

EFFECTIVE COUNTERMEASURES AGAINST OVERCROWDING OF CORRECTIONAL FACILITIES

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I. INTRODUCTION

Continuous growth of prison populations and overcrowding in correctional facilities is a serious problem facing the Government of many parts of the world. As one of the world's well developed cities, Hong Kong is no exception to encountering the same stress of overcrowding in correctional facilities. As it has tremendous adverse effects on prison discipline and order as well as the rehabilitation of offenders, sufficient and effective countermeasures have to be taken in tackling the problem.

In the past decade, Hong Kong has suffered from overcrowding in correctional facilities. In 1999, the total penal population was 10,358. With the total number of penal places in all 20 penal institutions standing at 9,045, the overall occupancy rate was 114.5%. In 2003, the total penal population was 11,682 and the overall occupancy rate was 122.6%. It was not until 2008 that the situation improved slightly with a total penal population of 9,343 and an overall occupancy rate of 96.7% (Appendix A). Nevertheless, it is still projected that there will be a serious shortfall in penal places in Hong Kong in the near future.

In view of such, the Correctional Services Department (CSD), as an integral part of the Hong Kong criminal justice system, took various measures, including redevelopment and collocation of penal institutions, enhancement of ageing penal facilities and proposals for establishing a super prison, to forestall the situation from worsening. To a certain extent, the situation has been slightly alleviated with immediate improvement noted.

However, it is anticipated that the situation may not be so desirable and long lasting with countermeasures at the CSD level alone. A comprehensive review of the criminal justice system to effect changes in each stage of "due process", from arrest to adjudication, sentencing, and correction, and enhancement in public education, are necessary. That is to say, innovations and enhancement at the Pre-sentencing stage, Penal custody stage and Post-release stage of the criminal justice process, as well as the Public level ("the 4Ps") are worth considering.

II. THE EXISTING CRIMINAL JUSTICE SYSTEM IN HONG KONG

Before going further, it may be necessary to provide a full picture of the criminal justice process in Hong Kong. The criminal justice system in Hong Kong is one of the world's most fair and well-developed systems. From the arrest of a person by police or other law enforcement agencies to incarcerating a convicted person as ordered by a court, there are statutory steps and procedures at every stage of the proceedings (Appendix B). The time for the whole process may vary from a few days to years, depending on the progress of investigation as well as the hearing of the courts. Anyhow, the procedures outlined below must be strictly complied with.

A. Police Interview/Investigation

Upon arresting a person, the police will interview him or her with a caution statement taken from the person arrested and conduct a preliminary investigation into the case if it has criminal elements. Depending on the findings of investigation, the police may decide either to discharge the person because of insufficient evidence, to release the person with a caution (for teenagers with minor offence(s)), or to proceed with formal prosecution.

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B. Prosecution

Once prosecution of the person is decided, he or she will be formally charged and may either be released on police bail or detained in police custody pending a court appearance. In some cases, especially for juveniles under the age of 18, where evidence is sufficient for prosecution a police officer of Superintendent rank may exercise his or her discretion to caution rather than prosecute, with a view to offering him or her a chance to mend his or her ways and save the juvenile from the bitterness of legal proceedings. This act is under the Police Superintendent Discretion Scheme.

C. Court Proceedings

Standing trial by court, the offender will be asked for his or her plea, and may plead guilty or not guilty to the charge(s) laid against him or her. Once he or she pleads guilty and is convicted, sentence will be imposed and the case closed. Where he or she pleads not guilty to the charge or pleads guilty without agreeing to the facts of the crime(s) he or she has committed, the case will be adjourned for trial and he or she may either be released on court bail or detained in jail custody. The case will be terminated after trial and sentence.

D. Sentencing

Before imposing a sentence on a convicted person, the court will take into consideration the background of the individual, the nature of the offence(s) and the response from the public through various documents and reports. Of course, some philosophies behind sentencing adopted by the judge such as retribution, deterrence, rehabilitation, incapacitation, restoration and reparation, etc. may also affect the decision of the court. There are quite a lot of sentencing options in the Hong Kong criminal justice system but they can generally be categorized as non-custodial and custodial sentences.

1. Non-Custodial Sentences

- (i) Absolute discharge;
- (ii) Conditional discharge (Bond);
- (iii) Fine;
- (iv) Compensation Order;
- (v) Suspended sentence; and
- (vi) Community-based sentences:-
 - (a) Probation Order;
 - (b) Community Service Order; and
 - (c) Curfew Order.

2. Custodial Sentences

- (i) Imprisonment;
- (ii) Training Centre;
- (iii) Detention Centre;
- (iv) Rehabilitation Centre;
- (v) Drug Addiction Treatment Centre;
- (vi) Reformatory School; and
- (vii) Hospital Order.

III. THE SITUATION OF OVERCROWDING IN HONG KONG CORRECTIONAL FACILITIES

A. Statistical Figures of Penal Population in Hong Kong

As mentioned before, Hong Kong has been suffering from the problem of overcrowding in penal facilities in the past decade. With reference to the statistical figure (Appendix A), from 1999 to 2008, the occupancy rate was over the certified capacity. In 1999, the total penal population was 10,358 and the overall occupancy rate was 114.5%. It was most alarming that the total penal population reached 11,472 with the overall occupancy rate at 121.3% in 2002. In 2003, the total penal population was 11,682 and the overall occupancy rate was 122.6%. It is not hard to imagine how bad the situation was. It was not until 2008 that the overcrowding at the aggregate level improved slightly as compared with the preceding year. By the end of 2008, the total penal population was 9,343. With the total number of penal places in all 19 penal institutions currently stands at 9,657, representing an overall occupancy rate of 96.7%.

Notwithstanding the slight improvement at the aggregate level, there is still a significant shortfall in the number of penal places at maximum security prisons, remand facilities and female institutions. In the case of male institutions, the occupancy rate in remand facilities and maximum security prisons was 106%, representing a shortfall of 213 places. Similar to the situation in male institutions, overcrowding was more serious in female remand facilities and maximum security prisons, where the occupancy rate was 162%, representing a shortfall of 230 places. Worse still, according to the latest projection conducted by the Correctional Services Department in 2008, the penal population is expected to increase to 11,960 by 2010 and 12,970 by 2015.

B. Staff Strength of Correctional Services Department of Hong Kong

In order to effectively manage such a huge number of offenders and rapid growth of the penal population, an increase in staff strength of the Correctional Services Department seems to be necessary and inevitable. However, it is frustrating that the staff strength of the Department has declined continuously in the past ten years.

Due to the Asian financial turmoil in 1997, there was an economic recession in Hong Kong. The Hong Kong Government has since 1999 taken more stringent control over expenditure and accelerated the pace of civil service reform by reducing the number of civil servants from around 198,000 in early 1999 to about 160,000 by 2007–2008. In this connection, the Department deleted 560 permanent posts in staff establishment and 473 permanent posts in staff strength between 1999 to 2008 (Appendix C) through organizational restructuring and work process re-engineering.

Faced with the continuous growth of the penal population and declining in staff strength, the administration and management of the Department was severely challenged. At the end of March 2009, the total penal population (including inmates, Halfway House residents and detainees of Castle Peak Bay Immigration centre) in Hong Kong is 10,575 and the strength of frontline custodial staff is 3,713. The ratio of staff to prisoners is 1: 2.85. The great pressure and heavy workload of staff, as well as the huge burden of management of the Department are not difficult to imagine.

C. Adverse Effects caused by the Overcrowding in Correctional Facilities in Hong Kong

There may be a wide diversity of causes of the overcrowding problem in Hong Kong correctional facilities and the cores of the problem is really complicated. It may be attributable to the combination of factors like the rise in the crime rate, the upsurge of illegal immigrants, legislative changes in sentencing policy and public preference for punitive reactions to crime and criminals. Anyhow, as the last law enforcement agency in the chain of “due process” to detain and rehabilitate convicted offenders, the Correctional Services Department is hardest hit with the burden by the overcrowding of penal population.

1. Breach of Discipline and Order in Prison

Most obviously, the overcrowding of the penal population directly causes greater pressure on the already stressful prison life. Living in a restricted and congested environment, prisoners’ emotional and psychological states are most affected. Scuffles, quarrels or even fighting among prisoners are not uncommon. Under such circumstances, the peace of the prison is difficult to maintain and good discipline and order is seriously challenged. It really places great pressure and burdens on the prison management and administration.

2. Hygiene Problems

Difficulty in maintaining discipline aside, overcrowding in penal facilities also raises the problem of personal hygiene. In a crowded and congested living environment, it is not hard to imagine that the quality of ventilation, cleanliness of dormitories and a good standard of prisoners’ personal hygiene may not be easily maintained. As such, infectious illness such as influenza, skin disease, avian flu or even tuberculosis may easily break out. It poses hazards and threats to the health of both prisoners and staff, and adds to burden of medical care.

3. Hindrance to the Rehabilitative Programmes of Prison

Overcrowding in penal institutions also defeats the fair use of the facilities and treatment/training programmes of prisons. Apart from punishment by deprivation of liberty, incarceration aims also at

rehabilitating the offenders with its facilities and treatment/training programmes. In an overcrowded situation, the common facilities in prison such as dining halls, counselling rooms, vocational training workshops, multi-function rooms, chapels, etc. cannot be fairly and fully utilized by all prisoners. With disruption to institutional life, the designated treatment/training programmes such as counselling groups, hobby classes and religious classes may not cater for all the population in the prison. It deprives prisoners of benefits from the treatment/training programmes and thus hinders the primary objectives of correctional facilities to rehabilitate and re-socialize prisoners.

IV. MEASURES TAKEN BY THE CORRECTIONAL SERVICES DEPARTMENT AGAINST THE OVERCROWDING PROBLEM

In face of the continuous growth of the penal population and the resultant overcrowding problem in correctional institutions, the Correctional Services Department endeavoured to take various measures including launching the Rehabilitation Centre programme, collocation and redevelopment of correctional institutions, enhancing development of early release schemes, taking initiatives in rehabilitation programmes, and a lot of re-offending preventive initiatives to address the problem. The result was encouraging and the pressure of overcrowding was to a certain extent alleviated.

A. Launching the Rehabilitation Centre Programme

With a view to meeting the rehabilitation needs of young offenders, the Department launched the Rehabilitation Centre programme in 2002. It consists of four Rehabilitation Centres, namely the Lai Chi Rehabilitation Centre (for males), the Lai Hang Rehabilitation Centre (for males), the Chi Lan Rehabilitation Centre (for females); and the Wai Lan Rehabilitation Centre (for females). The Lai Chi Rehabilitation Centre and the Chi Lan Rehabilitation Centre run the Phase I programmes emphasizing discipline training whereas the Lai Hang Rehabilitation Centre and the Wai Lan Rehabilitation Centre offer the Phase II programmes focusing on community-based training. The training period in Phase I is two to five months and Phase II is one to four months but the date of release of the inmates is not fixed and depends on their progress during training.

Before the rehabilitation Centre programme came into operation, young offenders who were convicted and needed custodial sentences might either be sentenced to a Detention Centre (1 to 12 months) or a Training Centre (3 to 36 months). As the a Detention Centre was fit only for first offenders, most of the recidivists were usually sentenced to a Training Centre of which the training/detention period was much more longer that that of Detention Centre. The launching of the Rehabilitation Centre programme not only provided a new sentence option to the courts, but also bridge the service gap between the Detention Centre and Training Centre to relieve the overcrowding of the penal population of young offenders.

B. Collocation and Redevelopment of Correctional Institutions

With a view to alleviating overcrowding in female institutions and grasping the opportunity to refurbish the outdated penal facilities, the Department converted the now defunct Lai King Training Centre into a penal facility for young female offenders to relieve overcrowding of the Tai Tam Gap Correction Institution (for young females). Before commencing the conversion work, two Training Centres, Lai King Training Centre and Cape Collinson Correctional Institution for males, were combined and the Lai King Training Centre was collocated to the site of the Cape Collinson Correctional Institution. Upon completion of the conversion, 80 additional penal places for female offenders were provided.

In addition, the Department started a redevelopment project in Lo Wu Correctional Institution in 2007 and it was expected that the new institution would commence operation in early 2010. Comprising two medium security and one minimum security institution, the redeveloped Lo Wu Correctional Institution will provide 1400 female penal places, which will substantially relieve the overcrowding situation in female institutions. Moreover, an extension project in Lai Chi Kok Reception Centre (for males) also provided 144 additional male penal places.

C. Enhancing the Development of Early Release Schemes

There is no parole system in the criminal justice system of Hong Kong. However, there are some early release schemes which are similar in nature to the parole system. Since 1987, the Release Under

Supervision Scheme (RUSS) and the Pre-Release Employment Scheme (PRES) has been enacted. Under the Release Under Supervision Scheme, prisoners who are sentenced to three (or more) years' imprisonment and have served half of their sentences with good performance may be granted early release from prison to undergo a period of aftercare supervision. For the Pre-Release Employment Scheme, prisoners who are sentenced to two (or more) years' imprisonment and have good performance during incarceration may be granted early release from prison six months before their date of discharge to undergo a half year of statutory aftercare supervision.

As one of the measures to relieve overcrowding of long term prisoners, the Department greatly enhanced the development of these two schemes in the past ten years. In 1997, there were only ten prisoners released under the schemes. In 2007, a total of 67 prisoners were released under the schemes (Appendix C). The upward trend of prisoners eligible for early release is obvious and it does help a lot in diminishing the population of long-term prisoners.

D. Initiatives in Rehabilitation Programmes

Apart from taking various measures to tackle overcrowding in penal facilities and increase the penal places, the Department also endeavoured to improve the rehabilitation on of offenders by taking initiatives in rehabilitation programmes to help reduce crime rate and recidivism.

1. Initiatives for Reforming Offenders and Facilitating their Reintegration into Society

In this regard, actions were taken to:

- (i) develop the Risks and Needs Assessment and Management Protocol for Offenders;
- (ii) run Relapse Prevention Course for offenders with substance abuse problems;
- (iii) launch an Offending Behaviour Programme for prisoners;
- (iv) organize an Adventure-Based Counselling Programme (ABC) for young offenders;
- (v) refine the Inmate-Parent Programme to foster offenders' family relationships.

2. Initiatives for Enhancing Offenders' Employability

For enhancing offenders' employability, initiatives were taken to:

- (i) refine the Employment Guidance Programme;
- (ii) introduce a new Information Technology Course for young offenders;
- (iii) provide accredited vocational training courses for prisoners.

E. Preventive Measures to Reduce Crime Rate and Recidivism

Special efforts for offenders' rehabilitation and reintegration aside, the Department also took initiatives at the social and community level as preventive measures to enlist public support with a view to reducing crime rates and recidivism. It included:

- (i) organizing a series of publicity campaigns to appeal for public acceptance of offenders and public support for offenders' rehabilitation;
- (ii) launching of the Rehabilitation Pioneer Project to let students and youth meet with some rehabilitated offenders and share the serious, far-reaching consequences of crime;
- (iii) running of Continuous Care Projects involving eight Non-Government Organizations to follow-up those supervisees whose statutory aftercare supervision had expired to sustain the services provided to those in need;
- (iv) organizing an employment symposium to appeal to the public for job offers for ex-offenders.

V. POSSIBLE MEASURES IN THE CRIMINAL JUSTICE SYSTEM OF HONG KONG

With the implementation and launching of various measures and initiatives by the Correctional Services Department, the pressure of overcrowding of penal populations is obviously alleviated and the situation is improved to a certain extent. However, as mentioned before, it is projected that there will still be a serious shortfall of penal places in 2010 and 2015. The existing policies and measures taken may not suffice to tackle the problem then. Thus, a comprehensive review of the whole criminal justice system to make changes at each stage of the "due process" and enhancement in education and of the public are deemed necessary in the long run.

Herewith, some possible measures or enhancements at the 4 "P" stages and level, namely the Pre-sentencing Stage, Penal Custody Stage, Post-release Stage and Public Level, are suggested for a long lasting solution to the problem.

A. Pre-Sentencing Stage

1. Release on Bail

This stage includes the processes from an offender being arrested to prosecution and then sentencing. With a view to effectively controlling the remand population in correctional institutions, more release on bail for minor offences should be granted during the processes of police investigation and court adjudication. To safeguard security loopholes and forestall the arrested person from jumping bail, Global Positioning System (GPS) technology may be used to trace the targets.

2. Extended Use of Police Superintendent Discretion Scheme

On the other hand, the Police Superintendent Discretion Scheme should be further extended to young adults first offenders who commit crimes of a minor nature, rather than confining its use to juveniles under the age of 18. It is believed that a large portion of the criminal population may be exempted from the legal proceedings as well as penal custody.

3. Community-Based Sentences

Regarding the court sentencing level, more community-based sentences, including Probation Orders, Community Service Orders, Curfew Orders, etc. should be imposed instead of the custodial sentences. Moreover, non-custodial sentence options other than the conventional ones should be incorporated into the judges' decision lists.

4. Work Camp for Women

With respect to the overcrowding situation in female penal institutions in Hong Kong, the concept of the Work Camp for Women is worthwhile considering. In general, female offenders are usually non-violent, pose less threat to society, and their offences are mostly minor in nature or commercial crimes. Under the sanction of the Work Camp, a term of work training is imposed on female offenders whose daytime work inside the camp is compulsory. They are allowed to stay overnight at home after working at the camp. While staying outside the camp, their behaviour is monitored by their supervising officers. This sanction may serve both the purposes of relieving overcrowding of female penal facilities and repaying society for their crimes.

5. Restorative Justice

Another sentencing option which can be taken into consideration is restorative justice. The concept of restorative justice is to settle some minor crimes through a reconciliation and mediation process by involving the three parties, namely the offender, victim and community, instead of going through the traditional legal proceedings by imposing a custodial or non-custodial sentence. Under the sanction of restorative justice, the elements of healing, victim-offender mediation, and apology and reintegration will be part of the reconciliation and mediation process. Apart from helping to contain the growth of the penal population, restorative justice may also benefit the rehabilitation of offenders as well as the recovery of victims.

B. Penal Custody Stage

This stage mainly focuses on the incarceration of prisoners and relates to the core business of the Correctional Services Department.

1. Redevelopment of Correctional Institutions

There is no doubt that the redevelopment of correctional institutions to increase penal places and update the aging penal facilities is the most tangible and effective measure in tackling the problem of overcrowding in correctional facilities. Other than redeveloping the existing penal institutions, the Department may consider exploring more suitable locations for establishing new penal institutions with modern rehabilitation facilities.

2. Parole System

Unlike other well-developed countries, there is no specific parole system in the criminal justice system of Hong Kong. Though the aforesaid two early release schemes serve a similar purpose in releasing some long-term prisoners, the applicability of the schemes is virtually restricted to those prisoners with a comparatively longer term of imprisonment. To reduce the penal population in the long run, a comprehensive parole scheme open to most of prisoners is necessary and worthy of development.

3. Transfer of Sentenced Persons

Besides, the Department may endeavour to study the feasibility and technicality of transferring persons of other nationality sentenced here in Hong Kong to their home countries to serve their remaining terms of imprisonment. According to the statistical figures (Appendix D), in Hong Kong correctional institutions, the total number of illegal immigrants in prison and prisoners of other nationality in 1998 was 3,749 (2,363 illegal immigrants and 1,386 of other nationality) or 31.47% of the total penal population. In 2004, the total number was 2,750 (1,488 illegal immigrants and 1,262 of other nationality) or 21.65% of the total penal population whereas there was 2,414 (967 illegal immigrants and 1,447 of other nationality), or 23%, in 2008. Though there has been a slow down in the number of illegal immigrants incarcerated in Hong Kong, the number of prisoners of other nationality has risen slightly. The total number remains high and forms quite a large portion of the total penal population. As such, to transfer these sentenced persons to their home countries to serve the remainder of their sentence is considered to be one of the effective measures to ease overcrowding of the penal population in Hong Kong.

C. Post-Release Stage

The post-release stage is the last but not the least stage of the criminal justice system. To the contrary, it is a crucial stage in controlling the rate of crime and recidivism through rehabilitative initiatives and monitoring of offenders released from penal institutions.

1. Enhancement of Aftercare Supervision

With legal provisions in Hong Kong, all prisoners/inmates released under the Post-Release Supervision of Prisoner Scheme or special correctional programmes such as the Training Centre, Detention Centre, Rehabilitation Centre and Drug Addiction Treatment Centre must undergo a period of statutory aftercare supervision for one to three years after their release. During the supervision period, supervisees' behaviour and employment status are closely monitored. A breach of the supervision requirement or relapse to crime will result in their recall to the correctional institutions for re-imprisonment or further training or treatment. With the monitoring and guidance of the aftercare supervision, the ex-offenders can effectively be kept on the right track and engage themselves in gainful employment. It is really an effective tool to rehabilitate ex-offenders and contain their re-offending behaviour. In view of such, the Department may inject more resources to enhance and develop her aftercare service, especially in staff strength, with a view to minimizing the rate of crime and recidivism. With the trimming down in the crime and recidivism rate, overcrowding in penal facilities may no longer occur in future.

2. Development of Social Enterprise

There is no denying that steady and gainful employment is one of the prerequisites of offenders' rehabilitation and reintegration. However, it is not easy for ex-offenders to get a desirable job given their criminal background and lack of work skills. Feeling discriminated against and looked down upon, they may be so frustrated that they resort to their former criminal path. To achieve both the aims of eliminating discrimination against offenders and enhancing their employability, the Department may adopt a proactive attitude to join hands with some merchants to form various social enterprises with a view to providing job offers for ex-offenders. With job satisfaction and steady financial income, the path for offenders' rehabilitation and reformation are much broader and more vivid. Greater success in offenders' rehabilitation means less risk of overcrowding in penal institutions.

D. Public Level

1. Enhanced Publicity Campaigns

As mentioned before, discrimination and stereotyping by the public are one of the greatest obstacles to offenders' rehabilitation. It is not rare for offenders who have sufficient determination and family support to feel frustrated and inferior because of discrimination at work, school or even in the community. They

eventually re-associate with their former dubious peer groups to seek identity and validity. In this regard, the Department may channel more resources into publicity campaigns, for examples, announcement of public interest on radio or TV, TV programmes and episodes, voluntary social services for offenders, exhibitions, seminars, symposiums, etc. extensively and intensively until the completion of public education, introducing the rehabilitation services provided by the Department and appealing for public acceptance and support of offenders' rehabilitation. Strong support from the community and the public can directly foster offenders' reintegration and reduce the penal population.

2. Enhancement in Prevention Programmes

To effectively control the crime rate and penal population, it is wise to prevent new offenders from the criminal path. In this connection, the Department has launched a Rehabilitation Pioneer Project covering a series of educational talks, visits and forums for youth. Under the scheme, young students may visit penal institutions and meet with inmates who share their experiences and lessons learned. It is a crime fighting tool by deterring youth from committing crime after getting them to realize the consequences of crime.

Taking it as a crime prevention programme to further control the penal population, the Department may consider extending the programme to the scope of adults rather than only focusing on youth groups in order to extend the service and benefit more members of the public to avoid their stepping on the track of crime. Similar programmes with specific topics such as drug abstinence, sex offences or violent offences would be worthwhile. With the implementation of sufficient crime prevention measures, desirable control of penal population may not be troublesome correctional administration.

VI. CONCLUSION

Overcrowding in penal facilities burdens and pressures correctional administration worldwide. The causes of the problem are complicated and inter-related. It is not possible to attribute it to a single factor. With the aforesaid illustrations of the "4Ps", namely the Pre-sentencing Stage, Penal Custody Stage, Post-release Stage and Public Level, it is not hard to note that there is a causal, vicious circle in the criminal justice system and each stage of which may cause overcrowding in penal facilities. Besides, other systems of the society may also consider extending the variety and contain, if not eliminate the development of the causal, vicious circle.

Each stage of the "4Ps" may be the start of the overcrowding problem. In the Pre-sentencing Stage, abuse of remand with less bail granted and imposing custodial sentences rather than non-custodial may result in an increase in the penal population. In the Penal Custody Stage, lack of foresight in penal places planning under or poor use of early release schemes, if not the parole system, and ineffective rehabilitation programmes may worsen the situation and foster recidivism and overcrowding. In the Post-release Stage, poor management and development of aftercare services, making no good use or under utilization of social resources, and incompetence in implementation of crime prevention measures may undermine the rehabilitation of offenders and accelerate crime and recidivism rates as well as overcrowding. Of course, at the Public Level, discrimination, stigmatization and low acceptance of offenders may also impede the rehabilitation and reintegration of offenders and boost the crime and recidivism rate and overcrowding. As such, it is explicit that each stage is inter-related and a deficit at any one stage or level may affect the next and trigger a vicious circle.

Besides the "4Ps", other social systems, such as economy, education and community, may also have a great impact on the issue. Economic downturn, incapable education system and grievances in society or hostility towards or dissatisfaction with government may all cause an upsurge in crime and the recidivism rate and penal population as well. Therefore, in order to thoroughly reduce overcrowding in penal facilities, the government should take initiatives or make remedial policies in the relevant social systems in addition to a comprehensive review with effective innovations and measures at each of the "4Ps".

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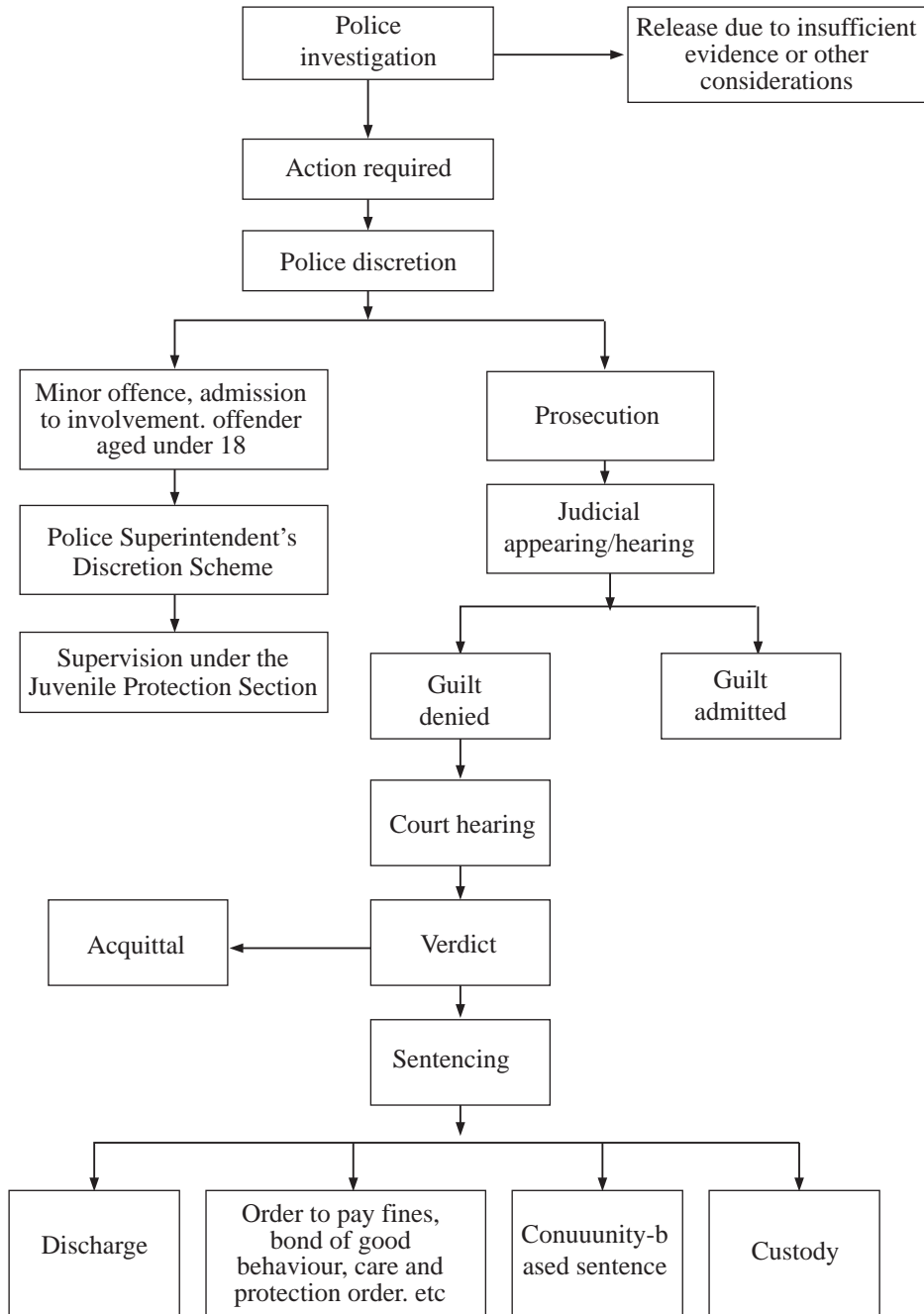
APPENDIX A

Table 2 : Prison Population and Accommodation

Year	Prison Population	% Change over Preceding Year	Certified Accommodation	No. of Prisons	Occupancy Rate (%)
I. Year End Position					
1996	11,044	-1.3	8,574	18	128.8
1997	10,056	-8.9	8,572	19	117.3
1998	10,627	+5.7	8,631	19	123.1
1999	10,358	-2.5	9,045	20	114.5
2000	10,696	+3.3	9,115	20	117.3
2001	10,852	+1.5	9,204	20	117.9
2002	11,472	+5.7	9,459	20	121.3
2003	11,682	+1.8	9,527	20	122.6
2004	11,437	-2.1	9,729	20	117.6
2005	10,063	-12.0	9,190	19	109.5
2006	10,110	+0.5	9,784	19	103.3
2007	9,819	-2.9	9,576	19	102.5
2008	9,343	-4.8	9,657	19	96.7

APPENDIX B

“Due Procedure” in the Hong Kong Criminal Justice System



APPENDIX C

Table 35 : Establishment and Strength of Correctional Services Department (as at end of year)

Rank	1996		1997		1998		1999		2000		2001		2002		2003		2004		2005		2006		2007		2008		
	E	S	E	S	E	S	E	S	E	S	E	S	E	S	E	S	E	S	E	S	E	S	E	S	E	S	
CCS	1	1	1	1	1	1	1	2	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
DC	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
AC	3	3	3	2	4	2	4	2	4	4	4	4	4	4	4	3	4	4	4	4	5	4	2	4	3	4	4
CS	2	2	2	3	2	4	2	3	2	2	2	2	2	2	2	3	2	2	2	2	2	2	2	2	2	2	2
SS	15	12	15	9	14	11	15	15	14	12	13	13	14	15	12	12	12	12	12	12	12	12	12	12	12	13	12
Supt	41	35	38	36	38	35	38	33	38	32	33	33	36	31	34	30	34	30	34	33	33	34	18	37	25	36	31
CO	81	76	72	61	69	69	72	64	71	60	70	63	69	66	63	65	62	56	62	66	66	63	76	62	69	63	65
PO	316	261	287	262	280	256	288	274	282	271	272	265	271	250	247	237	240	233	240	231	231	225	211	223	230	223	221
Offr	669	655	675	634	655	642	671	627	621	619	644	639	658	665	632	643	621	621	621	613	622	601	596	613	622	615	637
AO I	2,205	1,863	2,049	1,913	2,021	1,886	2,061	1,847	2,059	1,821	2,042	1,895	2,047	1,919	1,979	1,864	1,916	1,771	1,888	1,721	1,888	1,876	1,702	1,868	1,670	1,869	1,648
AO II	2,851	3,100	2,973	3,065	2,927	3,016	2,955	3,043	2,843	3,027	2,880	2,989	2,831	2,938	2,807	2,911	2,808	2,917	2,803	2,872	2,799	2,861	2,778	2,863	2,811	2,963	
Offr (VM)*	25	13	2	1	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
AO II (VM)*	217	192	73	32	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
Sub-total	6,427	6,214	6,191	6,020	6,012	5,923	6,108	5,911	5,936	5,850	5,967	5,905	5,934	5,892	5,782	5,770	5,701	5,648	5,654	5,531	5,618	5,486	5,601	5,499	5,638	5,585	
CSI Staff	361	350	358	344	360	352	370	355	359	356	365	358	367	353	346	344	344	327	342	312	339	305	339	303	339	295	
Civilian Staff	775	726	737	718	725	712	737	716	733	721	727	708	719	705	700	700	693	677	682	674	680	665	682	654	678	629	
Total	7,563	7,290	7,286	7,082	7,097	6,987	7,215	6,982	7,028	6,927	7,059	6,971	7,020	6,950	6,828	6,814	6,738	6,652	6,678	6,517	6,637	6,456	6,622	6,456	6,655	6,509	

Notes : Establishment (E) excludes supernumerary posts.
Strength (S) refers to substantive rank.
Civilian staff refer to General Grades and Common Grades Staff.

APPENDIX D

Table 34 : Parole Applications

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
<u>Application for RUSS</u>											
Success *											
Recommended by CSD	5	3	2	2	4	1	2	0	2	3	13
Not recommended by CSD	0	0	0	0	0	0	0	0	3	1	3
Failure *											
Recommended by CSD	1	3	1	3	0	0	0	1	0	1	1
Not recommended by CSD	21	10	11	5	5	3	6	2	4	3	2
Withdrawal	1	1	1	0	1	0	0	1	1	0	1
Total	28	17	15	10	10	4	8	4	10	8	20
<u>Application for PRES</u>											
Success *											
Recommended by CSD	5	1	2	4	5	13	17	12	29	46	46
Not recommended by CSD	0	0	0	0	0	0	0	4	2	2	5
Failure *											
Recommended by CSD	7	10	5	9	9	4	4	1	1	2	1
Not recommended by CSD	39	24	17	12	18	17	20	12	8	12	38
Withdrawal	4	6	1	1	0	3	0	2	1	0	2
Total	55	41	25	26	32	37	41	31	41	62	92

Notes : RUSS = Release Under Supervision Scheme

PRES = Pre-release Employment Scheme

* Based on Decision made by the Release Under Supervision Board.

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APPENDIX E

Table A3 : Penal Population by Sex by Broad Nationality (as at end of year)

Sex / Year	Mainland Chinese				Other Nations / Territories#	Total
	Local Chinese	Illegal Immigrant	Legal Entrant@	Sub-total		
Male						
1998	6,909	2,043	389	2,432	1,142	10,483
1999	6,767	1,943	359	2,302	1,019	10,088
2000	7,329	1,579	330	1,909	1,010	10,248
2001	6,999	1,613	314	1,927	892	9,818
2002	7,047	1,593	369	1,962	934	9,943
2003	6,962	1,675	574	2,249	954	10,165
2004	6,823	1,160	1,015	2,175	1,022	10,020
2005	6,427	885	864	1,749	846	9,022
2006	6,282	984	825	1,809	1,033	9,124
2007	6,190	785	766	1,551	1,027	8,768
2008	5,804	615*	803	1,418	1,037	8,259
Female						
1998	528	320	339	659	244	1,431
1999	531	328	374	702	224	1,457
2000	559	433	564	997	213	1,769
2001	606	605	781	1,386	244	2,236
2002	674	337	1,533	1,870	257	2,801
2003	691	138	1,760	1,898	258	2,847
2004	723	328	1,394	1,722	240	2,685
2005	698	405	914	1,319	272	2,289
2006	676	424	810	1,234	330	2,240
2007	727	413	607	1,020	431	2,178
2008	762	352	708	1,060	410	2,232
Both Sexes						
1998	7,437	2,363	728	3,091	1,386	11,914
1999	7,298	2,271	733	3,004	1,243	11,545
2000	7,888	2,012	894	2,906	1,223	12,017
2001	7,605	2,218	1,095	3,313	1,136	12,054
2002	7,721	1,930	1,902	3,832	1,191	12,744
2003	7,653	1,813	2,334	4,147	1,212	13,012
2004	7,546	1,488	2,409	3,897	1,262	12,705
2005	7,125	1,290	1,778	3,068	1,118	11,311
2006	6,958	1,408	1,635	3,043	1,363	11,364
2007	6,917	1,198	1,373	2,571	1,458	10,946
2008	6,566	967	1,511	2,478	1,447	10,491

Notes : Penal population includes prisoners, inmates, remands, VMs, VIIs, ECVIIs and other detainees and civil prisoners in penal institutions but excludes infants, half-way houses residents and detainees in CIC.

@ refers to Mainland Chinese 2-way permit / passport holders.

Including VII(S.32) detained in GIRC since June 1998 after closure of all VM centres.

* Including 2 detainees in SLPC.

REPORTS OF THE COURSE

GROUP 1

EFFECTIVE COUNTERMEASURES AGAINST OVERCROWDING OF CORRECTIONAL FACILITIES

Chairperson	Mr. Oleskyenio Enrique Florez Rincon	(Colombia)
Co-Chairperson	Mr. Hiroshi Suda	(Japan)
Rapporteur	Mr. Ricky Iomea	(Solomon Islands)
Co-Rapporteur	Ms. Marialda Lima Justino da Cruz	(Brazil)
Members	Mr. Jean Claude Ngoie Mutombo	(DR Congo)
	Mr. Mahendra Nath Upadhyaya,	(Nepal)
	Mr. Takahiro Sumikawa	(Japan)
Advisers	Prof. Naoyuki Harada	(UNAFEI)
	Prof. Fumiko Akahane	(UNAFEI)

I. INTRODUCCION

On 22 May 2009, Group 1 commenced its workshop. The Group appointed, by consensus Mr. Florez as its Chairperson, Mr. Suda its Co-Chairperson, Mr. Iomea as its Rapporteur and Ms. Justino da Cruz as its Co-Rapporteur. Lively discussions occurred during the course of the sessions. The Group had its last workshop session on 15 June 2009.

II. SUMMARY OF THE DISCUSSIONS

A. Alternatives to Pre-Trial Detention

1. Police Power in releasing Suspects on Bail

The powers available to police in fixing bail in some cases and releasing suspects without being indicted varies from one jurisdiction to another. However, in some countries, the discretionary powers of police during investigation appear to be similar in some ways. For instance, in the criminal justice systems of Brazil and the Solomon Islands, police can fix bail in less serious offences, and in Brazil, only the judge has the power to release a suspect on conditions. In Nepal, the police can release a suspect with the consent of the public prosecutor.

One participant from Japan stated that in Japan, police can release suspects but sometimes public prosecutors view this as not proper. The reason is that although police might think that the case is not serious the public prosecutors might think otherwise. Thus, it is believed that police judgments in some cases are not adequate at times.

The above views show that although having power to release suspects by police would contribute to avoiding unnecessary detention and overcrowding in correctional facilities, the objectives and principles of justice must also be carefully observed.

At the close of the discussion, some members support the idea that police should have discretionary powers to release suspects and on the contrary, some participants think that it is not a good idea to give these powers to the police because of the possibility that the powers might be abused.

2. House Arrest or Detention by Police

The first subject of discussion was house arrest or detention by police. In some countries, after a suspect has been arrested, he or she must be referred to a judge who decides whether the suspect should be released or not. In some countries which are represented in the group, if a judge releases a suspect restrictions can often be imposed.

In some jurisdictions, such as Japan, the police arrest and then refer the suspect to public prosecutors (within 48 hours) who then decide whether to seek detention or not. If a prosecutor decides not to ask a court for detention then the suspect can be released without any restrictions. The police sometimes release a suspect to his or her home but no restrictions may be imposed.

In discussing the issue of house arrest, the use of monitoring systems was also touched on. It is understood that this system is used in some countries. Some expressed the view that this system is not appropriate pre-trial because the suspect is yet to be convicted. Also, it might be against human rights principles.

It was pointed out by some members that although house arrest is an effective measure against overcrowding, the rights of the suspect/accused must also be considered. It was also expressed that there should be a balance between the rights of the suspect and the need to protect evidence from destruction. Some participants argued that house arrest is only necessary for serious offences.

In spite of the various views expressed, the group agrees that house detention is an effective measure to alleviate overcrowding. However, the issues such as human rights and costs also need to be considered. These must also be balanced with the need to protect the destruction of evidence, the need to avoid absconding and the need for maintenance of public safety.

3. Submission to Supervision of a Person or an Institution

As far as the countries represented in the group are concerned, this alternative to incarceration is practiced in some countries and not in others.

This supervision is practiced only in relation to juveniles and some participants expressed the view that this is not effective. The importance of the responsibility of supervisors was also discussed. It is a good measure against overcrowding but only if supervision is effective.

4. Electronic Monitoring

As far as the countries represented in the group are concerned, this system is yet to be introduced in their respective systems. Most members commented that the system is hard to implement and would be very expensive. On the contrary, one argued that although the system might be expensive, it is better than keeping innocent persons on remand in jail for a long period of time. Some expressed the view that this system is necessary in some societies, especially in relation to sex-offenders. Others think this system infringes upon human rights.

5. The Prohibition of the Suspect from Leaving a Particular Area

It appeared from the discussion that this is used in some countries and not in other countries. In countries where this is used, the procedural stage where this is used varies. For example, in Japan the above measure can only be used after indictment, as a condition attached to bail, by a judge. In other countries, this measure is used even before indictment and is often a condition attached to bail. In most countries this measure is applied only in relation to petty offences.

According to the discussion, this is believed to be effective and working well on the presumption that suspects who are released with this condition attached often observe this order because of fear of being detained again for breach of the condition.

In Japan, as in other countries, one reason why suspects are detained during investigation is because of the need to prevent interference with investigation or destruction of evidence. Also, accomplices are sometimes not released during the investigation period because of the possibility that they might conspire to defeat the course of justice.

In conclusion, of the discussion regarding the above subject, it appears that all members of the group agree that this is a good measure, but there is a need for effective supervision to avoid issues such as interference with investigation or the destruction of evidence.

6. Investigation without Arrest

Each member of the group explained the system in their respective countries regarding arrest during and after investigation. In some countries, police can arrest a suspect during investigation; however there are some cases in which the police must obtain a warrant of arrest from a judge before arresting a suspect. In relation to minor offences, suspects can be released within a few hours of arrest.

In Japan and other countries, for minor offences, whether a suspect is arrested or not, the investigation continues and the suspect is usually not detained. In some countries the arrest of the suspect is mandatory, but the decision to release a suspect can only be made by a judge or a prosecutor.

In conclusion, in some countries it is difficult for investigators to investigate without the arrest of the suspect because of the possibility of destruction of evidence, absconding and safety of the suspect, victims and witnesses. The group agrees that police having the discretion to release suspects in minor cases can contribute to alleviating overcrowding. Some participants were quite sceptical about giving that discretion to the police because of the possibility of the abuse of power.

7. Prohibition of the Suspect/Accused from appearing at Identified Places or meeting Named Individuals

Most of the participants indicated during the discussion that prohibiting a suspect or an accused from appearing at identified places or meeting named individuals is an order which courts often impose.

In Japan and the Solomon Islands, this is sometimes imposed as a bail condition when a judge grants bail to a suspect or an accused. The objective is mainly to prevent the destruction of evidence and to prevent accomplices from conspiring to defeat the course of justice.

In Brazil, this is stipulated in the law, with the aim of protecting victims, such as victims of family disputes, but it is not applied as a bail condition.

The group agrees that this is a good alternative to pre-trial detention but sometimes lacks effective supervision. However, some participants argued that this seemed to work well as people often report to Public Prosecutors any breaches or failure to comply with the condition/order by the suspect.

The group accepts that in developing countries, sometimes suspects cannot afford to meet certain bail requirements such as the need to deposit certain amounts of money.

However, this may not be a big problem as one participant from Japan pointed out that in Japan, when a suspect is unable to pay the bail bond required of him or her, an association does exist and can assist in paying the bond.

The group unanimously agrees that the payment of bail bonds is a good measure and it is important for the establishment of associations to assist suspects regarding bail bonds.

8. Confiscation of Passport of the Suspect

This measure is used in most of the countries represented. Some participants also indicated that the courts can also have the discretion to make an order preventing the suspect from applying for a passport if it considers that there is a flight risk.

In Nepal, the investigating authority can make this order in relation to suspects that have been indicted for corruption offences. It is interesting to know that in Nepal, foreigners indicted for offences that carry a maximum penalty of more than six months' imprisonment are not entitled to bail, unless they show exceptional circumstances. This is different from Japan where there is no restriction on bail no matter the severity of the offence. In the Solomon Islands, suspects charged with murder and treason are not entitled to bail unless they show exceptional circumstances. In Brazil, terrorist crimes, practice of torture and drug-related offences, such as drug trafficking, are non-bailable.

Despite the different approaches in applying this measure, the group agrees that this is a good alternative to incarceration and recommends that there should be flexibility in bail to avoid overcrowding.

9. Release with an Order to Pledge Financial or other forms of Property, such as Bail

It is understood that there is criticism of bail because it is believed that it is not applied equally. Some suspects can afford to meet such orders but others cannot.

In concluding this topic, the group agrees that this is a good system however; it is recommended that it is important and necessary for countries that are yet to have associations that can assist suspects with meeting

bail requirements to establish such an association.

B. Diversion from Criminal Justice Procedure

1. Absolute or Conditional Discharge

In most of the countries represented in the group, absolute or conditional discharge is a course applicable by courts and prosecutors.

In Japan, once a case is prosecuted, the prosecution cannot be suspended but withdrawal is possible. In many countries,¹ the decision to suspend or withdraw a matter must be approved by the bosses of the prosecution department and the government. In countries where such a decision is solely made by the prosecutor having carriage of the matter, it was argued that victims who do not agree with any decision to suspend prosecution should be provided with an opportunity to request an independent review of such decision.

2. Decriminalization

Some participants believe that decriminalization of some minor offences is important because it reduces overcrowding and also because judges and prosecutors do not have to be burdened with more cases. One participant however, thinks that decriminalization should not happen because of overcrowding. There are other factors that must be considered before any decision could be made whether to decriminalize or not.

The group seems to agree that the situation differs from one country to another and in some cases, decriminalization of minor offences is effective. However, public opinion must first be ascertained before any decision is made.

3. Restorative Justice

The other topic of discussion was restorative justice. In some countries represented there is no restorative justice. In one or two countries, although there is no requirement under law for restorative justice, it is practiced in the form of reconciliation or compensation. This is often done in minor cases and is used in the criminal justice process.

The participant from Colombia informed the group that Restorative Justice is an alternative mechanism which is practiced in his country. He explained what restorative justice is and its different forms which include:

- Restitution/Compensation;
- Community work;
- Individual reparation;
- Collective reparation;
- He further indicated that the period for completing restorative justice is 60 days. If not completed within this period then prosecutors will proceed with the case in court. Resolving a case through this system prevents a case from entering the criminal justice process. In Colombia more offences are resolved through an established Reconciliation Office. This is an independent office.

In some countries represented, there is no restorative justice and in some countries, there is no strict or formal legal requirement for it but it is used in the criminal justice system, for instance, matters are sometimes resolved by way of reconciliation. Although this is not in a strict sense restorative justice, it is somehow appears to be a form of restorative justice.

The group then identified the merits and demerits of Restorative Justice. The merits are:

- Alleviates overcrowding;
- Saves time and money;
- It lessens the burden or workload on police, public prosecutors and judges;
- It satisfies victims;
- It avoids stigmatization of offenders.

The demerits are:

- Lack of specific and general deterrence;
- Recidivism cannot be avoided;

¹ Countries represented in Group 1.

- Possibility of victim being disadvantaged in the mediation process;
- Possibility of unfair treatment for some offenders (risk of injustice to some offenders);
- Public insecurity.

The group agrees that what may be considered a serious offence in one country may not be a serious offence in another country. What may be seen as minor offences in some countries might be serious offences in other countries.

However, the group tends to agree that Restorative Justice may and should only be applied to offences which are considered to be minor offences in each country.

The group recommends that the establishment of an independent and neutral mediating body in the process is fundamental.

C. Speedy Trial Measures

1. Summary Proceeding and Speedy Trial

Each participant from the countries represented informed the group of the current situation in their countries in relation to speedy trial.

In Japan, there are two processes, one is the summary proceeding and the other is the speedy trial. In a summary proceeding, if the punishment for an offence is equivalent to a fine, trials may not be held. Instead, the evidence documents are sent to the judge after indictment and the judge then makes a decision.

Speedy trial in Japan is used to shorten the time period between indictment and trial and is used mainly in minor drug offences, immigration related offences, etc., where the execution of an imprisonment sentence must be suspended.

It is obvious from what was said by the participants that in most of the countries, there is lack of such a speedy trial procedure. Suspects therefore have to be detained for longer periods of time in prisons.

The group identified some common factors of lack of speedy trials. These include:

- No fixed timeframe for investigation and prosecution;
- Minimum number of judges in some countries;
- Legal frameworks, such as procedures, sometimes unclear and lengthy;
- Behaviour of stakeholders such as defence lawyers (e.g. intentional delaying of cases).

2. Pre-Trial Preparation System

Discussion started with the focus on the new pre-trial preparation system which was introduced in Japan in 2005. The process, as explained by a Japanese participant, allows for the screening of the facts and the legal issues. This is where the public prosecutor, the suspect or his or her lawyer and the judge discuss what evidence would be produced in court. The judge cannot scrutinize the content of the evidence.

It is designed with the aim of reducing the trial period, court sessions and time between conclusion of hearing and the pronouncement of judgment/sentence. One participant from Japan explained that based on his personal experience, some of the cases were finalized within two months, so this system is not disadvantageous for the accused.

The new pre-trial preparation/trial arrangement is similar to pre-trial conference in the Solomon Islands. In the Democratic Republic of Congo, pre-trial preparation is done only for minor offences. This is not practiced in other countries represented.

The group therefore agrees that this is a very good system because it:

- reduces the length of detention (remand period) and reduces the time period for trial;
- reduces and avoids overcrowding;
- avoids wasting of court resources and allows for speedy trials.

III. RECOMMENDATIONS

1. There is a need to fix timeframes for investigation and prosecution; however, the timeframe may be extended depending on the nature of each case;
2. There is a need for flexibility in the recruitment procedure or policies and appointment of sufficient numbers of judges;
3. The use of summary proceedings is recommended to avoid wasting time and resources;
4. There is a need to utilize pre-trial preparations or arrangements.