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Addendum

Workshop 5. Strategies and Best Practices against Overcrowding in Correctional Facilities

Proceedings

1. At its 10th and 11th meetings, on 16 April 2010, Committee I held the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities. The Workshop was organized in cooperation with the following institutes of the United Nations crime prevention and criminal justice programme network: the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and the International Centre for Criminal Law Reform and Criminal Justice Policy. The Committee had before it the following documents:

(a) Background paper on the Workshop on Strategies and Best Practices against Overcrowding in Correctional Facilities (A/CONF.213/16);

(b) Discussion guide (A/CONF.213/PM.1);

(c) Reports of the regional preparatory meetings for the Twelfth Congress (A/CONF.213/RPM.1/1, A/CONF.213/RPM.2/1, A/CONF.213/RPM.3/1 and A/CONF.213/RPM.4/1).

2. The workshop was moderated by Hans-Jörg Albrecht, Director of the Max Planck Institute for Foreign and International Criminal Law of Germany. Twenty presentations were made during the Workshop.

3. At the 10th meeting, an introductory statement was made by a representative of the Secretariat, followed by a welcoming statement by the Director of the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

4. Statements were made by representatives of Italy, Morocco, the Russian Federation, Azerbaijan, Brazil and the Dominican Republic and the observers for the Friends World Committee for Consultation and Penal Reform International.



5. At the 11th meeting of the Committee, statements were made by the representatives of Canada, Brazil and Algeria. A statement was made by the observer for the International Commission of Catholic Prison Pastoral Care. A statement was made by an individual expert.

General discussion

6. In an introductory statement, a representative of the Secretariat referred to the negative impact of prison overcrowding and the factors contributing to it. She stressed the importance of addressing prison overcrowding in a comprehensive and multisectoral manner, referred to possible strategies to deal with overcrowding and recalled recent activities undertaken by the United Nations Office on Drugs and Crime (UNODC) in providing guidance and assistance to countries in the area of prison reform, including the development of the draft rules for the treatment of women prisoners and non-custodial measures for women offenders.

7. In his statement, the Director of the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders recalled that overcrowding in correctional facilities was among the most pressing issues faced in many parts of the world. Prison overcrowding infringed on the basic rights of inmates and undermined the overall effectiveness and efficiency of the criminal justice system.

8. The first presentation, on the current situation concerning prison overcrowding, underlined the fact that overcrowding is the most important cause of the failure of States to meet minimum standards for humane treatment for many of the 10 million prisoners held worldwide. The panellist addressed the implications of prison overcrowding and explained some of the problems encountered in measuring the nature and extent of overcrowding. The panellist presented data of the International Centre for Prison Studies on known occupancy levels in prison systems in various regions, and argued that while high rates of overcrowding were not necessarily linked with high rates of imprisonment, they were related to high proportions of pretrial detainees in prison populations.

9. The second presentation focused on the main causes of prison overcrowding, including the following: excessive use of pretrial detention; punitive “tough on crime” policies; lack of alternatives to imprisonment; rigid sentencing systems; restrictive and rigid early-release practices and rigid revocation procedures; high re-offending rates resulting from the lack of or inadequate in-prison and community rehabilitation programmes; and criminal justice systems carrying out tasks that could better be administered by social, health and other services. In addition, more general structural and cultural factors, such as fear and concern over safety and security, public pressure, media impact, socio-economic equality and security, and political culture, can also have an impact on the problem of prison overcrowding. In conclusion, with the necessary political will, prison overcrowding could be counteracted and prisoner rates could be reduced.

10. In the third presentation, on measures to alleviate prison overcrowding, the panellist stated that prison overcrowding was often associated with problems of governance, a weak economy and the inefficiency of the criminal justice system. To alleviate prison overcrowding, the number of admissions and the length of sentences could be reduced. Reliable and up-to-date data were required in that regard. He recalled that strengthening the rights of inmates by empowering non-governmental

organizations assisting inmates could help alleviate the problem. Tackling prison overcrowding by building more prisons was expensive, and could have the opposite effect, causing greater overcrowding in the long term and reinforcing reliance on imprisonment and deprivation of liberty. Diversion should be considered for prisoners with drug addiction and for the mentally ill. Finally, restorative justice and mediation programmes were useful for reducing the length of prison sentences.

11. The presentation on penal reform and prison overcrowding in Latin America and the Caribbean emphasized the importance of identifying the cause of overcrowding in order to effectively reduce it and, in that regard, reference was made to the effects of inequality of income distribution on crime and on prison overcrowding. The panellist underlined that public policies for crime prevention and criminal justice should be accompanied by policies to reduce inequalities of income and wealth distribution. In conclusion, constructive models could be found in Costa Rica and the Dominican Republic, which had undertaken comprehensive reforms of the penitentiary system, leading, *inter alia*, to the reduction of prison overcrowding.

12. The presentation on human development and overcrowding in correctional institutions examined the complex relationship between crime and development: while crime was a factor of underdevelopment, development could, however, lead to an increase in crime. With the exception of the Libyan Arab Jamahiriya, Seychelles and Mauritius, African countries that ranked high on the Human Development Index tended to have less prison overcrowding than those ranking low. In the region, prison overcrowding was mainly the result of prolonged detentions caused by delays in commencing trials and in waiting for appeal verdicts.

13. The first panel presented strategies for the reduction of prison populations through diversion, informal and restorative justice and alternatives to imprisonment. The first panellist presented the experience in Thailand of a drug policy that had caused the greatest degree of prison overcrowding in the country's history. The key reform initiatives undertaken to address the problem included the creation of a diversion scheme for drug offenders, the introduction of restorative justice measures for juvenile offenders and strategies to enlarge the scope of probation work. Key lessons drawn from that experience: the debate over the choice of decriminalization versus conditional diversion was of relevance; there was a need for the coordinated management of dual-track diversion schemes; and community participation played an essential role. Another panellist presented the strategies used to reduce prison overcrowding in Uganda, which included a strategic partnership between government and civil society for providing legal aid services, the use of multidisciplinary teams in providing legal aid service, using traditional justice mechanisms, mediation and reconciliation, legislative and policy amendments, the mandatory provision of *pro bono* services by all lawyers, and support for initiatives such as the Paralegal Advisory Service. One panellist made a presentation on the Paralegal Advisory Service in Malawi, which provided practical, affordable and effective legal aid services. Through the Service, paralegals could assist, in particular, poor people in obtaining advice on bail or appeal, trace parents and guardians and assist in mediation in civil cases and petty offences. Furthermore, paralegals assisted in empowering prisoners to apply the criminal law and procedures appropriately in their own case and facilitated sessions including magistrates screening the remand caseload.

14. During the panel, a presentation was made on the factors contributing to the reduction of prison overcrowding in Japan in recent years. In that regard, reference was made to the decrease in the number of reported crimes, the construction of new correctional facilities, as well as the national system for overseeing pretrial detention. The panellist recalled that the use of pretrial detention was limited in practice and that there were provisions for the speedy trial procedures for less serious offences. In addition, the national system of diversion contributed to the reduction of pretrial detention. Another panellist was of the view that the excessive use of pretrial detention could be successfully tackled through various measures such as law reform, the early assignment of defence counsels or paralegals, electronic monitoring and programmes to deal with case backlogs. Measures to decrease the use and duration of pretrial detention included legislative and policy frameworks ensuring that police and pretrial detention were used only when absolutely necessary; encouragement of the use of pretrial release options; the requirement that pretrial detention be decided by a competent authority and be set for a determined period of time; and the requirement that trials be held within a reasonable period of time, after which detention could not continue. Finally, he stressed that special measures should be developed and applied in cases of offenders who were mentally ill or dependent on drugs. The final panellist stated that restorative justice in the criminal justice systems was a way to respond to offending and the effects of crime that placed those affected by the crime at the centre of the process, and he underlined that a common element of successful restorative justice processes was the involvement of the local community and the involvement of existing groups dealing with problems in local communities. Incorporating restorative justice as a mandatory practice at all court events would go some way to lowering the imprisonment rate and reducing reconviction rates.

15. During the discussion that took place at the end of the first panel, several speakers detailed their respective national experiences in reducing overcrowding, referred to the benefits of increasing the use of alternatives to detention and imprisonment and emphasized the importance of focusing on access to justice and restorative justice.

16. The second panel concerned strategies for reducing prison populations at the sentencing and post-sentencing stages. The first panellist outlined the experience of Brazil in implementing alternatives to imprisonment in order to reduce overcrowding. She provided an overview of the use of alternative sentences and trends in the growth of the prison population. There was a need to address the issue of overcrowding in a strategic manner, establish limits to imprisonment, develop sentencing guidelines and ensure equal access to justice. Raising public awareness was key to achieving success. The second panellist explained that the first element of a strategy to address prison overcrowding was determining the maximum capacity of prisons, and proposed that the judiciary be given the responsibility of determining the limits to incarceration. The second element of such a strategy was the increased use of alternatives to imprisonment and early release. She gave the successful example of Uruguay, where legislation had been amended to limit imprisonment and increase the use of early release, followed by after-care. The third panellist focused on the holistic, rehabilitative approach adopted in Singapore to achieve a significant reduction in the prison population by reducing the rate of recidivism. Under that system, prison officers took on the role of personal supervisors of a group of prisoners and, following a thorough assessment of the

prisoners' background and needs, they planned staged programmes for their effective rehabilitation, with support extending to the period following release. The prison service cooperated with social welfare agencies in the community to ensure comprehensive support for ex-prisoners. The fourth panellist focused on how parole could be used to reduce prison overcrowding. The presentation considered risk assessment, looking at key risk factors and the management of risk. It considered protective factors contributing to an effective risk management strategy vis-à-vis offenders. The panellist concluded with a short assessment of what constituted success in parole decisions and recommended that parole be used in the appropriate cases as an effective part of the strategy to tackle prison overcrowding.

17. The third panel reviewed strategies to secure support for the reduction of prison populations. The first panellist provided an overview of how prison overcrowding was reduced in Thailand through the development of a probation system and by ensuring community participation and introducing legislative reforms. The second panellist reviewed a key strategy to reduce prison overcrowding in the framework of a project in Singapore: a campaign to engage communities and bring about societal acceptance of ex-offenders and their families. The project, operating successfully for more than six years, provided a coordinated approach for creating awareness, generating acceptance and inspiring action within communities to support the rehabilitation and reintegration of ex-offenders. The third panellist considered the issue of alternatives to imprisonment in Africa and ways to ensure successful implementation. He underlined that involving the community in the criminal justice process at the pretrial, post-sentencing and post-release stages was a key requirement. Community participation was especially important for reaching a restorative outcome. The second key requirement was moving from a punitive and retributive approach to a restorative approach in responding to crime, in order to complement the role of the community. The fourth panellist underlined the importance of ensuring public awareness about parole, and provided examples of initiatives undertaken in England and Wales of the United Kingdom so that the public and key stakeholders, such as judges, would accept use of parole and facilitating their constructive involvement in its implementation. The presentation was followed by a film on the Parole Board for England and Wales. The fifth panellist focused on the subject of responsibilities and accountability with respect to prison overcrowding. He underlined that overcrowding, which had led to a humanitarian disaster in many countries, was a situation involving many institutions, and thus, there was a need to devise comprehensive strategies. A major challenge was determining what institutions were willing to do to reduce overcrowding and help sustain positive action in that regard. He stated that not all policies directed at preventing crime were compatible with the goal of reducing crime, noting that politicians promoted strategies that sent large numbers of people to prison.

18. At the conclusion of the Workshop, one speaker highlighted the difficulties encountered in exercising religious rights in overcrowded prisons. Another speaker provided information about how systemic inefficiencies had been addressed in his country through the establishment of a steering committee whose membership comprised key justice institutions. One speaker noted that in order to reduce the number of people imprisoned, there was a need to improve the re-socialization of offenders, and Governments needed to invest in crime prevention. Another participant underlined that overcrowding was a challenge in his country and that

imprisonment should no longer be viewed as the only response to offending behaviour. He noted that there were challenges in implementing alternatives to prison, owing to public pressure for tougher responses to crime. Another participant explained that in his country, efforts were being made to reform the criminal justice system, one goal being to reduce prison overcrowding. Initiatives focused on social reintegration to reduce recidivism.

Conclusions and recommendations

19. The Workshop reached the following conclusions:

(a) Overcrowding in correctional facilities was one of the most serious impediments to compliance by Member States of relevant United Nations instruments and standards and norms and violated the human rights of inmates;

(b) Crime was a social problem to which criminal justice systems could provide only part of the solution. Taking action against poverty and social marginalization was key to preventing crime and violence and, in turn, reducing prison overcrowding;

(c) Member States should define prison overcrowding as an unacceptable violation of human rights and consider establishing a legal limit of their prison capacity;

(d) Member States should consider reviewing, evaluating and updating their policies, laws and practices to ensure the development of a comprehensive criminal justice strategy to address the problem of prison overcrowding, which should include reducing the use of imprisonment and increasing the use of alternatives to prison, including restorative justice programmes;

(e) Policies and strategies to address prison overcrowding should be evidence-based;

(f) Member States should implement reforms and strategies to reduce overcrowding in a manner that is gender-sensitive and that effectively responds to the needs of the most vulnerable groups;

(g) Member States are encouraged to review the adequacy of legal aid and other measures, including the use of trained paralegals, with a view to strengthening access to justice and public defence mechanisms to review of the necessity of pretrial detention;

(h) Member States are invited to conduct a system-wide review to identify inefficiencies in the criminal justice process that contribute to prolonged periods of custody during the pretrial and trial processes, and to develop strategies to improve the efficiency of the criminal justice process, which includes measures to reduce case backlogs, and to consider introducing time limits on detention;

(i) Member States should be encouraged to introduce measures providing for the early release of prisoners from correctional institutions, such as referral to halfway houses, electronic monitoring and reduction of sentences for good behaviour. Member States should consider reviewing their revocation procedures to prevent the unnecessary return to prison;

(j) Member States are invited to develop parole and probation systems;

(k) Member States should ensure effective implementation of alternatives to imprisonment by providing necessary infrastructure and resources;

(l) Member States should promote the participation of civil society organizations and local communities in implementing alternatives to prison;

(m) Member States should raise awareness and encourage comprehensive consultative processes, involving the participation of all relevant sectors of government, civil society, in particular victims' associations, and other stakeholders in the development and implementation of national strategies, including action plans, to address overcrowding;

(n) Member States should ensure that evidence-based information on crime and criminal justice is communicated to legislators, politicians, decision makers, criminal justice practitioners, the public and the media. For this purpose, Member States should be encouraged to continue research on factors contributing to prison overcrowding;

(o) Relevant offices and bodies of the United Nations working on different issues relevant to the problem of prison overcrowding should strive to better coordinate their activities and initiatives in order to more effectively assist countries in reducing prison overcrowding;

(p) UNODC should continue to provide assistance and support to countries, upon their request, to address prison overcrowding.
