rape cases. Mr. Uchida (Japan) commented that as for rape, the number of suspended sentences is limited and decreasing these days, and usually a settlement has been made between the defendant and the victim. In the case of sexual crimes, Japanese judges sometimes pass a suspended sentence together with a probation order so the offender is under the supervision of probation officers during the duration of suspension, but the number is not so large.

2. Alternative Sentence

An advisor brought up the German practice whereby a hospital order of the court, commits offenders to a psychiatric hospital to give them proper treatment, and asked each participant their views. In all the participating countries, a judge can make a hospital order for a mentally disordered person according to the report of medical officers before or during the trial, but this kind of system is not as comprehensive as Germany's. In this regard, Mr. Uchida (Japan) raised the problem that even in Germany, they have three rigid requirements for a hospital order, namely: i) severe criminal act with criminal intent; ii) 'irresponsibility' or 'severely diminished responsibility' during the criminal act due to a mental disorder; and iii) high risk of re-offending due to the mental disorder. According to these requirements, the court can make a hospital order in a case where the offender is responsible but has a high risk of re-offending, in which therapeutic treatment is needed for the offender. Moreover, Mr. Uchida wondered if judges would have sufficient information in order to decide whether the offender meets these requirements without a pre-sentence investigation by probation officers.

D. In Correctional Institutions

The Group further examined the problems in correctional institutions. Except for Japan, no participating countries have special treatment for sexual offenders in correctional institutions. Moreover, in some countries, even general treatment programmes for inmates, such as educational or vocational training, does not necessarily work well. Mr. Villanueva (Honduras) explained that in his country, the condition of prisons is bad due to overcrowding and lack of resources. He admitted that the sense of treatment is lacking there and they do not provide prisoners with an effective vocational training programme. Some countries have general training programmes for inmates. In Myanmar, they have some vocational training in prisons, such as farming and handcrafting. In Yemen, the prison provides prisoners with basic education, such as reading and writing, along with vocational training, such as woodcrafting, metalwork and blacksmithing. Religious lectures are also supplied to inmates on religious values. Yemeni prisons even introduced a system of '*conjugal visits*', which allows inmates to meet their spouse and to stay together.

There are also countries which have already established treatment programmes but have not implemented them yet. Mr. Gan mentioned in Malaysia, there are special programmes for sexual offenders, but it is impossible to implement them due to lack of human resources, lack of experts who specialized in this topic, space and time. Since Malaysia is a multi-ethnic country, they need to hire psychologists who can speak two or three languages that are spoken in the country.

E. Aftercare Programme

The Group acknowledged the importance of treatment of sexual offenders after release from correctional institutions. Currently, not many countries have an effective parole system; some countries, however, have a system whereby the police supervise ex-offenders to prevent them from recidivism and it works well.

Mr. Likaj explained in Albania, after the completion of 75 percent of the term of imprisonment imposed by the sentence, the offender can be released on parole, and put under the supervision of police officers. During the period of parole, the police officers near the parolee's residence supervise him/her through collecting information. If the parolee wants to change residence, he/she must report that to the police.

In Myanmar, when offenders are released from jail, they must inform the police of their residence and what they will do, Mr. Khin said. Having obtained such information, the police supervise the offenders. There is no fixed term for this supervision system.

Mr. Gan reported that similarly in Malaysia, there is no parole system, but they have police supervision orders imposed by the court. The court can impose a police supervision order up to three years, in addition to a sentence of imprisonment for more than two years, when the offender has a criminal record of imprisonment of two years or more. During the period of police supervision, the ex-offender has to visit a chief police officer and provide information about himself every month. If the ex-offender wants to change residence, he must inform the police and receive permission from them. The execution of this order is secured by up to one year's imprisonment for breach.

IV. SOLUTIONS AND BEST PRACTICES

After exploring current situations and identifying problems, the Group deliberated the solutions to the encountered problems and discussed the best practices.

A. Capable Investigative Authority

1. Victim-Friendly Atmosphere and Well Trained Personnel

Since many sexual crimes remain unreported, all participants agreed that criminal justice officials should encourage victims to report the damage to the police. Therefore, the creation of victim-friendly atmosphere is very important. One of the good practices is the Malaysian one-stop centres run by the governmental hospitals. All participants agreed that, especially in the cases of sexual offences, the officers and investigators should be considerate to victims without bias and be empathetic with victims. The police officers who receive the report at first hand should be specially trained. With regard to the venue of the interview with victims, Mr. Ajaj (Yemen) proposed to hold interviews with victims in the victim's houses because visiting the police station to report the damage is a heavy burden for Yemeni women. Many participants supported the idea that the investigation of sexual offences should be carried out by female police officers.

2. Sophisticated Methods of Investigation

As many of the participants have pointed out, they need to improve the investigative ability in terms of forensic science, especially the ability of DNA profiling. Although DNA profiling is one of the most effective methods of investigation for sexual offences, some countries have not yet introduced it due to the lack of technology, and even in the countries which have already established it; they have some troubles in the accuracy and promptness of testing. Therefore, all the participants reached the conclusion that they should introduce or improve DNA profiling to appropriately investigate sexual crimes, and if needed, they should share its technical know-how.

Moreover, Mr. Gan (Malaysia) suggested that the police should collect DNA information of sexual

offenders and organize a DNA database. He insisted that DNA information of sexual offenders is considerably useful for investigation in the future because objective evidence is often left at the scene of sexual offences; comparing the results of DNA analysis of these objects with a database would be helpful to identify the criminal.

While most of the participants agreed to his suggestion, some participants questioned its feasibility. They pointed out that it is impractical because of cost and problematic in terms of privacy protection to collect and systematize the DNA information of all sexual offenders. In regard to this matter, Mr. Gan argued that if the information is limited to that of sexual offenders who are sentenced to imprisonment and is strictly controlled by the police, it is feasible and does not infringe human rights.

Obviously, a DNA database is premised on the existence of a comprehensive and effective criminal record system, so the Group confirmed that the establishment of such system is a matter of first consideration for the countries where it has not been developed.

B. Shift of Burden of Proof

As a Japanese participant pointed out above, in rape cases, it is sometimes considerably difficult for prosecutors to prove the fact that the victim did not consent to having sexual intercourse with the offender. The fact of having intercourse can be proven by scientific evidence like the sperm and pubic hair; contrarily, the absence of consent and the existence of a threat is difficult to prove, especially if no external marks or injuries are found.

In this regard, Dr. Barinbra Nath Chatteraj, a visiting expert from India, shared with the Group a very interesting practice in his country: the Criminal Law Amendment of 1983. Section 114-A, introduced in the Indian Evidence Act by this amendment, lays down that the court shall presume lack of consent in special cases of rape like gang rape and custodial rape cases where sexual intercourse by the accused has been proved and the victim states before the court that she did not consent. Rape by police officers, public servants, prison, hospital and remand home staff and gang rape are included in the section. He explained the background of this amendment as follows. In India, the rate of conviction in rape cases was extremely low mainly due to inadequate police investigation, incomplete medical reports and non-availability of witnesses, inordinate delay in disposal of cases, and the absence of an independent prosecution authority. He also pointed out the profiling of the victims; i.e. the majority of victims of sexual crimes in his country belong to the lower class and they are not educated enough to give concrete testimony before the court. Under this situation, in a custodial rape case, the Supreme Court of India irrationally acquitted the defendants on the ground that the victim was not able to prove that she did not consent to sexual intercourse. After a notorious case, known as the *Mathura* case (1979), there were widespread demonstrations with the demand of a retrial. This compelled the government to move for the amendment of the law of rape. Since the amendment alleviated the burden of proof on prosecutors to a certain extent, the conviction rate of rape cases gradually rose after the enactment of the amendment.

Based on this explanation, many participants, especially law enforcement officers and prosecutors, were in favour of introducing such a law which shifts the burden of proof on to the offender in particular rape cases. They examined the advantages of having such a shift in the burden of proof: this law would not only enable prosecutors to prove lack of consent more easily but would also reduce the burden of victims who must testify before the court. Mr. Uchida (Japan), however, expressed his reservation from the position of an assistant judge. He insisted that if such law were to be introduced, the offender could be convicted not because he committed a crime but because he failed to disprove lack of consent due to his poor ability to collect evidence.

C. Proper Punishment and Treatment of Sexual Offenders

All the participants were informed of the special treatment programmes for sexual offenders in prison and in the community through the comprehensive and informative lectures by visiting experts from the UK, Canada and Germany in this training course. Above all, the programme in the UK seemed to be the most impressive and favourable for many of the Group. As a result, most of the participants understood the importance of such programmes, and some of them said it is worthy of consideration if budget and human resources permitted.

However, as some of the participants pointed out, even the general treatment programme in prison does not necessarily work well mainly because of the overcrowding in their countries. Under such situations, it is absolutely impossible to introduce special treatment programmes for sexual offenders. In these countries, an improvement of the basic conditions in prison is the urgent priority, the Group concluded.

Furthermore, the Group emphasized the significance of harsh punishment for sexual offenders as well as treatment. No one denied that severe punishment for sexual offenders is effective to prevent not only ex-convicts from recidivism but also non-convicted persons from committing sexual crimes. Some participants also stressed that the feelings of victims should be sufficiently taken into consideration in sentencing, and questioned the idea that harsh punishment does not necessarily reduce the number of offences. In addition, there were some participants who thought the death penalty should be available for sexual offences.

On the other hand, one of the Japanese participants said that there is also some merit to suggestions that lenient punishment is proper in particular cases. He showed hesitation to uniformly accept harsh punishment for sexual offenders because imprisonment itself often makes it difficult for them to find jobs and narrow the possibility of rehabilitation after release. In cases which the victim forgives the offender and the risk of re-commitment is not so high, the execution of sentence can be suspended according to the circumstances. Therefore, the Japanese Penal Code that leaves room for suspension of execution in rape and sexual assault cases is reasonable unlike other countries.

The Group, after such discussion, at least reached a consensus that the sexual offenders whose risk of recidivism was particularly high should be harshly punished, while offenders who acquired the forgiveness of the victim and whose risk of recidivism is low should receive relatively lenient punishment.

Moreover, the discussion proceeded to aftercare programmes for sexual offenders, focusing on the monitoring system. All the participants agreed with the idea that during the probation period, offenders should be properly monitored by the police or probation officers. As for the method of monitoring, some participants suggested an electrical monitoring system which has already been introduced in some states in the US, and one of the advisers mentioned the merits of using GPS, because monitoring by only human means does not necessarily work well.

By contrast, the participants were divided over the pros and cons of monitoring offenders after finishing their sentence. While most of the participants pointed out that monitoring after completing sentence can infringe the offender's human rights, some of them insisted that sexual offenders should be monitored for life.

D. Registration and Notification of Sexual Offenders – Sharing Information among Agencies/the Community

Under this topic, the Group debated whether they should establish a register of sexual offenders or not. As for the registration itself, there was no participant who had objections. Also, they agreed that relevant information of the offenders, such as their name, address, photos, fingerprints, DNA etc., should be registered. In this regard, Mr. Villanueva (Honduras) mentioned that the fingerprints and photos of juveniles cannot be collected in his country, so the law should be amended.

On the contrary, as for whom the registered information should be shared with, the participants did not reach agreement. Mr. Gan (Malaysia) and Mr. Likaj (Albania) strongly argued that the information should be shared not only by the police and other related agencies but also by the community, referring to Megan's Law in the US. They emphasized that it is essential for the community to have information on sexual offenders living in their neighbourhood to protect themselves and their family. On the other hand, Mr. Uchida (Japan) argued against that idea mainly for the following reasons: the effect of Megan's Law for the prevention of recidivism is not necessarily demonstrated; according to a survey, many of the offenders whose information is notified to the public have great difficulty in finding a job, and they and their families face serious harassment from neighbours. These situations could make it difficult for the offenders to be rehabilitated; notifying information to the community after completing sentence could be unconstitutional in terms of double jeopardy. In this regard, Mr. Ajaj (Yemen) argued that there are two kinds of information about offenders; one is very personal information such as names and addresses, and the other is not so personal such as high-crime areas of the community. The former should not be disclosed in order to protect the offenders' privacy while the latter should be, he said.

After the debate, the Group at least agreed that the information should be properly shared among the police, prosecutors and correction officers nationwide. On this point, Mr. Middleton (Visiting Expert from the UK) provided us with useful information on the Multi-Agency Public Protection Arrangements (hereinafter “MAPPAs”). He explained that the MAPPAs share relevant information about targeting offenders including sexual offenders, assesses the risk and recommend action to manage this risk, and monitors and reviews this action plan periodically. Every one in the Group acknowledged that the MAPPAs is an ideal model of interagency cooperation that is lacking in almost all the countries. The Japanese participants mentioned the difficulty of interagency information sharing because the protection of personal data is a controversial issue in their country.

E. Early Intervention by the Police and/or the Judiciary

There are some petty crimes, such as stalking and minor domestic violence, which themselves are not considered as serious but can lead to heinous sexual offences. The Group shared the view that the causes of this sort of sexual crime should be eliminated at an early stage. Most of the participants stated that the legal framework of early intervention by the police and/or the judiciary in Japan, such as the anti-stalking law and anti-domestic violence law, were a good example for other countries.

Meanwhile, the Japanese participants pointed out that all these laws were recently made, and such minor crimes used to be solved by the parties, the family or the community. The police were reluctant to intervene in private matters. They said that there are still some minor crimes that should be resolved without the intervention of the police, and the establishment of the above mentioned laws indicates a decline in the problem-solving capability of the community. In this regard, Mr. Ajaj (Yemen) commented that such early intervention by the police and judiciary might be impossible in his country because solving problems within the community was preferred.

The Japanese participants also noted that as Mr. Sikata, a police officer, mentioned in his ad hoc lecture, that the Japanese legal measures for preventing sexual offences are not comprehensive. They do not have any regulations or registration on sexual offenders or civil court orders to respond to risky activities. On the other hand, in the UK, the police can apply for court orders to ban an offender’s specific conduct if the offender is involved in risky activities that may lead to him/her reoffending. Although some participants were positive about introducing such a system, Mr. Uchida (Japan) had a negative opinion of it. He pointed out that the proof and assessment of the risk is too difficult for the police and the courts, and even if the police can get an order, it is also very hard to prove its violation. All the participants acknowledged that the early intervention conducted by the police or the judiciary may lead to infringements on privacy. The existing laws can be utilized to allow the police or the judiciary to intervene in private matters of citizens. If there are any difficulties in applying the laws, due to a lack of clarity or ambiguity, the laws should be amended.

F. Preventive Measures – Coordination between the Police and the Community

The Group agreed that the police alone can not perform effectively to prevent sexual offences but it is essential for them to have good coordination with the community in crime prevention. Many of them said the Japanese police have established a very good relationship with the community through the following activities: the police provide information about suspicious incidents to residents via e-mail, which is collected by both the police and the residents; they inform women and children how to avoid victimization through practical training sessions in schools; they advocate and assist crime prevention activities by residents, such as escorting children to school, offering their houses as “Child Shelter Houses” where children in trouble can ask for help and make a “Community Safety Map” which indicates high crime areas; they try to employ environmental design in streets, parks, parking lots, etc. to aid in crime prevention. These efforts by the police and the community impressed most of the overseas participants, and they said they would report these measures to the relevant agencies in their respective countries.

The Japanese participants pointed out that such measures do not have an immediate impact on crime prevention, and that not everyone in the community has a good relationship with the police and even in Japan, it is sometimes very difficult to get resident’s cooperation.

G. International Cooperation

As the Group reviewed the current situations, it was apparent there is little international cooperation

focusing on sexual offences or offenders. According to the information provided by Mr. Middleton (the Visiting Expert from the UK) and Dr. Mueller-Isberner (the Visiting Expert from Germany), the EU has an international information sharing structure concerning ex-offender's, including sexual offenders.

Based on this, some of the participants suggested that all the countries participating in the United Nations should conclude a treaty that enables the participants to share information on sexual crimes. However, as we mentioned above, there are various types of sexual offences and every country has its own definition and forms of punishment reflecting their difference in culture and legal system. Therefore, it was considered impossible to establish a convention among all the countries of the world.

On the contrary, it is not so difficult to make agreements with neighbouring countries, where the culture and the legal system are not so different, other participants pointed out. Consequently, the Group reached the consensus that they should start by improving regional cooperation in sharing information on sexual offences and offenders.

V. RECOMMENDATIONS

At the end of the discussion, the Group reached a consensus that the following should be recommended as possible measures to tackle sexual offences.

1. Create a victim-friendly atmosphere at police stations, especially at the firsthand offices which receive the victim's report, by allocating female officers or specially trained officers who are equipped with basic knowledge of victim's feelings in order to encourage the reporting of sexual crimes.
2. Improve the capacity of forensic laboratories for their prompt and accurate deliberation.
3. Amend existing laws, or legislate a series of laws, which enable the criminal justice system to intervene in crimes, such as stalking, child abuse and domestic violence, that have the possibility of leading to more serious sexual offences.
4. Enhance a well-organized nationwide criminal record system of sexual offenders and consider creating a DNA database for convicted sexual offenders.
5. Establish a proper monitoring system of sexual offenders after release by probation officers or/and the police by referring to the British system as a good model.
6. Provide potential victims of sexual crimes, such as women and children, with knowledge about crime prevention and heighten their self-defence ability.
7. Improve collaboration between the police and the community for crime prevention by sharing information, making safety maps and promoting environmental design, referring to the Japanese system.
8. Enhance interagency cooperation among the police, prosecutors, correctional officers and probation officers by sharing information on sexual offenders, paying attention to the protection of personal data.
9. Strengthen international cooperation, especially regional networks, to enable the sharing of information on sexual offenders.