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## REPORTS OF THE SEMINAR

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### **GROUP 1**

#### **EFFECTIVE MULTI-AGENCY COOPERATION IN TERMS OF IMPLEMENTATION OF NON-CUSTODIAL MEASURES AT EACH STAGE OF THE CRIMINAL JUSTICE PROCESS**

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<b>Chairperson</b>	Mr. Allah Dad ROSHAN	(Pakistan)
<b>Co-Chairperson</b>	Ms. Hosne Ara AKTER	(Bangladesh)
<b>Co-Chairperson</b>	Mr. Takeshi JIMI	(Japan)
<b>Rapporteur</b>	Mr. MIN Kyaw Thu	(Myanmar)
<b>Co-Rapporteur</b>	Mr. Yuichiro WAKIMOTO	(Japan)
<b>Members</b>	Mr. Thachvud PUTTISOMBAT	(Thailand)
	Mr. Joseph Kala MUASYA	(Kenya)
<b>Visiting Expert</b>	Ms. Beverly Diane WILLIAMS	(USA)
<b>Adviser</b>	Prof. Ayuko WATANABE	(UNAFEI)

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### **I. INTRODUCTION**

Group 1 started its discussion on 22nd January 2016. The Group unanimously elected Mr. Allah Dad ROSHAN as its Chairperson, Ms. Hosne Ara AKTER and Mr. Takeshi JIMI as its Co-Chairpersons, Mr. MIN Kyaw Thu as its Rapporteur and Mr. Yuichiro WAKIMOTO as its Co-Rapporteur. The Group had ten sessions, discussing the issue of multi-agency cooperation under the topic, “Effective Multi-Agency Cooperation in Terms of Implementation of Non-Custodial Measures at Each Stage of the Criminal Justice Process.”

### **II. SUMMARY OF THE DISCUSSION**

#### **A. Justifications**

Why is multi-agency cooperation necessary in criminal justice? Why should the Group discuss it? Firstly, we need it to reduce recidivism. Secondly, it is necessary to facilitate offenders’ smooth transition, as well as reintegration, into the community. Thirdly, multi-agency cooperation promotes alternatives to custodial measures, which are considered cost-effective and humane. And lastly, the community is safely protected through multi-agency cooperation. In light of the multi-faceted needs and challenges of offenders, the importance of engaging relevant agencies in the community cannot be over-exaggerated; no one agency can single-handedly deal with crime prevention and treatment of offenders. For these reasons, the Group discussed multi-agency cooperation.

#### **B. Method of Discussions**

Multi-agency cooperation can take place in every stage of the criminal justice process. Therefore, the Group discussed the issue taking three stages into consideration, namely, pre-trial, trial and post-trial stages. And, for the purpose of in-depth analysis of multi-agency cooperation, the Group divided the topic into sub-topics in the following manner; 1) types of offenders who benefit from multi-agency cooperation, 2) ideal structure of multi-agency cooperation, 3) information analysis of offenders and information sharing, 4) problems of legislation, and 5) evaluation of treatment provided through multi-agency cooperation.

#### **C. Contents of Discussions**

##### **1. Types of Offenders Who Benefit from Multi-Agency Cooperation**

To begin with, the Group discussed what should be the targeted population for multi-agency cooperation. This led to the following questions: what types of offenders are most appropriate for multi-agency cooperation; what types of offences are most appropriate; and how can we identify them?

As to targeted population, some members argued that we should exclude such offences as corruption, treason, terrorism and other forms of offences that are deemed unsuitable due to their anti-social nature; others contended that even those offences can be included in the multi-agency cooperation scheme if the offenders’ characteristics are appropriate for it. In this regard, the Group agreed that the focus should be

on the offender rather than the offence.

In the following discussion, the Group unanimously pointed out that underprivileged and/or vulnerable offenders such as handicapped offenders, juvenile offenders, elderly offenders, and offenders suffering from serious chronic illness should be considered for multi-agency cooperation schemes given their needs and challenges; their needs and challenges are better addressed when relevant community agencies' interventions are available. In addition, the members stated that lower-risk and first-time offenders are more appropriate than high-risk and habitual offenders; the former is fit for diversion whereas the latter needs formal criminal justice proceedings.

To identify such offenders/offences, the Group stressed the importance of assessment, which should be conducted in consideration of the offenders' personal characteristics (i.e., age, behaviour, health conditions, employment, educational background, economic status, prior criminal record, etc.) as well as social environment (i.e., housing/accommodation, family background, neighbourhood environment, etc.).

It should be noted that "housing (accommodation)" may lead to different decision-making according to the stages of criminal justice. Offenders who have no place to go after their release from prison are candidates for multi-agency cooperation; halfway houses or other forms of housing arrangements should be considered to facilitate their smooth re-entry into the community. Homeless offenders in the pre-trial stage, on the other hand, are more likely to be detained due to their high risk of absconding.

Drug addicts are another example where some members stated different opinions. Some insisted that drug addicts in the pre-trial stage should be taken out of the formal criminal justice process to be placed under medical treatment. Meanwhile, other members maintained that drug addicts in the pre-trial stage should be formally prosecuted because of their high recidivism rate. The difference of opinions resulted from views on "drug addiction" in each jurisdiction; drug addicts are considered either "patients in need of medical interventions" or "criminals who repeatedly commit drug offences" depending upon the jurisdictions and criminal justice practices.

## 2. Ideal Structure of Multi-Agency Cooperation

What is an ideal structure of multi-agency cooperation? To effectively explore the issue, the Group examined 1) related agencies and 2) possible dispositions regarding diversion, and 3) problems and challenges of the existing structures.

In each stage of the criminal justice process, particular agencies are responsible for diversion of offenders in cooperation with community resources. For example, in the pre-trial stage, the investigative agencies (the police and prosecutors' offices) mainly deal with diversion of offenders; probation offices, the judiciary, defence lawyers, and other community resources are involved depending on the nature of the cases.

At trial stage, it is the courtroom workgroup, i.e., the judiciary, public prosecutors and defence counsel, that are responsible for diversion, with probation offices and detention centres being partners. At the post-trial stage, probation offices, parole boards and prisons are involved in releasing offenders into the community.

The Group agreed that, to implement release, diversion or reintegration of offenders to the community, criminal justice agencies need cooperation from non-criminal-justice agencies such as hospitals, welfare facilities, NGOs and public offices, regardless of the stages.

Some members expressed concerns, stating that private entities and the community are reluctant to be involved in offender treatment because of potential risk. Others, however, felt this hurdle can be remedied through active use of incentives such as subsidies, tax reduction, rewards, prizes, and honours, quoting an example regarding successful utilization of Japan's volunteer probation officer system.

Possible dispositions (i.e., non-custodial measures) in each stage are as follows: in the pre-trial stage, discharge, bond/cash bail and suspension of prosecution; in the trial stage, acquittal, fine, suspended sentence and suspended execution of sentence; and in the post-trial stage, parole, remission and pardon.

162ND INTERNATIONAL SENIOR SEMINAR  
REPORTS OF THE SEMINAR

The Group, however, found that non-custodial measures available are different according to the jurisdictions due to differences in legal framework. One typical example is Japanese public prosecutors' discretionary suspension of prosecution; they, at their discretion, can suspend prosecution even when enough evidence to establish guilt is available. Another example is restorative justice and ADR (Alternative Dispute Resolution) utilized in some members' states; in these measures diversion is informally implemented heavily depending upon community resources.

The Group agreed that, for the ideal implementation of multi-agency cooperation, stakeholders and relevant agencies need inter-linkages, consultation, and information-sharing; MoUs should be signed where necessary.

The Group further discussed that multi-agency cooperation does not work when there is a lack of trust, legislation, coordination, institutional confidentiality or when bureaucratic barriers and negative responses from the community are in place.

The Group concluded that an ideal structure can be put into practice when dispositions available in each stage match the community resources available with coordination, inter-linkage and information sharing among such agencies.

### 3. Information Analysis of Offenders and Information Sharing

Subsequent to the previous discussion, the Group moved on to discuss "information analysis of offenders and information sharing". First of all, agencies need offenders' information to effectively carry out interventions. The Group, however, could not draw a clear line on information sharing because of different judicial, cultural and historical backgrounds. Yet the Group agreed that necessary information is the same as what has been discussed regarding assessment, i.e., prior criminal records; medical records; economic, employment, housing status; educational background; family and neighbourhood environment; situations of victims; and so on.

Through discussions, the Group found that there are challenges regarding information sharing; the agencies cannot disclose information to protect offenders' privacy as well as victims'. In addition, information sharing is difficult if agencies' confidentiality policy is present. This issue is further complicated if the nature of information is sensitive (e.g., criminal records) especially when the private sector is included in the scheme. Moreover, not all offenders are willing to disclose their personal information.

In this regard, some members contended that the agencies should obtain offenders' consent in advance before sharing their information with relevant organizations.

### 4. Problems of Legislation

The Group found that no jurisdictions have legislation that specifically and exclusively deals with multi-agency cooperation although all the jurisdictions have such fundamental acts as the Penal Code, the Criminal Procedure Code, the Prison Act and the Probation Act. In other words, legislation regarding linkage as well as coordination among stakeholders and relevant agencies does not exist.

For this reason, some members stated that, to fill the gap among existing acts, MoUs (Bilateral, Multi-lateral) and/or agreements among agencies should be signed. Others contended that a law exclusively intended for multi-agency cooperation should be enacted. Some others, however, showed concerns; they pointed out that despite such measures, political interference, corruption, insufficient budgetary allocation and bureaucratic barriers may disrupt smooth coordination/inter-linkage among agencies.

### 5. Evaluation of Treatment Provided through Multi-Agency Cooperation

The Group agreed that evaluation is necessary to understand how effective/ineffective multi-agency cooperation is. Therefore, the Group discussed 1) indicators of success, 2) evaluating bodies, and 3) timing of evaluation.

The Group identified the indicators of success as follows: lowered recidivism rate, reduction in prison overcrowding through the frequent use of non-custodial measures and multi-agency cooperation, expanded sentencing options (non-custodial measures) resulting from multi-agency cooperation, and positive feedback

from the community.

The evaluating bodies should be concerned agencies such as the judiciary, probation offices, public prosecution offices, prisons, and the police. Some members stated that an independent body's monitoring is useful for the purpose of unbiased research and analysis. The Group pointed out that the result of the evaluation should be open to the public whenever possible to invite feedback by means of mass media, public forum, seminar, social media and so on. Evaluations should be conducted on an annual basis in consideration of the calendar/fiscal year.

### III. CONCLUSION AND RECOMMENDATIONS

The Group discussed multi-agency cooperation to reduce recidivism, to facilitate offenders' smooth reintegration into the community, to promote non-custodial measures, and to establish a safer environment. The discussions centred on types of offenders/offences, structure of cooperation, information sharing, legislation and evaluation.

With those in mind, the discussions covered three stages of criminal justice proceedings, i.e., pre-trial, trial and post-trial stages. As it turned out, however, the Group could not find any significant differences among stages although the post-trial stage is slightly different from the other two stages because prisons, probation services and NGOs are more involved than in the earlier stages.

Based upon the preceding discussions, the Group came up with recommendations as follows:

For all the parties concerned

- Collective effort on cooperation among different agencies should be encouraged.
- System of information sharing should be established; the issue of privacy and confidentiality, however, should be addressed especially when agencies of the private sector are included.
- Legislation, agreements and MoUs should be considered to facilitate coordination among agencies.

Mainly for CJ agencies

- More options of non-custodial measures should be introduced through such technology-based interventions as electronic monitoring, drug testing devices and others.
- A national database of offenders should be established for the CJ agencies' easy access to information.
- Maintaining good practices and benchmarking based upon the results of evaluations is encouraged.
- Training and research are necessary.

Mainly for the private sector

- Employment and housing for ex-offenders should be more available and accessible.
- Incentives (e.g., subsidies, tax reduction, rewards, prizes and honours) should be provided to motivate agencies of the private sector; sufficient budget allocation is necessary as well.

For the general public

- Public awareness should be raised.

The Group, in conclusion, unanimously agreed that the goal of criminal justice is achieved if the gap

162ND INTERNATIONAL SENIOR SEMINAR  
REPORTS OF THE SEMINAR

among agencies is bridged, seamless interventions are made, and non-custodial measures are more effectively utilized through multi-agency cooperation in the treatment of offenders. Although the Group was unable to cover every aspect of multi-agency cooperation due to the participants' different experiences and backgrounds, the Group did discover possible systems and ways forward for the betterment of society.