

GROUP 2

EFFECTIVE MEASURES TO IMPROVE THE TREATMENT OF OFFENDERS THROUGH THE ENHANCEMENT OF COMMUNITY-BASED ALTERNATIVES TO INCARCERATION AT THE POST SENTENCING STAGE

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I. INTRODUCTION

The group convened on 26 January 2009 and concluded discussions on 3 February 2009. The group was chaired by Ms. Makunga, with Mr. Nosaka as the co-chairperson, Ms. Davey as the rapporteur and Mr. Date as the co-rapporteur. The group consisted of 13 participants from ten countries; who had diverse professional experience ranging from legal expertise to policing as well as probation work to working with convicted inmates. The group was assisted by four UNAFEI professors.

The members of Group 2 were required to examine: “Effective measures to improve the treatment of offenders through the enhancement of community-based alternatives to incarceration at the post sentence stage.”

Sub- topics included:

- a) The mechanism of community-based alternative measures to incarceration undertaken by each country;
- b) Current situations and problems facing existing legal systems and/or practice of the above mentioned mechanisms;
- c) Countermeasures under current legal systems and/or practice of the above mentioned mechanisms;
- d) Identification of other effective intervention models;
- e) Measures to monitor and evaluate all mechanisms discussed.

II. SUMMARY OF THE DISCUSSIONS

A. Mechanism of Community-Based Alternatives to Incarceration in Each Country

The group first reviewed the current systems of community-based alternatives to incarceration employed in each participant’s country. These are listed in Table 1 below. There were slight variations in the administration of some of the alternatives, the general agreement was: even if the term is the same; there is a difference in the use for each country. With this in mind there were differences in some of the non-custodial options - included in the differences were: parole, probation and suspension of execution.

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These variations are outlined below.

TABLE 1: A SUMMARY OF NON-CUSTODIAL ALTERNATIVE MEASURES TO INCARCERATION UNDERTAKEN BY EACH COUNTRY

	Brazil	Indonesia	Jamaica	Japan	Jordan	Paraguay	Peru	Philippines	Uruguay
	Parole	Parole	Parole	Parole		Parole	Parole	Parole	Parole
Probation	Probation	Probation	Probation	Probation			Probation	Probation	
		Suspended Sentence Supervision Order							
Fines	Fines	Fines	Fines	Fines	Fines	Charity Help		Fines	Fines
Extramural labour		Community Services Order				Community work	Community Labour	Community Service	Community Labour
Suspended Sentence		Suspended Sentences		Suspension of Execution	Suspended Sentences				
Dismissal with warning		Conditional release					Remission	Commutation of Sentence	Reduced Sentences
	Domiciliary Arrest	Remission				House Sentences - for people over seventy and pregnant women	Domiciliary Arrest		Domiciliary Arrest
	Halfway house			Halfway house				Halfway house	Halfway house
Presidential Pardon		Amnesty Pardon		Amnesty Pardon	Amnesty Pardon	Pardon	Amnesty Pardon	Amnesty Pardon	Amnesty
Corporal Punishment	Rights Restricted	Bound over to keep the peace						Good conduct time allowance	Indictment without prison
	Redemption/- (for person who study or work in prison)	Electronic monitoring (currently piloting)							Patronage
	Reprieve	Admonished and Discharged							Extra wall leave
		Combination Orders							Family leave
									Redemption for prisoners who work or study in or out of prison.

B. Current Situations and Problems

Participants deliberated on the major problems impacting on the administration of the various alternatives to incarceration processes. The main problems were lack of financial resources to maintain community-based programmes as well as lack of adequate human resources to monitor and guide offenders. Also stated were numerous problems which were unique to each system in each country. These were itemized as follows:

1. Lack of community understanding and societal support: communities deem offenders to be dangerous and do not appreciate them being released into their environment; believing that this type of practice can endanger the populace as a whole;
2. Lack of collaboration between agencies: results in the fragmentation or duplication of services by agencies that work with offenders in the community; causing the agencies services to be overstretched. Furthermore, this in turn could result in lack of support systems for some candidates;
3. Slow legal procedures: this was believed to be related to the lack of adequate risk assessment procedures. For example, what criterion was to be used to select offenders suitable for parole?
4. A highly centralized processing system: the end result of a centralized system is a backlog of cases resulting in the impediment of carrying out the prescribed sentence;
5. Too many high-risk offenders: making the option of community-based alternatives to incarceration risky for the community;
6. Inadequate monitoring due to lack of human resources.

The problems outlined by participants from countries using parole as an alternative to incarceration are as stated above. However, some of the participants listed a short parole period (resulting in a high recidivism rates) and a highly centralized processing system (resulting in a backlog of cases and the ensuing impediment of carrying out the prescribed sentence) as major problems.

Of the ten legal systems, six had probation as an alternative to incarceration. In the case of Jamaica this is a separate order and not pinned to any other order as is evident in the systems that have it pinned to parole or suspension of execution. The major problems affecting probation are similar to the ones stated above.

Regarding the alternative of monetary penalties/economic sanctions, most of the participants stated that there are no major problems with this option; however, the participant from Botswana stated that offenders may have a tendency to believe they can buy the criminal justice system because they have the means to do so. Another participant indicated by that the major problem with the administration of this option was the non-payment of fines. The participant from Indonesia pointed out that fines are only granted for special cases i.e. traffic accident offences and limited corruption cases.

Most of the participating countries utilized some form of suspended sentence. Concerning the option of suspended sentence without supervision, participants indicated that the major problems encountered with the administration of this alternative are a high recidivism rate and lack of recognizance on the part of the offender.

On the subject of a suspended sentence with supervision order, most participants indicated that the major problems encountered in the administration of this alternative are similar to the former. In addition, the participant from Jamaica pointed out that lack of human and financial resources hampered the implementation of programmes and projects for offenders who are subjects of this option.

Participants from Indonesia, Japan, Jordan, Uruguay, Peru, and the Philippines stated that amnesty was used in their countries as an alternative to incarceration. However, they pointed out that the problems with this option include increased recidivism rates due to poor evaluation of recipients, limited use of the option by the judiciary and the lack of clear procedures in some jurisdictions.

One legal system is piloting electronic monitoring and this will be used as a measure to enhance other options. Problems include a high cost, a lack of clear legislation and lack public sensitization.

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Community Service Orders, Combination Orders, Charity, and Extramural Labour all punish offenders in the community. These forms of alternatives to incarceration were defined in a similar manner - unpaid public work or service conducted outside the prison. However, participants agreed that the major problem with this option is a high risk factor for penal institutions, where offenders could/would bring in contraband into the prison, as well as a high recidivism rate.

Brazil was the only country which has Rights Restricted as an alternative to incarceration and the problems encountered in relation to that option are similar to the problems mentioned in the introduction of this section above.

Brazil, Uruguay and Paraguay are the only represented countries which have house sentence/domiciliary arrest as an alternative to incarceration. This option requires an offender to remain in his/her own abode with certain restrictions. The problem encountered in relation to this option is a lack of human resources. Similarly Uruguay's patronage for released people and extra-mural leave had problems with lack of financial resources and carried a risk factor of the importation of contraband for penal institutions. Extra-mural leave also encountered the same problems in Brazil. Family visits existed as an alternative in some countries and the problems cited were similar in nature to those encountered in the use of patronage for released people and extra-mural leave as alternatives to incarceration.

Reduced Sentences/remission were outlined as alternatives to incarceration in some countries and the major problems with were cited as a lack of comprehensible legislation: inadequacies in the selection process of suitable offenders, a lack of adequate human resource and slow legal processes.

Corporal punishment was used as an alternative in one jurisdiction. One of the participants stated that it was an inhumane and degrading punishment; another stated that it was a violation of human rights; however, corporal punishment should be viewed in its cultural context.

Verbal sanctions i.e. admonition and discharge or dismissal with warning are used in Jamaica and Botswana respectively. The main disadvantage of these options were identified as a lack of human resources.

Redemption is used in Brazil and Uruguay as an alternative to incarceration and as a measure of rehabilitation and social reintegration. However the major problem is inadequate support services i.e. lack of employment opportunities and educational facilities.

C. Countermeasures and/or Practice of the Above Mentioned Mechanisms

The participants went on to deliberate upon the problems that were encountered by, and possible solutions for, the relevant agencies responsible for offenders.

Table 2-A. Collaboration among related agencies- e.g. Parole, Probation, Suspension of Execution

PROBLEMS	SOLUTIONS
<ul style="list-style-type: none"> • Lack of financial resources • Inadequacies regarding information sharing • Lack of capacity building • Lack of human resources • Lack of support systems for victims of crime • Fragmentation of the availability of services; e.g. health services for drug users and offenders with mental illness • Limited employment opportunities • Police confidentiality of criminal records tends to be lax 	<ul style="list-style-type: none"> • Enhancement of NGOs & CBOs by: <ul style="list-style-type: none"> - Information Sharing - Capacity Building - Sensitization • Secondment of officers to other related agencies • Sensitization and regular consultation meetings among related agencies • Creation of a multi-sectoral board to assist in the search for solutions • Victim compensation and assistance programmes • Offender education regarding recognizance and restitution • Skills-development for parolees and probationers • Keep criminal records valid for a set period of time • Enhancement of the PPP (Public-Private Partnerships) • Tax incentives for companies/agencies that employ ex-offenders • Change of legislation to prevent access of passed criminal records that will disadvantage the parolee or probationers regarding their reintegration into society • Developing a policy of anonymity for certain categories of parolees and probationers; i.e. keeping their IDs anonymous in order to enable them to reintegrate into society with minimal stigma and discrimination, but this should not be afforded to sex offenders and those who have committed violent crimes

Table 2-B. Improvement of Staff Skills

PROBLEMS	SOLUTIONS
<ul style="list-style-type: none"> • Lack of capacity building • Lack of financial resources • Lack of screening of potential personnel • Poor motivation and incentive work packages • Closed/guarded incarceration systems • Lack of periodic evaluation of prison personnel • Lack of specialized training 	<ul style="list-style-type: none"> • Holistic training done by qualified persons and experts • Work in collaboration with skilled professionals from other sectors in order to gain much needed knowledge and skills • Regular refresher courses especially for senior personnel in order to keep them informed of current trends • Work–study programmes to further staff development • Development of efficient VPO systems • Encouraging school-leavers and university graduates to take up employment in the sectors that work with offenders • Develop in-country/national networks whose sole focus would be developing community-based alternatives to incarceration • Develop biannual international collaboration forums. • Develop skills banks nationally and internationally to exchange best practices • Develop efficient selection procedures for personnel • Develop attractive career development processes

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**Table 2-C. Improvement of Treatment Programmes offered while the Offender serves his/her Sentence
(in an institution and/or the community, etc.)**

PROBLEMS	SOLUTIONS
<ul style="list-style-type: none"> • Problems with prison officer/offender ratio • Lack of financial resources • Lack of Capacity Building • Lack of human resources to monitor and assist offenders • Lack of support systems; i.e. drug rehab; sex offender rehab and health care for the offenders • Lack of facilities; i.e. with regard to employment and education opportunities for the offenders • “Proper” sentencing of offenders e.g. some drug traffickers are given probation which is not practical • HIV/AIDS and related problems as a critical health problem • Lack of sustainability of VPO programme • Lack of committed staff • Poor training of prison officers • Increased aged & disabled prison populations 	<ul style="list-style-type: none"> • Provision of funding for prison systems and prison programmes • Capacity building of prison personnel • Robust community programme to help communities understand community-based alternatives to incarceration • Post-release control of offenders • Improve infrastructure to afford employment and education opportunities for offenders • Availability of formal educational facilities and vocational training opportunities within prisons that afford inmates qualifications to use in the community • Have newly qualified professionals in psychology, sociology, criminology, medicine etc offer a year’s service on completion of programme (mandatory national service) • Decentralization of mental healthcare for those in need of relevant care • Affordable; accessible healthcare for offenders • Collaboration with health sector and drug rehab sector to conduct drug-testing • Intensive HIV/AIDS prevention and treatment programmes; including TB treatment in order to prevent or reduce the possibility MDR TB or XDR TB • Sex offender-treatment that is evidence-based • Small group therapeutic communities where offenders support each other: this is cost effective • Therapeutic community modality with a restorative justice as a conceptual framework and utilization of volunteers as a strategy • Creation of field training labs to enhance recruitment of VPOs • NGOs train offenders in various skills • Supervision and support of NGOs that work with offenders • NGOs that assist offenders families until children are 18 • Collaboration with private sector; including private sector administration of prisons • Collaboration of universities’ health faculties (or relevant institutions) with agencies that assist offenders • Review of treatment programmes in order to make them all evidence-based • Employment of professional experts from outside the offender rehabilitation sector • Establishment of national prison hospitals to care for inmates with health problems • Provide psychological treatment for all inmates/offenders

D. Identification of Other Effective Intervention Models

The group participants went on to identify a number of practical intervention models, as follows:

- The relevant ministries should work in collaboration to provide additional community support services and halfway houses that meet the needs of aged and disabled offenders;
- Domiciliary (house) arrest should only be considered for aged, chronically ill and disabled people;
- Establishment of a workable probation officer/offender ratio;
- Establishment of an effective risk assessment system to determine suitable candidates for house arrest and other community-based alternatives to incarceration;
- Electronic monitoring;
- Identify and adopt specific and effective drug treatment programmes for offenders with drug abuse problems; e.g. the Therapeutic Community Model;
- Establishment of comprehensive community crime prevention forums.

E. Measures to Monitor and Evaluate all Mechanisms Discussed

The importance of monitoring and evaluation were considered; and critical areas were highlighted as follows:

- Monitor recidivism rates in order to evaluate the success of the prescribed programmes;
- Monitor effectiveness of treatment models used to rehabilitate offenders;
- Employ qualified staff to monitor effectively;
- Establish an effective offender management system;
- Develop short-term and long-term monitoring systems;
- Monitor the mortality and morbidity of offenders to evaluate the level of healthcare provided for them;
- Establish a national crime statistics register that includes community crime statistics;
- Conduct a cost/benefit analysis of treatment programmes;
- Develop risk assessment tools to assist with analyses;
- Involve offenders in the choice of alternative sentencing;
- Establish neighbourhood commissions/committees that can help with the monitoring of offenders;
- Establish effective VPO systems;
- Conduct public surveys to establish public opinion of alternative sentencing methods and involve the public in the planning of releasing offenders into their respective communities;
- Establish international networks that focus on monitoring and evaluation of alternatives to incarceration.

III. RECOMMENDATIONS AND CONCLUSION

Using incarceration as the only method of punishment will only lead to high recidivism rates, and furthermore it will be a violation of human rights. Although we need to reduce the number of inmates in our prisons, the most important of our goals should be the rehabilitation of inmates. Therefore, to be effective

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and to improve the treatment of offenders, the alternatives to incarceration that we propose should:

1. reduce stigmatization;
2. promote the social reintegration of offenders;
3. prevent recidivism.

In order to succeed in this objective we believe that by matching the right offenders with the right sentencing options and ensuring that community-based programmes are adequately resourced and administered with integrity, community-based alternatives to incarceration can become a reality for productive and prosperous societies that aspire to reduced rates of crime.

The following are the recommendations proposed by the group members:

1. Non-custodial options be considered as effective rehabilitation strategy;
2. Sentencing officers who utilize alternative sentencing options should be cognizant of the human rights of offenders;
3. Recidivism rates be continuously monitored;
4. Risk assessments be used as an efficient supervision/monitoring system for community-based non-custodial options;
5. Inmates be evaluated during incarceration and as follow-up post release;
6. Effective measures for evaluation of social measures be established;
7. Effective public education programmes be implemented in order to sensitize and inform the public about community-based alternatives to incarceration;
8. Human and financial resources be increased to enhance the administration of community-based alternatives to incarceration;
9. Continuous research in these areas through public education forums, conferences, seminars and networking, at national, regional and international levels.

Finally, as societies we must understand that inmates are human beings who belong to our respective societies and communities. We have discussed many community-based alternatives to incarceration and we have arrived at the conclusion that the only way to reinstate offenders into society and into communities is by developing rehabilitation programmes in order to avoid recidivism - especially in this era where violence is emerging due to deterioration in moral values, the current economic recession, influence on cultural values and other related factors.

GLOSSARY

- * AIDS –Acquired Immuno-deficiency Syndrome
- * CBO – Community Based Organizations
- * HIV – Human Immune Virus
- * M & E – Monitoring and Evaluation
- * MDR – TB - Multi-drug resistant tuberculosis
- * NGO – Non-governmental Organization
- * TB – Tuberculosis
- * VPO – Volunteer Probation Officers
- * XDR – TB – Extreme multi-drug resistant tuberculosis