

THE UNIVERSITY OF HULL

Colonial Penalty: A Case Study of Hong Kong's Penal Policy and
Programmes under British Administration (1945-1997)

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Abstract:

Penal policies and programmes for the control and management of offenders have always been essential in maintaining law and order in the colonial setting. Hong Kong, being one of the few remaining British crown colonies in the twentieth century, is used as an example in this thesis to illustrate how colonial penalty was developed after the Second World War.

Penal policies and programmes in Hong Kong divorced gradually from the British practices after the Second World War and ended with significant differences in 1997 when Hong Kong was handed back to China. This thesis explores in detail how penal policies and programmes were developed in Hong Kong from 1945 to 1997. Roles of the British administrators in London and Hong Kong, local elites and the community at large in the policy making process are studied and suggestions given to explain why Hong Kong only transported certain penal policies and programmes from England after the War. The differences in timing for the implementation of these adopted policies as well as penal policies and programmes which were developed entirely locally are examined.

This former British colony is claimed to be one the safest cities in Asia. Penal policies and programmes in Hong Kong are used to explain how they contributed towards the maintenance of law and order in Hong Kong and their relationship with the interwoven political, social, cultural and economical factors and social institutions which helped transforming Hong Kong into a world class city whilst under the British administration.

This case study of colonial penalty in post-War penal policy and programme development in Hong Kong would provide insights and contributions in the fields of historical and comparative penology.

Samson Chan

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I must mention Professor Carol Jones in the acknowledgements as she had inspired me to look for academic advancement in the area of penology. She had encouraged me to learn more on this subject as well as to contribute on what I have learnt to those working in the correction profession and academics interested in the penal history of Hong Kong. When I was thinking of taking up a full-time PhD programme shortly before my retirement, I have consulted Professor Jones for advice and she had promptly referred Professor Peter Young to me who had kindly agreed to be my PhD supervisor.

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This thesis is of my own work and every effort has been made to ensure the correctness of information contained in this thesis. If there are mistakes in this thesis, the responsibility is entirely mine.

Preface

I started my career as a young Prison Officer with the then Prisons Department in Hong Kong in 1974. I worked in the Department for 32 years and retired from the Correctional Services Department in 2006 with the rank of Assistant Commissioner. I have witnessed changes of the Department not only the change of the name from Prisons Department to the Correctional Services Department in 1982 but also changes in penal policies and programmes as well as the number and types of offenders held under custody. With such a long career in the prisons, it is natural for me to develop my interest in the history of the Hong Kong prisons and colonial penalty.

The history of the prison services in Hong Kong could be traced back to the 1840s shortly after Hong Kong was ceded from the Imperial China to the British. When Hong Kong was handed back to the Chinese Government in 1997, there were great varieties of publications covering the different aspects of this Colony's history. However for a prison service with history as long as the Colony, surprisingly very little has been written on Hong Kong's penal system and prisons, and in particular on the development of penal policies and programmes in Hong Kong whilst a British Colony.

Even for an insider working within the penal system, I found my knowledge in this area extremely limited. To satisfy my curiosity, I have attempted to trace Hong Kong's pre-war penal history when writing my Master dissertation in the 1990s. My research at the time allowed me to realize that penal policies and practices in pre-war Hong Kong basically followed the practices in England but adopted a much harsher

approach to the local population in view of the colonial context.

Professor Carol Jones, my MA dissertation supervisor found my work interesting and encouraged me to continue with my academic pursuit. I took on this challenge by enrolling in a part-time PhD programme in the 1990s whilst working with the Correctional Services Department. This however did not work out partly because of the difficulties associated with the distance learning mode of the study but mostly owing to the heavy workload I had with the Correctional Services Department at the time. I had been working at the Correctional Services Headquarters since 1994 as the Senior Superintendent responsible for the development of correctional programmes for the offenders. In 1998 I was transferred to the newly formed Rehabilitation Division. Being the deputy in a newly established Division, it was simply not possible for me to find time for the study and I have no alternatives but to withdraw from the part-time PhD programme.

My aspiration to undertake the PhD programme however still persists despite of this set back. In deciding what I am going to do upon my retirement from the Correctional Services Department in 2006, my wife had encouraged me to take up the study again. My return to Durham after my retirement allowed me to enrol in the full time PhD in Criminology programme with the University of Hull and I have enjoyed my best two years as an over-age postgraduate student in the campus.

As a full time student, I have more time to think about this thesis and decided that I should focus my area of research on the post war penal policies and programmes development in Hong Kong whilst still a British Colony. Unlike the pre-War situation, penal policies and practice in post-War Hong Kong was moving further and further

away from that of the United Kingdom despite the fact that Hong Kong still followed the British practice of not executing prisoners from 1966 onwards, the introduction of the after-care services, the reformatory schools and the psychiatric institution for prisoners suffering from mental illness, etc.

On the other hand, corporal punishment and dietary punishment were still heavily relied upon for the maintenance of prison discipline in Hong Kong up to the 1980s when similar practices were long abolished in Britain under Criminal Justice Act 1948. The ‘short-sharp-shock’ detention centre programme is still a favourite choice of sentence for judges and magistrates to hand down onto the young offenders in Hong Kong until this day. Whilst working with the Correctional Services Department, I have opportunities to visit many overseas penal establishments. In England and Scotland, I spent some time to study a number of penal establishments including the first privately run Wold’s Remand Prison shortly after it came into operation under the charge of Group 4. My personal observation and experiences during these study tours further increased my quest to unearth the reasons why Hong Kong, being a British Colony, developed a set of penal policies and practices quite different from the British system at the time.

With the research topic settled, the two years spent at Hull had been most rewarding not only for my own academic development but also allowed me to build up my bonds with my supervisors at Hull, Professor Peter Young and Dr Helen Johnston. Through their unfailing guidance, I have formulated and developed my research plans and progressed steadily with my research project.

In 2008, I was asked and eventually returned to Hong Kong to help setting up a

number of full time and part-time criminal justice related programmes for local students and law enforcement practitioners. These new commitments had taken up my scheduled write-up time and the completion period of this thesis has to extend from three to five years. These two extra years had however given me additional time to think through some of the finer points in the thesis and I am indeed grateful for Professor Young and Dr Johnston's understanding and tolerance on my disrupted progress.

Hong Kong remained to be one of the safest cities in the world in 1997 and the contribution of a sound penal system within the criminal justice system was indispensable for this success. Colonial penalty in Hong Kong officially ended on the midnight of 30 June 1997 and new penal policy initiatives under the Hong Kong Special Administrative Region were launched after this date. Nevertheless most of the pre-1997 penal policies and programmes remained intact and are still being practiced in Hong Kong. It is fifteen years after Hong Kong's return to Chinese sovereignty and the completion of the thesis at this moment provided a good opportunity to look back on how colonial penalty was evolved in post-War Hong Kong.

Introduction

This is a thesis about how penal relations develop in a colonial setting. It takes the case of Hong Kong to explore this topic in detail and develops the argument by introducing the concept of colonial penalty.

The British Empire began with the founding of her colonies in North America and the West Indies in the seventeenth century and ended with the reversion of her last crown colony of Hong Kong to the People's Republic of China in 1997.¹ The map of the British Empire had altered significantly with the acquisition and independence of her colonies over time. Looking back at these four hundred years of British colonial history, "*T(t)he twentieth century saw the British Empire reach its greatest geographical extent, and for a brief time exercise its greatest power.*"²

Given the long history of the British Empire, the different circumstances and reasons for Britain to acquire her colonies in the first place, the huge and scattered geographical locations of these colonies, their differing social, political and economic situations together with the ethnic and cultural diversity of its colonial subjects, the study of the operation of the British Empire and the determinants of imperial management are extremely complex subjects. On the other hand, there were common issues shared within the British Empire throughout the colonial history such as the

¹ Brown, J. (1999) 'The Twentieth Century' in Louis, R. Wm. (Ed.) *The Oxford History of the British Empire, Volume IV*. Oxford: Oxford University Press.

² Ibid. p. 703.

governance of the colonies, in particular the maintenance of law and order through which the colonial governments' authorities were anchored.³

The British legal and penal systems were transported to her colonies and territories as part of the colonisation process and as “*the colonies were embedded within the Empire, the colonial criminal justice system was never autonomous of imperial forces*”.⁴ The operation of the imperial criminal justice system, in particular the work of prison systems in Britain and its related policies are therefore central for the understanding of its impacts on the British colonies.

Punishment is regarded as the state's most important tool of social control for sanctioning those who break the law, it is therefore necessary to learn of the history and functions of the responsible institutions and their effects. However the study of punishment is not just limited to penology with primary concern “*to monitor the practices of penal institution, tracing and evaluating their effects, and suggesting ways in which institutional ways might be more effectively achieved.*”⁵ With the advancement on the study of punishment in sociological perspectives since the 1980s, Garland and Young (1983) put forth “penality” as a new approach to analysing punishment and penal control by referring to their relationship to the socio-political discourse of the society.⁶

³ See Fitzgerald, W. (1952) Penal Administration in the Colonies. *The Howard Journal of Criminal Justice*, 8(3), pp. 140-5.

⁴ Meranze, M. (2008) ‘Penality and the Colonial Project: Crime, Punishment and the Regulation of Morals in Early America’ in Grossberg, M. and Tomlins, C. (Eds.) *The Cambridge History of Law in America*. Cambridge: Cambridge University Press, p. 182. Also see Marcks, E. (2000) English Law in Early Hong Kong: Colonial Law as a Means for Control and Liberation. *Texas International Law Journal*, 35 (2).

⁵ Duff, R.A. and Garland, D. (1994) ‘Introduction: Thinking about Punishment’ in Duff, R.A. and Garland, D. (Eds.) *A Reader on Punishment*. Oxford: Oxford University Press, p.21.

⁶ Garland, D. and Young, P. (1983) (Eds.) *The Power to Punish – Contemporary Penality and Social Analysis*. London: Heinemann Educational Books.

The philosophies and methods of punishment as well as the penal system in Britain have changed a lot since the seventeenth century. Punishment has moved away from inflicting bodily pain through corporal sanctions and from exiling criminals through transportation to the extensive use of incarceration in penal institutions; from operating a punitive prison regime and the adaptation of the less eligibility standards to reformation of offenders through penal welfarism and rehabilitation, and the emergence of the new penology in this century as means to address the penal crisis.⁷

There are theories within the sociology of punishment which explain penal changes. Marxist criminology emphasises the economy as a driver of change (Marx, 1954)⁸; Foucault emphasises that changing penal relations can be understood as changing modes of power (Foucault, 1977) and Durkheimian criminology's focuses upon penal change as a result of changes in morality / collective consciousness (Durkheim, 1984).⁹ Elias' work derived from *The Civilizing Process* (Elias, 1939) portrays penal change as an aspect of long term developmental shifts in sensibilities coupled with the emergence of the modern state as the repository of legitimate violence.¹⁰

These theoretical frameworks have informed the development of this thesis by sensitising the analysis the need to see penal change as the product of complex forces and long term process (Pratt, 2002).¹¹ They all share, however, a common fault; they

⁷ See Rusche, G. and Kirchheimer, O. (1968) *Punishment and Social Structure*. New York, Russell and Russell.; Foucault, M. (1977) *Discipline and Punish*. London: Allen Lane; Garland, D. (1985) *Punishment and Welfare: a History of Penal Strategies*. Aldershot, Gower; (1990) *Punishment and Modern Society*. Oxford, Oxford University Press; Feeley, M. and Simon, J. (1992) The New Penology: Notes on the Emerging Strategy of Corrections and its implications, *Criminology*, 30 (4); Garland D. and Young, P. (eds) (1983) op cit.

⁸ Marx, K. (1954) *Capital, Volume I*. London : Lawrence and Wishart.

⁹ Durkheim, E. (1984) *The Division of Labour in Society*. Basingstoke: Macmillan.

¹⁰ Elias, N. (1994) *The Civilizing Process: Sociogenetic and Psychogenetic Investigations*. Oxford: Blackwell Publishers.

¹¹ See Pratt, J. (2002) *Punishment and Civilization*. London: Sage Publications.

ignore the expansion of western empires and the development of the penal systems outside Europe. Hong Kong, the last British crown colony in the Far East, is therefore used in this thesis as a case example to develop this new concept of colonial penalty.

Colonial Penalty

There are few studies on the relationship between penalty at home and in the colonial contexts. A combination of scholastic works covering the general topics of crime and punishment in various colonies under the European Empires, including British colonies in Australia, New Zealand, India and Africa, were collected by Godfrey and Dunstall (2005).¹² Apart from the cited work on colonial penalty in America from Meranze (2008)¹³ and colonial prisons in Africa, Asia and the Latin America by Dikötter and Brown (2007)¹⁴ earlier, Barker (1944)¹⁵ and Arnold (2007)¹⁶ had written respectively on India's penal system whilst a British colony. Milner (1969, 1972)¹⁷ and Bernault (2007)¹⁸ had both written on penal systems in Africa and Pratt (2006)¹⁹ on New Zealand's penal system.

There were many former British Colonies and Territories exhibiting various traits of colonial penalty characteristics worth studying but there are comparative few

¹² Godfrey, B. and Dunstall, G. (2005) (Eds.) *Crime and Empire 1840-1940: Criminal Justice in Local and Global Context*. Devon:Willan Publishing.

¹³ Meranze, M. (2008) op cit.

¹⁴ Dikötter, F. and Brown, I. (Eds.) (2007) *Culture of Confinement: A History of the Prisons in Africa, Asia and Latin America*. New York: Cornell University Press.

¹⁵ Barker, F.A.L.C. (1944) *The Modern Prison System of India – A Report to the Department*. London: Macmillian.

¹⁶ Arnold, D. (2007) 'India: The Contested Prison' in Dikötter, F. and Brown, I. (Eds.) op cit.

¹⁷ Milner, A. (Ed.) (1969) *African Penal Systems*. London: Routledge and Kegan Paul; (1972) *The Nigerian Penal System*. London: Sweet and Maxwell.

¹⁸ Bernault, F. (2007) 'The Shadow of Rule: Colonial Power and Modern Punishment in Africa' in Dikötter, F. and Brown, I. (Eds.) op cit.

¹⁹ Pratt, J. (2006) The Dark Side of Paradise, *British Journal of Criminology*, 46, pp. 541-560.

in-depth studies of penality in the colonial context within the British Empire despite of its long history and geographical coverage. As remarked by Radzinowicz and Turner (1944) over half a century ago and still being true at present that:

*“Too little is known in this country about penal developments in other parts of the Empire. These provide a student interested in criminal science with a most important field for investigation. A decent and efficient administration of criminal justice constitutes an essential element in the social welfare and cultural level of any country. Within the British Commonwealth of Nations the responsibilities of England in this domain have long been acknowledged.”*²⁰

The subject of colonial penality after the Second World War is in particular a neglected subject in the field of criminology despite its significance in understanding penal changes and their relationships with the social institutions of the former and existing colonies since 1945. This is an important period when major penality changes happened in England whilst the wind of decolonisation was swiping across the British Empire.

This thesis therefore aims to fill this historical gap by providing a comprehensive historical record on the transformation of Hong Kong’s post-War colonial penal policy and penal system. Apart from compiling the penal history, this thesis is also aiming at explaining the penal transformations in Hong Kong. As remarked by Garland (2006), *“One wants to know how to explain penal transformations, not just how to document and classify them.”*²¹ Through this approach, the finished work

²⁰ See Editorial Note by Radzinowicz, L. and Turner, J.W.C. in Barker, F. A. L. C. (1944) op cit, p. xiii.

²¹ Garland, D. (2006) Concepts of Culture in the Sociology of Punishment. *Theoretical Criminology*, 10, p. 22.

should contribute towards the concept of colonial penalty through the case study of Hong Kong.

To understand colonial penalty, it is necessary to start with the legal frameworks from which the various penal systems operate and their relations with the Empire. Dikötter (2007) when quoting examples of colonial prisons in Africa, Asia and the Latin America comments that *“I(i)n colonial contexts, prisons were part and parcel of the ‘civilising mission’ of colonisers, as existing penal practices, which were often based on physical punishment, were viewed as ‘barbaric’ and ‘uncivilised’.”*²²

Meranze (2008) in his study of the British colonies in America noted the complex relations between the colonial authorities and the local elites in penalty. *“In transporting British legal forms and traditions, colonial authorities aimed to maintain their own claims to civility on the borderlands of their cultural world while establishing their authority over natives and settlers.”*²³ Meranze further comments that *“the lack of effective imperial oversight allowed local elites to turn the law to their own purposes, while the absence of meaningful police intensified the importance of publicly imposed corporal penalties. The fragmentation of the British polity was inscribed on the juridical cultural of British colonial world.... Colonial penalty became more of a piece.”*²⁴

This observation has rebutted the belief that British colonies would exhibit the same penal philosophies and systems at home. Banton (2008) elaborates that the day-to-day operations of the colonies were not governed by the Colonial Office from London. He

²² Dikötter, F. (2007) ‘Introduction’ in Dikötter, F. and Brown, I. (Eds.) op cit, pp. 3-4.

²³ Meranze, M. (2008) op cit., p. 178.

²⁴ Ibid., pp. 178-9.

explains that “*the secretary of state for the colonies was ultimately responsible to the British government, and thence to the UK Parliament, for the peace, order and good government of the colonies, day-to-day responsibility for administration was effectively devolved to the governors and the colonial governments. There were occasions when London made demands on the colonial authorities – which might be accepted or vigorously resisted – but in most respects British colonies were governed internally rather than by the imperial centre.*”²⁵

As a result, there was no unified colonial penal system across the British Empire and each colony or territory had modified and developed its set of legal and penal system marked with its own characteristics based on individual circumstances. It was not until late 1920s that there was any real attempt within the Colonial Office in London to co-ordinate various policy areas, and matters for the treatment of offenders in the colonies was only started in 1937.²⁶ The Colonial Office’s approach in dealing with the colonial affairs explains why penal policies and practices differed widely between the colonies and making the study of colonial penalty much more challenging than the study of penalty in Britain in view of the added complexity and diversity.

Case studies on colonial penalty in America and Australia would reveal very different findings from other British colonies such as those in Africa or in Asia. Although both America and Australia had been British colonies, yet their penal populations were in main transported from Britain for punishment. They were essentially of the same ethnic background sharing the same language with identical

²⁵ Banton, M. (2008) *Administrating the Empire, 1801-1968: A Guide to the Records of the Colonial Office in the National Archives of the UK*. London: Institute of Historical Research and the National Archives of the UK, p. 21.

²⁶ *Ibid.*, p. 22, 300. Also see Fitzgerald, W. (1952) *op cit.*

cultural and social heritages except being removed from their hometowns. Colonial penalty in other parts of the British Empire where vast ethnic and cultural differences from home would generate far more complicated issues.

Britain starting from the eighteenth century had possessed colonies in North and Central America, Africa, India, Australia and the Far East. The vast landscape of the British Empire covered geographical areas of different continents embracing colonial subjects with very different ethnic and cultural backgrounds. Penalty in the colonial context therefore covers much more than the social analysis of the institutions and policies composing the penal systems of the colonies but also the relationship and interaction between the colonies and in this case Britain in political, economical and cultural aspects.

The end of the Second World War in 1945 saw the colonial powers of the West under immense pressure from the United Nations led by America to give up their colonial possessions. Together with the political consciousness stimulated by the war, these external pressures had encouraged and facilitated in firming up the various colonial territories' demand for self-government.²⁷ The effect on the British Empire was significant starting from 1946 with the independence of Transjordan (renamed Hashemite Kingdom of Jordan in 1949). This was followed rapidly by the partition and independence of India and Pakistan in 1947 and the independence of Burma and the formation of the Northern Rhodesia during the same year. Ceylon (renamed Sri Lanka in 1972) also gained her independence in 1948.²⁸

²⁷ Hyam, R. (2010) *Understanding the British Empire*. Cambridge: Cambridge University Press.

²⁸ Brown, J. (1999) *op cit.* pp. 726-739.

During the 1950s, more former British colonies gained their independence such as Libya in 1951; Gold Coast became the independent state of Ghana in 1957; the granting of self-government in Eastern and Western Nigeria and the independence of Malaya in the same year. The 1960s witnessed the complete withdrawal of the British Empire from Africa with the independence of Sierra Leone and Tanganyika (1961); South Africa became a republic (1961); the independence of Uganda (1962); Nigeria became a republic (1963); the independence of Nyasaland as Malawi (1964); Northern Rhodesia as Zambia (1964); Gambia and Lesotho (1965); Basutoland as Lesotho and Bechuanaland as Botswana (1966); Biafra (1967) and finally Swaziland (1968).²⁹

Apart from colonies in the African continent, other British colonies also gained their independence during the 1960s and the 1970s such as Western Samoa (1962), Malta (1964), Mauritius (1968), Fiji (1969), Tuvalu (Ellice Islands) and the Solomon Islands (1978), Kiribati (Gilbert Islands) (1979) and Vanuatu (New Hebrides) (1980). Hong Kong was the last British colony to sever official linkage with the British Government in 1997.³⁰

By 2008, Britain was left with only fifteen dependent territories now known as United Kingdom Overseas Territories. These include: Anguilla; Ascension; Bermuda; British Antarctic Territory; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Falkland Islands; Gibraltar; Montserrat; Pitcairn; Henderson, Ducie and Oeno Islands; St Helena; South Georgia and Sandwich Islands; Tristan de Cunha and the Turks and Caicos Islands.³¹ Despite the decline of the British Empire, Brown (1999)

²⁹ Ibid.

³⁰ Banton, M. (2008) op cit., p. 9.

³¹ Brown, J. (1999) op cit., p.703.

comments that “*the historical legacies of British colonial rule still profoundly mark the international world, the former metropolis, Britain herself, and the once-dependent areas. The power of these legacies and interest in the Empire is still deep and ideologically sensitive.*”³²

Hong Kong

Hong Kong was under British administration from 1841 and was the largest and most successful British crown colony before its return to Chinese Sovereignty in 1997. Academic work on Hong Kong’s penal system is rare and there has not been any comprehensive empirical study on the development of the colonial penal policy and system in Hong Kong. This is particularly true in the absence of historical studies on colonial penalty on the twentieth century Hong Kong as previous works by academics and students only highlighted specific areas or covering short period of Hong Kong’s penal system and programme.³³ ‘*Criminal Justice in Hong Kong*’ by Jones with Vagg (2007) is the exception which covers both criminal justice institutions and practices in the colonial and post-colonial era of Hong Kong.³⁴

³² Ibid. p. 703.

³³ See Sinclair, K. (1999) *Society's Guardian: A History of Correctional Services in Hong Kong 1841-1999*. Hong Kong: Kevin Sinclair Associates Ltd.; Munn, C. (1999) 'The Criminal Trial Under Early Colonial Rule' in Ngo, T.W. (Ed.) *Hong Kong's History: State and Society Under Colonial Rule*. London: Routledge; Dikötter, F. (2004) A Paradise for Rascals: Colonialism, Punishment and the Prison in Hong Kong (1841-1898) *Crime, History and Societies*, 8, pp. 49-63; Lowe, K. and McLaughlin, E. (1993) An El Dorado of Riches and a Place of Unpunished Crime: The Politics of Penal Reform in Hong Kong, 1877-1882, *Criminal Justice History*, 14, pp. 57-89; Vagg, J. (1991) 'Corrections' in Traver, H. and Vagg, J. (Eds.) *Crime and Justice in Hong Kong*. Hong Kong: Oxford University Press; (1994b) 'The Correctional Services Department' in Gaylord, M.S. and Traver, H. (Eds.) *Introduction to the Hong Kong Criminal Justice System*. Hong Kong: Hong Kong University Press.

³⁴ Jones, C. with Vagg, J. (2007) *Criminal Justice in Hong Kong*. London: Routledge Cavendish.

Some correctional officers in Hong Kong, e.g. Chan, W.K. (1988);³⁵ Poon, K.L. (1988);³⁶ Sham, S.S. (2000)³⁷ and Lau, S. (2000)³⁸ had in their social sciences postgraduate dissertations studied parts of the penal policy and programme in Hong Kong. Chan (1994a) was the first to document the early penal history of Hong Kong in a Master's dissertation titled '*Development of the Hong Kong Penal Policy and Programme under the British Administration (1841-1945)*'.³⁹

The year 1945 was chosen as the beginning of this thesis as it marked the beginning of the 'modern era of penality' in Hong Kong, a term on historical periodisation suggested by the conventional penologists.⁴⁰ Prior to the fall of the colony to Japan at the onset of the Second World War in December 1941, the colony basically adopted the English penal system of the same period but significantly more punitive in approach in view of its colonial background.⁴¹

After a period of three years and eight months under Japanese occupation, Hong Kong's infrastructure and population suffered greatly when most of the Chinese residents in Hong Kong were forcibly send back to Mainland China. After the unconditional surrender of Japan on 15 August 1945, the British Government took swift action to liberate and re-occupied Hong Kong on 30 August 1945.⁴²

³⁵ Chan, W.K. (1988) An Analysis of the Hong Kong Government's Policy on Capital Punishment. *MSc Dissertation*, Hong Kong, University of Hong Kong.

³⁶ Poon, K.L. (1988) Historical Development of the Correctional Services in Hong Kong. *MSc Dissertation*, Hong Kong, University of Hong Kong.

³⁷ Sham, S.S. (2000) Role of Attribution and Efficacy Expection of the Local Penal Services. *MSc Dissertation*, Hong Kong, University of Hong Kong.

³⁸ Lau, S. (2000) Rehabilitative Programmes for Female Offenders Operated by the Hong Kong Correctional Services Department. *MSc Dissertation*, Hong Kong, University of Hong Kong.

³⁹ See Chan, S. (1994a) '*Development of the Hong Kong Penal Policy and Programme under the British Administration (1841-1945)*', MA Dissertation, University of Leicester.

⁴⁰ Garland, D. (1985) op cit.

⁴¹ See Chan, S. (1994a) op cit.,

⁴² See Endacott, G. B. (1958) *A History of Hong Kong*. London: Oxford University Press.

When Britain re-took Hong Kong in 1945, the few remaining British civil servants had to be repatriated back to the United Kingdom for rest and recuperation. Many of them were in poor health as a result of malnutrition whilst being interned and were unable to return to Hong Kong. The British Government had to start everything almost afresh in Hong Kong after the war including the rebuilding of the government and the administration. To allow the effective management of the War torn city, the colony was placed under Military Administration until 1 May 1946 when the administration of Hong Kong was returned to the civil government.⁴³

The year 1997 was chosen as the year for the conclusion of this research given the fact that Hong Kong was handed back to the People's Republic of China on 1 July 1997, thus marking the end of the British administration in Hong Kong. Although there were other significant changes in Hong Kong's penal policy after 1997 under the Hong Kong Special Administrative Government especially on the emphasis on the rehabilitation and community involvement in offender rehabilitation, the inclusion of such would require coverage far exceeding the remit of this thesis.

The term penal development used in this thesis refers to the penal policy as well as operations of penal establishments and programmes under the Prisons Department, Hong Kong (renamed as the Correctional Services Department, Hong Kong after 1 February 1982). Prisons and penal establishments are used as the framework for the analysis on the development of penal policy and programmes in this thesis as they are *"... the most important apparatus of penality and that the central task of the nation's penal administration is simply to improve its functioning"*⁴⁴

⁴³ Ibid.

⁴⁴ Garland, D. (1985) op cit, p. 10.

Penal policies and programmes discussed in this thesis will cover both pre-court and judicial sanctions adopted in Hong Kong. Primarily focus is given on penal policies that had direct impact on the custodial and non-custodial sanctions delivered by the then Prisons Department and the current Correctional Services Department. Other key community sanctions such as suspended sentences and community services orders are also studied as these policies are having direct impact on custodial sanctions.

Being a crown colony of Britain, one might expect the development of the Hong Kong penal policy and programmes to be heavily influenced by changes which took place in England during a similar time frame. The other objective of this study therefore aims to explore how closely did Hong Kong follow the British model on penal policies and systems; and did Hong Kong move from penal welfarism to that of 'new punitiveness' and 'actuarial penology' as happened in England and Wales?⁴⁵

It is suggested in this thesis that penal policies and practices in Hong Kong were indeed closely following the penal welfarism developments in Britain shortly after the Second World War.⁴⁶ The British Empire at the time immediately after the War was still in possession of a large number of colonies and territories across the globe and it is demonstrated in this study that it was the wish of the Whitehall that British colonies should adhere to the more advanced and welfare oriented Western penal philosophy through the watchful eyes of the Colonial Office and its Advisory Committees.⁴⁷

With the gradual decline of the British Empire, Hong Kong, in view of its unique

⁴⁵ See Garland, D. (2001) *The Culture of Control*. Oxford: Oxford University Press; Pratt, J. (2005) 'Elias, Punishment and Decivilization' in Pratt, J. et.al. (Eds.) *The New Punitiveness- Trends, Theories, Perspectives*. Devon: Willan Publishing; Feeley, M. & Simon, J. (1992) The New Penology: Notes on the Emerging Strategy of Corrections and its implications, *Criminology*, 30(4).

⁴⁶ See Vagg, J. (1994a) 'Crime and its Control in Hong Kong: Recent Developments and Future Prospects' in Leung, B. & Wong, T. (Eds.) *25 Years of Social and Economic Development in Hong Kong*. Hong Kong: Centre of Asian Studies, The University of Hong Kong.

⁴⁷ See Barker, F. (1944) op cit.

political position (not being able to become an independent state), became Britain's only outpost in the Far East and developed gradually into a world class international city.

Penal policy and programme in Hong Kong had moved gradually from changes occurred in England and Wales after the 1970s and ended with major differences when the colony was returned to China in 1997. On the other hand, Hong Kong's penal system also shared similar traits of the new punitiveness and actuarial penology though under very different circumstances as illustrated in this study.

By 1997, the Correctional Services Department was operating a total of 22 penal institutions, 16 of which were prisons, and six of which were training, treatment, detention, or psychiatric centres. None of the penal institutions in Hong Kong are operated by the private sector. The average daily population of prisoners and inmates in these institutions was 11,713 including young offenders aged 14 and above. They were under the charge of 6,364 uniformed staff in a highly regimented department. The imprisonment rate in Hong Kong was 180 per 100,000 of the population which is relatively high by Asian standards and was also much higher than the 120 per 100,000 imprisonment rate for England and Wales in 1997.⁴⁸ (Appendix A refers.) The total expenditure of the Correctional Services Department for the year 1997 was Hong Kong Dollar \$2,501.5 million.⁴⁹

⁴⁸ See Walmsley, R. (2006) *World Prison Population List* (seventh edition). London: International Centre for Prison Studies, King's College and White, P. (1998) *The Prison Population in 1997: A Statistical Review*. Research Findings No. 76, Home Office Research and Statistics Directorate.

⁴⁹ See Biles, D. & Lai, M.K. R. (1997) Hong Kong Prisons Before the Handover, *Overcrowded Times*, 8, 1, pp. 6-8. The imprisonment rate of 201 per 100,000 quoted by Biles and Lai should be the 1996 figure of which the average daily population was 12,713 and the total population of Hong Kong was 6,311,000 as reported in the *Hong Kong Correctional Services Annual Review 1996*, Appendix 8.

Objectives of this Study

One of the objectives of this thesis is to fill in the historical gap in Hong Kong's penal history covering the period immediately after the Second World War in 1945 until Hong Kong was handed back to the Chinese Government in 1997. This period is chosen as no comprehensive study in this area had been carried out.

Historical penology is an essential and important topic in the field of criminology. As suggested by Morris and Rothman (1995), '*the history of the prison serves to illustrate the history of all social institutions.*'⁵⁰ The study of penal history would further help to understand our current system as remarked by Sir Edmund Du-Cane, Chairman of the Prison Commissioners in 1885:

*"It would be impossible to understand our present penal and preventive system, or to appreciate the reasons for many of its characteristics, without some knowledge of what has gone before, and of the experience on which it is founded."*⁵¹

This historical approach, as suggested by Garland (1985), would allow '*a more precise and controlled form of comparability*'⁵² with the structure and pattern of the modern penal system. Winston Churchill also commented on the importance in the study of treatment of crime and criminals in the society when speaking in the House of Commons as Home Secretary in 1910 that:

"The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of any country. A calm,

⁵⁰ Morris, N. & Rothman, D. (Eds.) (1995) *The Oxford History of the Prison – The Practice of Punishment in Western Society*. Oxford: Oxford University Press, p. vii.

⁵¹ Du Cane, E. (1885) *The Punishment and Prevention of Crime*. London: Macmillan and Co., p. 8.

⁵² Garland, D. (1985) *Punishment and Welfare*. Aldershot: Gower, p. 3.

dispassionate recognition of the rights of the accused, and even of the convicted criminal, against the State - a constant heart-searching by all charged with the duty of punishment - a desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment: tireless efforts towards the discovery of curative and regenerative processes: unflinching faith that there is a treasure, if you can only find it, in the heart of every man. These are the symbols, which, in the treatment of crime and criminal, mark and measure the stored up strength of a nation, and are sign and proof of the living virtue within it."⁵³

Garland (1985) further considered the history of penal strategies significant as:

*"[it]can reveal the competing ways in which the penal problem was variously formulated, the choices available between different objectives, institutions and techniques, the struggles and concerns which decided these choices, and the wider issues which were seen to be at stake in these calculations and struggles."*⁵⁴

The primary objective of this thesis is therefore to document and analysis the historical development of the Prisons Department in the post-War years. The Prisons Department, later changed its name to Correctional Services Department in 1982, was the key agent in Hong Kong not only responsible for the execution of penal policy and programmes but had actively involved in the formulation of penal policies in Hong Kong.

A full account on the post-War development of the Prisons / Correctional Services Department could enable a better understanding the evolution of colonial penalty that had taken place from 1945 to 1997 and the reasons for the changes. Roles and views

⁵³ See Howard, D. L. (1960) *The English Prisons - Their Past and Their Future*. London: Methuen & Co. Section before Introduction.

⁵⁴ Garland, D. (1985) op cit, p. 4.

of the leaders in this organisation, in particular the Commissioners are studied as they were the penal elites having major influence in the formulation of penal policies in Hong Kong. This is similar to the influences made by the Prison Commission on penal policies in England and Wales as observed by Thomas (1977).⁵⁵

The management of the different types of offenders in post-War Hong Kong under the custody of the Prisons Department / Correctional Services Department will be discussed. How these different groups of offenders were treated represented Hong Kong's attitude and social values towards crime and punishment.

Another objective of this thesis is to study the distinctive colonial penalty characteristics in post-War Hong Kong. The study looks at how penal policies were formulated and shaped in Hong Kong and the key figures behind the penal policy formulation process. Particular attention will be paid to colonial influence and the mechanisms used to influence Hong Kong's penal policy.

Specific areas studied in this thesis include the identification of penal policies and programmes that Hong Kong had transported or adopted from England and the process and time taken for this. Another area of study is on those British penal policies that Hong Kong had only partially adopted and those Hong Kong did not adopt at all. Again attempts are made to explore the rationales involved. Finally there were penal policies in Hong Kong which were different from the British system and developed entirely under the local situation.

⁵⁵ Thomas, J.E. (1977) 'The Influence of the Prison Service' in Walker, N. (Ed.) *Penal Policy-Making in England*. Cambridge: Institute of Criminology, University of Cambridge.

The latter two scenarios had resulted in Hong Kong having developed a unique penal system and policies with distinct differences to that of England and Wales by 1997. The non-conformity to the sovereign state's penal policy and practice is of particular interest to this research bearing in mind Hong Kong was a British crown colony under the direct governance of British appointed Governors during the period from 1945 to 1997.

Methodology

Different approaches have been considered on how this research should be conducted. It was finally settled that this study would be conducted through empirical research by referring to mainly primary source materials kept in Hong Kong and in the United Kingdom. For a study of this nature, it is necessary to conduct archival research of official records. The search focused on finding out how the post-War penal policies were formulated and transformed in England and in Hong Kong and who were the key decision makers. Records of the agencies which implemented these policies were studied to find out how these policies were carried out. Furthermore, the research had looked into the political and social condition of Hong Kong as well as changes in the society during the period from 1945 to 1997 through press cuttings and other related literatures.

Apart from English records used in this research, it was important and necessary to look at Chinese records on related subjects. The Chinese perceptions regarding the British administration in Hong Kong, attitudes towards crime and punishment and the general livelihood of the Hong Kong society were important factors that needed to be

covered. After all, 95% of the population in Hong Kong in 2001 was of Chinese origin.⁵⁶

Literatures and government publications on the post War development of the English penal system after 1970s are abundant for using as a comparison to Hong Kong's development. However documents on penal development in Hong Kong, especially those with dates prior to 1945 were more difficult to collect as most of the pre War official records kept in Hong Kong were destroyed during the War years. Fortunately microfilmed documents on the related topics obtained from the National Archives at Kew are now available in the public and university libraries as well as in the Government Records Service of Hong Kong making research work much easier.

The archive research at Kew focused mainly on unearthing the role of the Colonial Office in the shaping of colonial penalty. Colonial Office correspondence between England and Hong Kong which includes: despatches between the Governors of Hong Kong and the Foreign Office and the Colonial Office; minutes of the related Advisory Committees; the Hong Kong Government Gazette; Hansard of the Hong Kong Legislative Council meetings as well as Government and departmental records were studied.

For information covering the post-War era, departmental and Government papers in both England and in Hong Kong were used as reference in analysing the development and changes in the penal policy and programme in Hong Kong. The Annual Prisons Department Reports immediately before the War as well as Prisons Department

⁵⁶ See Table on 'Population by Ethnicity, 2001 and 2006', 2006 Population By-census Office, Census and Statistics Department, Hong Kong.

Annual Reports after the War, and from 1982 onwards Correctional Services Department Annual Reports till 1997 had provided a rich source of primary information on the post War penal development and these were used extensively for referencing.

In view of the different nature and vast volume of materials to be selected for this research, the author was mindful on documenting the method of archival selectivity or might face similar criticism made by Braithwaite (2003) about Garland's (2001) work *The Culture of Control* in which it was suggested that the choices Garland makes lack methodological explicitness as he only records his method of archival selectivity.⁵⁷

The limitations of using administrative or official records in this study are being considered but are outweighed by the conceived advantages of being the official discourse.⁵⁸ Official statistics covering the research period are sometimes found to be inconsistent or inaccurate especially during the time immediately after the Second World War when the colony was short of experienced civil servants in keeping departmental records. However the lacking of official data for the research is more problematic. Unlike the standard returns required by the Colonial Office before the War, government departments in Hong Kong after the War were given a free hand on how they would like to present their work in the respective annual reports.

⁵⁷ Braithwaite, J. (2003) What's wrong with the Sociology of Punishment. *Theoretical Criminology*, 7, pp. 5-28.

⁵⁸ See Hakim, C. (1993) 'Research Analysis of Administrative Records' in Hammersley, M. (Ed.) *Social Research-Philosophy, Politics and Practice*. London: Sage Publications; also see Walker, M.A. (1983) Some problems in interpreting statistics relating to crime, *Journal of the Royal Statistical Society, Series A*, 146 (3): 281-93. Also refer to Pratt, J. (2002) *Punishment & Civilization*. London: Sage, pp. 11-2.

Using the Prisons Department in Hong Kong as examples, statistics available in the Annual Reports in the 1950s were no longer available in the later versions and in the case of the Judiciary, statistics on sentencing were absent from the early 1950s. It is in fact very difficult for the general public to gain access to official information and statistics regarding the criminal justice system in Hong Kong and the published information from these departments are extremely limited. This is in sharp contrast with countries like the United Kingdom where research findings and statistics on criminal justice and the prisons are being published and made available to the public on a regular basis by the Home Office and the Ministry of Justice.

Another difficulty encountered in this research was to identify and select useful information that is related to this study. Owing to the long time span covered by this research from 1945 to 1997 (over 50 years) and that the relevant information is scattered under different subjects, the research started off by going through the Colonial Office's Advisory Committee minutes to look for remarks on the Hong Kong penal system. The developments of the English Criminal Justice Ordinances as well as the Hong Kong Prison Ordinances and Prison Rules after 1945 were compared and the differences between the two places studied to find out why certain Ordinances and Rules in Hong Kong were amended following the English version whilst some were not being amended at all.

The research also included Commission Reports ordered by the Governor of Hong Kong relating to the prison incidents or issues in Hong Kong to discover why and how such issues came into being. By adopting these steps, the author expects to identify how penal policies and systems were developed and transformed in Hong Kong, in particular the rationales for not following the established penal policies and

programmes in England and Wales. The final scope of this research is to identify the key figures behind the penal policy formulation process in Hong Kong, their views and the agendas they represented, the arguments they presented and the influences and impacts they had in the process.

The author did not conduct any interviews with members of the serving or former staff of the Prisons Department or the Correctional Services Department, prisoners or former prisoners or other members of the Administration or the community when conducting this research. Views of the former Commissioners are however collected from published materials including their own published or unpublished works, interviews by media as well as newspaper articles.

In preparing this thesis, it is necessary to point out that the spellings of a number of street names in Hong Kong as mentioned in the early despatches and papers between Hong Kong and London were different from the current spellings. In this thesis, spellings will appear as quoted from the original documents to be followed by the current name.

To avoid confusion on the translated Chinese names which might appear in either Hong Kong ‘Cantonese forms’ or in ‘Pinyin’, which Ngo (1999) has identified as another example of the ambiguity and complexity of the Hong Kong situation, this thesis will adopt the similar method by using Cantonese proper names as appeared in the official records whenever available. Pinyin will only be used when the Chinese name has no official or common translation.⁵⁹ In addition to this, Chinese names, in

⁵⁹ Ngo, T. W. (Ed.) (1999) *Hong Kong's History: State and society under colonial rule*. London: Routledge.

traditional Chinese characters forms, will also be added as far as possible after the translations to allow Chinese readers' ease of referencing.

The Structure of this Thesis

This thesis is divided into two main parts covering firstly Hong Kong's penal system and secondly on Hong Kong's penal policy. Part I consists of six chapters including: penal history of Hong Kong before the Second World War; post War development of the Prisons / Correctional Services Department and the management of young and adult offenders in Hong Kong. The issues relating to death sentence, execution, life sentence and corporal punishment are included in this Part as separate chapters in view of their complexity and these special punishments are also used as case examples to illustrate the controversies in penal policy formulation in the British colony of Hong Kong.

Chapter One provides the necessary background information on the development of penal policy and programmes starting from 1841 when Hong Kong was claimed by the British as a crown colony. The birth and the development of the first prison and the early penal policies in Hong Kong are discussed in brief. Hong Kong's penal policy and programmes in the 1930s are covered in a greater detail under a separate sub-section in order to portray the situation of the penal system up to the time before the Second World War in December 1941. To bridge up the pre-War and post-War penal development in Hong Kong, a sub-section is used to cover the conditions of the Hong Kong prisons whilst under the Japanese administration from 1942 to the surrender of the Japanese in 1945.

Chapter Two covers the development of the Prisons Department from 1945 to 1997. The development of the Department is broken down into three periods starting with the Prisons Department operated under the Military Administration immediately after the War. The period of Military Administration was less than a year from 1945 to 1946, but it provided the necessary linkage between the pre and post-War situation of the Prison Department. The next period of the development was from 1946 to 1973 seeing the rise and fall of the progressive penal policies and programmes in Hong Kong. The next phase of development started with the 1973 Stanley Prison riot which was regarded as the watershed of the Prisons service in Hong Kong. The subsequent changes and improvements had formed the basis of the current penal system in Hong Kong. The impacts of the Vietnamese refugees and the illegal immigrants on the prison service are also included in this Chapter.

Chapter Three covers the policies and management on the young offenders in post War Hong Kong. The Chapter starts with the immediate years after the War when special efforts were made to separate the juvenile and young offenders from the adult prisoners. Reformatory Schools were developed and later transferred from the Prisons Department to the social welfare agency followed by the development of the training centres modelled after the borstals in England. The development of the detention centre in Hong Kong as a response to the rise of violent youth crime and the treatment of young prisoners who were sentenced to undergo periods of imprisonment; setting up of half-way houses and the involvement and roles of the professionals in the Young Offender Assessment Panel are also discussed in this Chapter. Discussions are made on each of these young offender programmes looking at how such policies and programmes were developed in Hong Kong, the operations of these programmes and

the respective programme effectiveness up to the time when the colony was returned to China.

Chapter Four is on the management of adult prisoners in post-War Hong Kong and starts off with a sub-section describing the life of the Japanese War Criminals in Hong Kong. They were a unique group of prisoners in Hong Kong's penal history. The other section covers the management of adult prisoners in Hong Kong and how Hong Kong had developed a unique treatment programme in dealing with prisoners who were found to be drug addicts. Two sections in this Chapter are used to describe Hong Kong's 'parole' system, the Release under Supervision Scheme and the Post Release Supervision Scheme set up in 1988 and 1996 respectively. These two Schemes are having similarities and differences reflecting rather different penal philosophies on adult offenders in Hong Kong during the 1980s and the 1990s.

Chapter Five devotes to the history of death sentence and execution in Hong Kong. The life of the condemned prisoners, their death as a result of judicial hanging and the disposal of their remains were also covered. This Chapter also deals with the commutation of death sentences in Hong Kong following the British practice and the subsequent replacement of death sentences by life sentences. Attitudes and feelings on capital punishment are divided in both Britain and Hong Kong and this Chapter will trace the related debates represented the opposing views of the Hong Kong society on this topic. The Chapter ends with the sequences of events leading to the abolition of death sentence in Hong Kong.

Chapter Six discusses in detail the practice of corporal punishment in Hong Kong, its historical roots and how Hong Kong had retained this physical punishment when

Britain had already removed such practice under the Criminal Justice Act 1948. Finally this Chapter ends with the sequences of events leading to the removal of corporal punishment in Hong Kong.

Part II of this thesis mainly addresses on the formulation of post-War penal policies in Hong Kong. This Part is divided into four Chapters and starts with Chapter Seven which presents the study on the colonial impact on Hong Kong's post-War penal development. The roles and impacts of the Colonial Office and its Advisory Committees in penal policy formulation in Hong Kong are discussed together with the influence from Home Office, the Parliament and the HM Prison Services also explored.

The remaining three Chapters attempt to divide Hong Kong's penal development into three phases with Chapter Eight covers the period from 1945 to 1969 when the Colonial Office was still active in overseeing the administration of Hong Kong. The Chapter looks into how the political, social and economic conditions in Hong Kong had interacted with the British influence in formulating a welfare-oriented penal system amidst a Chinese society which favours punitive penal policies in this period.

Chapter Nine covers the period from 1970 to 1981 analysing how Hong Kong had followed the populist demand in shifting its penal policies towards a more punitive approach in the wake of the rising crime rates, in particular violent crimes committed by young offenders. Outdated British penal practices like detention centre, corporal punishment for young offenders and preventive detention were brought to Hong Kong.

Chapter Ten discusses the impact on the change of sovereignty in 1997 on Hong Kong's penal policy. The handing over of a westernized Hong Kong to the Communist China in 1997 is arguably the catalyst in seeing the rush on introducing human rights related amendments on Prison Rules, programmes and the rights related legislations to safeguard the standard of the colonial penalty would not be compromised after 1997.

Part I

Penal System in Hong Kong

Chapter One

Hong Kong Penal Policies and Programmes Prior to 1945

1.1 Introduction

To fully appreciate the development of penal policy and practices in Hong Kong after the Second World War, it is necessary to trace back the penal history of Hong Kong before the War. Penal system of the colony started right after the British took possession of Hong Kong in 1841 and Victoria Gaol was one of the two earliest buildings erected on the island of Victoria.¹ The colonial penalty evolved in Hong Kong for a century mainly following the British system until interrupted by the fall of the colony to the Japanese in December 1941 and the subsequent three years and eight months when Hong Kong was under Japanese occupation.

Hong Kong had undergone great transformation from mid 19th to mid 20th century changing from an island of farmers and fisherman in small villages to a well developed international city. To enable Hong Kong to be prosperous in trade and business, the Administration had spared no efforts in maintaining law and order in the colony, which included the formulation and development of penal policies and practices in Hong Kong.

¹ See Chan, S. (1994a) 'Development of the Hong Kong Penal Policy and Programme under the British Administration (1841-1945)', MA Dissertation, University of Leicester.

Hong Kong's penal policy and practice had gone through several major stages of development before the Second World War in 1941 as suggested by Chan (1994a).² The formative stage, started in 1841 and lasted until the enactment of the first '*Ordinance for the Regulation of the Gaol of Hongkong*' and the '*Regulations for the Government of the Gaol at Hongkong*' in 1853.³ The Ordinance was drawn up to meet the circumstances of the colony and the Rules were mostly taken from Acts of Parliament covering similar subject.⁴

The second phase of development, from 1853 to 1885, was a period of high crime rates and deterrence punishment that resulted in overcrowded prison with Chinese prisoners forming the bulk of the penal population. Hong Kong's penal system and the treatment of prisoners, based on the British model, were considered to be too lenient by the community as well as Government officials in Hong Kong. It was remarked that the British penal model had no deterrent effect on the Chinese criminal elements when compared to the harsh sentences in the neighbouring countries as "*imprisonment with hard labour in the Gaol of Victoria, wherein the prisoner is better fed, better and cleanser clothed, better lodged and less worked (inasmuch as he has rest on the Sabbath) than the honest artisan or labourer, would scarcely operate as a prevention of crime*".⁵ Interestingly enough, the British penal system Hong Kong mirrored had already ingrained the 'less eligibility' principle from the days of the Poor Law which stated "*that the condition of the pauper should be less eligible than that of the lowest grade of independent labourer.*"⁶

² Ibid.

³ C.O. 129/43, pp. 241-8.

⁴ Ibid., pp. 239-40.

⁵ C.O. 129/184, p. 587.

⁶ Fox, L. (1952) *The English Prison and Borstal Systems*. London: Routledge & Kegan Paul Ltd., p. 133.

Flogging and branding of Chinese prisoners were used extensively before deportation was introduced in 1866. The aim of imprisonment, ‘to deter from crime’ was affirmed in the first *Gaol Committee Report* in 1876,⁷ emphasizing the need to deal with the Chinese prisoners ‘*by hard labour, hard fare, and strict physical discipline*’, which was similar to British deterrent penal policy at the time.

The third phase of Hong Kong’s penal development began in 1885 during Governor Hennessy’s time. He introduced a new set of Prison Ordinance, Rules and Regulations based on England’s prison regulation and reformatory discipline. These new provisions removed all discriminatory laws against the Chinese offenders, ended public flogging, replaced the ‘cat-o-nine’ with rattan (cane) and ceased the branding of prisoners. The concept of reformation was carried out through the importation of penal policy and practice from England bringing in the ‘Silent System’, remission of sentence and rewards under the ‘Mark System’ to Hong Kong. This ‘Deterrent and Reformatory’ period with most of these penal measures remained in force up until 1932.⁸ These three phases of penal development were also similar to what had happened in England⁹ and would be covered in greater detail in the next section under the heading “The Birth of the Hong Kong Prison”.

The final phase of penal development in Hong Kong prior to the outbreak of the Second World War, to be discussed in more detail in the section “Hong Kong’s Penal Policy and Practices in the 1930”, was regarded as a period of reformation. Industrial and Reformatory Schools were set up based on the British model to house juvenile and young offenders. The ‘Silent System’ in use in the prison was repealed under the

⁷ C.O. 129/177, pp. 176-83.

⁸ Chan, S. (1994a) *op cit.*, p. 73.

⁹ See Garland, D. (1985) *Punishment and Welfare: A History of Penal Strategies*. Aldershot: Gower.

1932 Prisons Ordinance.¹⁰ The new Hong Kong Prison at Stanley was completed in 1937 with 1,500 single cells and purpose built workshops.¹¹ A classification system was introduced in 1939 to separate the first offenders from the recidivists.¹² This was an important period as most of the post-War penal policies and practices were inherited from this period.

1.2 The Birth of the Prison in Hong Kong

When the British occupied Hong Kong in 1841, the Victoria Island was having a small population of less than 7,000 of which 2,000 were fishermen living on their boats.¹³ Owing to this small population, no prison was provided in Hong Kong by the Chinese Government.

Victoria Gaol, sometimes referred to as the Central Gaol, was set up in the central part of Hong Kong island soon after the British took possession of Hong Kong.¹⁴ The earliest record on Victoria Gaol was a copy of its Elevation Plan published in the '1844 Annual Return on Gaols and Prisoners'.¹⁵ The Gaol was designed and constructed as a single-story building with a day room, three large cells, twelve solitary cells and a yard. 'The Regulations for the Government of Her Majesty's Gaol on the Island of Hong Kong', appeared in the '1845 Annual Return on Gaols and

¹⁰ Chan, S. (1994a) op cit., p. 73.

¹¹ Ibid, pp. 73-75.

¹² Ibid, p. 78.

¹³ A census was conducted in Hong Kong in 1841 by the British. See Welsh, F. (1997) *A History of Hong Kong*. London: HarperCollins Publishers.

¹⁴ Chan (1994a) op cit., p. 12. See Jones, C. & Vagg, J. (2007) *Criminal Justice in Hong Kong*. London: Routledge Cavendish.

¹⁵ C.O. 133/1, pp. 86-7.

Prisoners,¹⁶ was the first set of regulations governing the operation of the colony's prison. This was a simple, three pages hand written document listing the eight regulations embracing the entire operation of Hong Kong's only prison.¹⁷ (Copy attached at Appendix B)

In Hong Kong, transportation was still the most popular sentence passed by the courts during the early years. The necessary logistics for the transportation of prisoners was mutually arranged between the Colonies, with the Colonial Office in London being informed of the eventual actions.¹⁸

Between 1844 when transportation of prisoner first started in Hong Kong until the last lot of prisoner transferred out in 1858, a total of 569 prisoners, of which 555 were Chinese, were actually transported. 70% of the Chinese convicts transported were sent to the Straits Settlement (Malacca, Penang and Singapore) and others to Van Diemen's Land (Tasmania), the Sind (Pakistan) and Labuan (East Malaysia). All of these destinations are in the Pacific Rim and mainly within South East Asia, which ensured that the shipping cost for transporting prisoners from Hong Kong to these territories could be better managed.¹⁹

Hong Kong encountered similar problems to that of England in the 1840s in finding suitable Colonies to accept penal labours.²⁰ Together with the high cost involved in carrying out the transportation making this an expensive exercise, imprisonment

¹⁶ C.O. 133/2, pp. 125-6.

¹⁷ Ibid.

¹⁸ Chan, S. (1994a) *op cit.*, p. 20.

¹⁹ Chan, Y.S. (2006) 'A Study of the Adoption and Enforcement of Transportation in Hong Kong 1844-1858,' PhD Thesis, University of Hong Kong. p.4.

²⁰ Fox, L. (1952) *op cit.*, p.44.

gradually became the more viable option in dealing with criminals in Hong Kong. In a Despatch sent out in 1858 from Hong Kong, Governor Bowring commented that:

*We have no means of relieving the Gaol by carrying out sentence of transportation except through an occasional and uncertain demand from Labuan, which may or may not be repeated.*²¹

As argued by Chan (1994a),²² the decline of transportation in Hong Kong was not because of a lack of deterrence in this sentence as suggested by Radzinowicz and Hood (1990) for the case in England.²³ Nearly all of the residents in Hong Kong were new settlers and they had no strong social or family links established in this British colony. Hong Kong's decline of transportation was mainly due to the lack of convict colonies in the region willing to accept unskilled prisoners from Hong Kong as well as the high cost involved in the actual transportation process.

From its formative days, the Victoria Gaol was under the direct control of the Hong Kong Government and was merely designed for the containment of prisoners with very limited facilities and activities. Prisoners were managed by policemen with the Magistrate in charge of the Gaol activities. It was only in 1879 that the administration and management of the Gaol was separated from the police and under the administration and management of a separate department of the Hong Kong Government.²⁴

Victoria Gaol was Hong Kong's only prison until 1863 when the Hong Kong Government used the ship 'Royal Saxon' as the prison hulk to accommodate all the

²¹ C.O. 129/69, pp. 614-6.

²² Chan, S. (1994a) op. cit., p. 21.

²³ See Radzinowicz and Hood, (1990) *The Emergence of Penal Policy in Victorian and Edwardian England*. Oxford: Clarendon.

²⁴ Crisswell, C. & Watson, M. (1982) *The Royal Hong Kong Police (1841-1965)*. Hong Kong: Macmillan.

colony's prisoners whilst Victoria Gaol was renovated. Prison labour was used in building a new prison in Stone Cutters Island, a small island next to Kowloon (九龍) peninsula. In 1867, upon the completion of the renovation work, all prisoners were moved back to Victoria Gaol. The newly built prison at Stone Cutters Island was turned into other use and Victoria Gaol remained the only prison in Hong Kong until a branch prison with 350 bed spaces was built in 1924 at Laichikok (Lai Chi Kok) (荔枝角). In 1936, the building of the six cell block prison with a total of 1,500 cells located in the Stanley peninsula on the southern tip of Hong Kong Island, was completed and named the Hong Kong prison. This prison was regarded as the most advanced prison in the region at the time.²⁵

1.3 Hong Kong's Penal Policy and Practices in the 1930s

The final phase of penal development in Hong Kong prior to the outbreak of the Second World War was regarded as a period of reformation. Juvenile and young offenders were managed in the Industrial and Reformatory Schools; the 'Silent System' was repealed under the 1932 Prisons Ordinance. The new Hong Kong Prison at Stanley was completed in 1937 with 1,500 cells and purpose built workshops. A classification system was introduced in 1939 to separate the first offenders from the recidivists in the prison.

The completion of a modern prison in Hong Kong was not being welcomed by everyone in the colony. During the Legislative Council meeting debating the Government's budget of 1938, the Senior Unofficial Member of the Council, Sir

²⁵ Chan, S. (1994a) *op. cit.*

Henry Pollock again used the ‘less eligibility’ principle to suggest the new prison could lead to the increase of crimes by saying:

“We view the proposals for the construction of a third Court at the Central Magistracy with mixed feelings, because we consider that the number of cases tried by the Magistrates or, to put the matter in another way, the considerable increase in various forms of crime is due to a great extent to the somewhat too luxurious accommodation for prisoners which is provided in the new four million dollar gaol at Stanley, where the inmates enjoy comfortable lodging, too liberal a scale of food, regular exercise, and free medical attendance.

We concede that the modern humanitarian treatment of prisoners in Britain is a success, but, having regard to the everyday conditions unfortunately prevailing amongst the poorer classes in Hong Kong, entirely different considerations apply here.

In fact in this Colony we ought to make prison condition harder, and we trust that the Government will give its earnest consideration to this aspect of the problem.”²⁶

Major James Lugard Willcocks, DSO, MO, became the head of Hong Kong’s prisons in June 1938 and the title of the department head was also changed from Superintendent of Prisons to Commissioner of Prisons. Commissioner Willcocks had been a regular officer of the Black Watch who earned his decorations at Somme. He later became the Adjutant to the Governor of Bermuda and then joined the Prison Service in Kenya.²⁷

Shortly after his appointment as the Commissioner, Willcocks submitted a 20-page report to the Governor of Hong Kong proposing a number of changes to Hong Kong’s penal system. His proposed changes included the re-organization of the Prisons

²⁶ *Hong Kong Hansard*, 13 October 1937, pp. 113-4.

²⁷ Norman, J. (undated.), *Unpublished Memoirs by James Norman, CBE, Commissioner of Prisons, Hong Kong: 1953-1968*.

Department and the management of prisoners. In addressing the prison overcrowding problem, he recommended that those prisoners sentenced to less than one month's imprisonment be renamed or reclassified under the title 'detainee'. He proposed that these detainees be treated differently from prisoners and be housed in detention camps. Regarding the management of the prisons, he proposed the 'Mark System' in use for remission be replaced by a simpler system in order to relieve the work of the clerical staff; to employ more European Warders; adding a post of Assistant Superintendent, and a review of staff prisoner ratios for outside working parties, staff salaries and uniforms. As for the day-to-day operation of the prisons, he proposed the following changes: to open part of the disused Victoria Prison to house remand prisoners; to divide the Hong Kong prison into two sections for easier operation; prisoners to be re-classified and dressed in distinctive uniforms, and better managed through proper separation and segregation.²⁸

Commissioner Willcocks further proposed to relocate his headquarters from the Hong Kong Prison in Stanley to the Central District in town where the central government offices were located. He also questioned the rational of having the Juvenile Remand Home under the charge of the Police which was not in line with the practice in England and in some Colonies like Kenya. Finally, he commented that he would like to publicize the work of the prisons through the media in order to gain support from the public as *"Ignorance and apathy on the part of officials and non-officials alike on the whole penal question can but hamper Government in its efforts to create a system suitable to the needs of the Colony."*²⁹

²⁸ C.O. 859/15/11, Encl. 29.

²⁹ C.O. 859/15/11, p. 19.

The Governor and the Executive Council considered Commissioner Willcocks' proposal sound but, "*for financial and other reasons, it was not possible to take immediate action on them.*" On his letter of 17 February, 1939 to the Colonial Office, the Governor stated that he would "*submit individual proposals based upon the report for your approval as opportunity offers from time to time.*"³⁰

The Governor of Hong Kong did send a despatch to the Secretary of State on 15 March 1939³¹ proposing the setting up of detention camps in Hong Kong under the control of the Commissioner of Prisons "*for confining short-term prisoners convicted of crimes, such as persistent begging, hawking without licences and so forth*" and that they "*will be employed on useful work, such as reclamation.*" *It was the intention of the Governor of Hong Kong that "the detention camp or camps will, I hope and expect, be a permanent feature of this Colony's prison organisation.*"³²

A request of HK\$169,000 was tabled before the Legislative Council on 27 April 1939 for building the detention camp. When asked by the legislator, the Financial Secretary Hon. Mr. S. Caine explained that:

"It has not yet been decided where it is to be situated. It is intended to put short-term prisoners in the detention camp where it is hoped the upkeep will be cheaper and at the same time relieve the congestion in Stanley Gaol. They can be used on public works such as reclamation work, and the camp may be situated somewhere in the New Territories. This method will save an elaborate staff of warders, and only short-term prisoners are to be put in the camp."³³

³⁰ Ibid, p. 1

³¹ This despatch was discussed by the Colonial Penal Administration Committee on 5 June 1939. The proposal of setting up detention camps in Hong Kong was supported by the Committee.

³² C.O. 129/578/7.

³³ *Hong Kong Hansard*, 27 April 1939, p. 37. There is no record on the existence of such detention camps in Hong Kong. The 1940-41 departmental report did not mention the existence of such camp and that statistics for sentenced prisoners held in Hong Kong Prison and the Victoria Remand Prison included all prisoners sentenced to under one month imprisonment.

The segregation of Chinese first offenders from the repeat offenders at the Hong Kong Prison was completed on July 1939. Part of the disused Victoria Gaol³⁴ was reopened on 16 October 1939 as Victoria Remand Prison with accommodation for 160 remand and short term prisoners. This however did not relieve the overcrowding situation at the Hong Kong Prison. The Prison was built with a capacity of 1,578 but was holding more than 3,000 prisoners in mid January 1940. As a result, premature release of selected prisoners had to be arranged as:

*“3,000 is the agreed figure beyond which overcrowding cannot be allowed to go-neither the staff nor the accommodation nor the equipment can stand the strain above that figure.”*³⁵

The Commissioner of Prisons selected prisoners for Governor’s ‘Order of Special Release’. Prisoners selected were on summary conviction with sentence ranged from 6 to 18 months and subject to deportation after sentence. Their sentences were normally reduced by 2 to 3 months and most of them were deported to Mainland China upon the early release. The draw back to such an arrangement was that most of these early released prisoners were soon back in Stanley Prison serving new sentences for returning from deportation before their original sentences had expired as commuting between China and Hong Kong was easy and there was no proper border control between the two places.³⁶

The overcrowding in Stanley Prison had generated disciplinary as well as management problems for the Prisons Department. Two large scale faction fights broke out in 1939 and on one occasion warning shot had to be fired to stop the fight.

³⁴ Victoria Gaol, the first prison in Hong Kong, was closed down with the commissioning of the new Hong Kong Prison in Stanley in 1937. This prison in Stanley was being regarded as architecturally the best in the Colonial Empire at the time.

³⁵ Prisons Department Annual Departmental Report 1940, p. 6.

³⁶ See HKRS 41-1-2916.

On another occasion, a prisoner was killed in an assault case. To maintain order in the prison in view of the overcrowded condition, “[I]t has had to be largely the discipline of repression rather than of expression.” And that “the issue of heavy canes to European officers was found to be most effective.”³⁷

As the Sino-Japanese war was getting more intense by late 1930s, Hong Kong was regarded as a safe haven by many Chinese on the Mainland. In the last Prisons Department Annual Report prepared before the Second World War in April 1941, Commissioner Willcocks reported that the work of the department was being severely affected by prison overcrowding in view of the unstable social condition and the influx of poor Chinese refugees to Hong Kong. During this period, a total of 20,391 persons (18,718 males and 1,673 females) were sentenced for imprisonment. 15,161 or 74% of them were first offenders and 18,735 or 92% were serving sentences of less than 6 months. The daily average prisoner population in 1941 was 2,874, with 2,538 male prisoners in the Hong Kong Prison;³⁸ 151 male prisoners in Victoria Remand Prison and 185 female prisoners in Lai Chi Kok Prison.³⁹

On 1 April 1941, the management of the Juvenile Remand Home was transferred from the Police to the Prisons Department.⁴⁰ The Juvenile Remand Home later became the Causeway Bay Reformatory for convicted boys under the control of the

³⁷ Prisons Department Annual Departmental Report 1940, p. 7.

³⁸ The Hong Kong Prison was renamed Stanley Prison after the Second World War.

³⁹ Jarman, R. L. (Ed.), (1996) *Hong Kong Annual Administration Reports, 1841-1941*. Hong Kong, Archive Editions. pp.72-3.

⁴⁰ Mr. Willcocks, Commissioner of Prisons, visited the Juvenile Remand Home on 4 April 1938 and raised his concern that the Home should be under the control of the Prisons Department rather than the Police for better reformatory influence, which would be in line with the arrangement in England and in Kenya at the time. His comments formed part of the report on the reform of the Prisons Department sent by the Governor of Hong Kong to London on 17 February 1939. (C.O. 859/15/11: Encl 29 pp.10-12)

Prisons Department while boys on remand were kept in the Juvenile Section of Victoria Prison.⁴¹

The Prisons Department at the time had an entire compliment of 387 staff from the Commissioner downwards. Eighty-two of them were European staff including eleven clerical staff, a locksmith and an electrician. The few 'Gazetted Officers' of the Prisons Department were all English, recruited either at Home or from other parts of the Empire. The Prison Officer rank was also filled by British nationals only, mostly former Non-Commissioned Officers recruited from Her Majesty Forces in Hong Kong.⁴² The European staff were backed up by 220 Indian staff performing mainly warder and guard duties. Twenty-eight female staff, mostly wardresses under the charge of a Matron, were responsible for the management of the female institution. Sixteen staff were employed to operate the printing workshop at the Hong Kong Prison.⁴³ Forty-one Chinese were employed by the department but none of them were responsible for the supervision of prisoners. Except a few working as mechanics and fitter, most of the Chinese employees were either cooks or coolies.⁴⁴ The budget for the Prisons Department in 1940-41 was HK\$1,220,972, which was about 2.4% of the total government expenditure for Hong Kong of the same period.⁴⁵

With the possibility of hostilities with Japan closing-in, male European and Indian prison staff in Hong Kong were required to prepare for their newly acquired additional roles as members of the Hong Kong Volunteer Defence Corps. The female

⁴¹ Jarman, R. L. (1996) *op cit.*, p. 72.

⁴² See Norman, J. (undated) *op cit.*

⁴³ The printing workshop was closed in June 1940 with all printing machinery transferred to the Government Printers and the site of the printing workshop was converted into a temporary workshop for making concrete blocks. See Jarman, R. L. (1996) *op cit.*, p. 72.

⁴⁴ Jarman, R. L. (1996) *op cit.*, pp. 179-80.

⁴⁵ *Ibid*, pp. 90-91.

prison staff were also prepared to work with the British War Organization should Hong Kong enter into war with Japan. These added roles for the prison staff required training sessions which had taken staff off their prison duties and added fuels to the prisons overcrowding problems.

To deal with the prison overcrowding problem, the Government had put up the Magistrates Amendment Bill during the Legislative Council session on 13 November 1941 proposing the granting of power for the Magistrates *“instead of sending a person to prison for some summary offence, may bind him over to do a day’s work for a day or two on some useful object and then go away, and never be put in prison at all.”* The proposed Bill was mainly aiming at relieving overcrowding at Stanley Prison but also carried the rational of keeping casual offenders from associating with the more serious offenders in a prison environment. The proposed work in mind was stone-breaking at the quarry.⁴⁶

Should this Bill be passed, Hong Kong could have claimed to have its first non-custodial ‘community service order’ introduced as early as 1941. However this Bill had only gone through its first reading and there were no more Legislative Council sittings as the Japanese attacked Hong Kong in December 1941.

1.4 Hong Kong Prison under Japanese Administration

On 8 December 1941, Japanese warplanes bombed Hong Kong and started the 18 day ‘Battle of Hong Kong’. The prison officers at the Hong Kong Prison were mobilised

⁴⁶ *Hong Kong Hansard*, 13 November.1941, p. 220.

as the Stanley Platoon of the Hong Kong Volunteer Defence Corps and were one of the last units to surrender to the Japanese. Commissioner Willcocks was given the field appointment of Lieutenant-Colonel overseeing the defence of the Stanley Peninsula. He was injured during the battle and Assistant Superintendent Norman took over the command from within Stanley Prison.⁴⁷

Norman (undated) in his unpublished memoirs mentioned that the official surrender of Hong Kong took place at 3.00 pm on Christmas Day, 1941 but the surrender of the Stanley Platoon, the last organized fighting group in the colony, only happened during the Christmas evening owing to the cut off of communication with its headquarters in town. Upon the surrender, the Japanese released all prison officers temporarily on condition that they returned to their post in the prison and carry on the prison administration therein until the Japanese could impose their own form of law and order in Hong Kong.⁴⁸

All short-term prisoners were released at the outbreak of the war under the Emergency Order leaving only about 500 '*dangerous criminals*' in Stanley Prison.⁴⁹ Their fate was not mentioned by Norman, but in Joyce Ho's book collecting oral history from retired prison staff; one stated that only 70 of them were left in Stanley Prison when the Japanese soldiers arrived. All of them were later taken out to a near-by beach and beheaded by the Japanese.⁵⁰

⁴⁷ Norman, J. (undated) op cit., p. 24.

⁴⁸ Ibid, p. 25.

⁴⁹ Ibid, p. 22. Details not available on who they were, the offences they were convicted and the length of sentences they had to serve.

⁵⁰ 何仲詩 (2008) *風雲背後 香港監獄私人檔案*. 藍天圖書 (紅投資有限公司). p. 52.

When the first prisoner sentenced by the Japanese was sent to Stanley, all European prison officers ‘*down tooled*’ and ceased to work in the prison. They joined the other European civilians and were interned in the staff quarters of Stanley Prison. The Indian warders however remained working inside Stanley Prison under the charge of the Japanese officer throughout the period of occupation.⁵¹

The BBC monitored Hong Kong’s war time news and reported that the Government-General of Hong Kong had decreed the revision of the judicial system on 15 October 1943 by creating a public prosecutor’s office and a criminal court. Offences against the occupying army would remain to be dealt with by court martial while other criminal cases were to be dealt with by the criminal court in accordance with the published criminal ordinance with different sanctions spelt out.⁵²

Very little information on the administration of the prison under Japanese occupation is available. However a report sent by a confidential source to the Military Attaché of the British Embassy, Chungking, China in 1943 did provide some information on life inside Stanley Prison.⁵³

The report revealed that twenty-two of the original sixty Mohammedan Indian Warders had resigned, leaving thirty-eight working under the four Japanese Officers inside Stanley Prison. In addition there were eleven Chinese working in the prison as cooks, drivers and various tradesmen. There were about thirty to forty prisoners imprisoned inside Stanley Prison at the time for minor offences such as theft.

⁵¹ Norman, J. (undated) op cit., p. 27.

⁵² See C.O. 129/590/22.

⁵³ Ibid, pp. 137-40.

The daily routine of the prison started at 6.00 a.m. (Tokyo time) when all prisoners have to get up. Work started at 7.00 a.m. and finished at 4.00 p.m. with a meal break between 11.00 - 11.30 a.m. Prisoners returned to their cells after having a bath and evening meal from 4.00 – 5.00 p.m. The daily ration consisted of 12 ounces of rice with very little vegetables and a small piece of fish occasionally.

*“Before the American attack on Hong Kong, two 12 oz. tins of meat were allowed daily for 46 prisoners, but after the attack, this meat ration was stopped. The prisoners also occasionally get potatoes, but no bread. Allowed tea and water.”*⁵⁴

Information concerning the other prisons during the Japanese occupation was unavailable. Acting Commissioner of Prisons J. T. Burdett reported in the Annual Report of the Prisons Department in 1946 that the Japanese had performed some service by bombing the oldest part of the Victoria Gaol during the period of occupation. He expressed the hope that the remainder of the Victoria Prison would eventually be demolished and replaced by a new remand prison.⁵⁵

Norman in his unpublished memoirs mentions that around the summer of 1945, a new Japanese commandant arrived and took charge of the Stanley internment camp. He ordered all male internees, except those with wives in the camp, to be locked up inside Stanley Prison in order to tighten up the camp discipline. Norman himself was one of those put inside Stanley Prison for a period of three weeks and this experience allowed him to experience being a prisoner inside the prison. He mentions that:

“The commandant had done me an unintentional good turn. For the first time I learned what it is really like to be confined in a cell, to see and hear the heavy door close upon you, and to spend long hours waiting for it to open again. Physical torture apart, solitary confinement is the most

⁵⁴ Ibid.

⁵⁵ Prisons Department Annual Report for 1946-7, p. 2.

dreadful punishment that can be inflicted. I have hated being alone ever since. I resolved there and then that so far as I had the power no prisoner should be confined to his cell except during the hours of sleep, and that he should be allowed constant communication with his fellow prisoners and with the outside world. The absurd and unenforceable rule of silence in the workshops must go. There was much else to be done, but I was still a prisoner myself, and in no position to do it.”⁵⁶

This three week lock-up inside Stanley Prison had casted tremendous impact upon Norman and affected his future administration of the Hong Kong prisons. He kept his words by launching a more progressive and reformatory penal system in Hong Kong especially during the time he took up the post of the Commissioner of Prisons from 1953 to 1968. Corporal punishment was not awarded to prisoners found in breach of prison disciplines and the number of prisoners placed on disciplinary reports was much fewer than the subsequent years after his retirement.

In another source information obtained by the British Embassy in Chungking (重慶), China in February 1943 also mentioned the locking up of 246 single male internees under the age of thirty-five in ‘F’ Hall of Stanley Prison during November 1942. The reason given was fear of escape and possibility of signalling to allied planes during black out period. After about one month, black-out was discontinued and the locking up of male internees inside Stanley Prison was also discontinued.⁵⁷

During the three years and eight months stay in the internment camp, Norman and Commissioner Willcocks had discussed and made plans for the administration of prisons in Hong Kong after the War.⁵⁸ The Second World War ended with Japan’s

⁵⁶ Norman, J. (undated) op cit., p. 36.

⁵⁷ See C.O. 129/590/22.

⁵⁸ Norman, J. (undated) op cit., p. 29.

surrender on 14 August 1945. When the news of Japan's surrender reached Stanley Internment camp, Mr. Gimson, the Colonial Secretary of Hong Kong and the highest Hong Kong Government official amongst the internees, took over the administration of Hong Kong from the Japanese starting from 15 August 1945. The Prison Officers took back the prison from the Japanese and "*released those of our comrades who had not been executed or starved to death.*"⁵⁹

The Royal Navy's liberation fleet, under the command of Rear Admiral Sir Cecil Harcourt, entered the Hong Kong harbour on 30 August 1945 and Hong Kong was once again returned to British administration as a crown colony.⁶⁰ A Proclamation on 1 September 1945 established a Military Administration in Hong Kong. The next day, Admiral Harcourt was appointed as the Commander-in-Chief and Head of the Military Administration with Gimson temporarily assumed the role of Lieutenant Governor.

1.5 Conclusion

Penal development in Hong Kong followed, in general, the changes in penal policy in England, as to be expected in a crown colony. However it was widely believed that the transportation of the humane and reformatory England penal system to the colony would not have any deterrent effect on the Chinese criminals. With the majority of the penal population consisting of Chinese from Mainland China, whose culture, diet and

⁵⁹ Ibid, p. 38.

⁶⁰ Ward, I. (1991) *SUI GENG: The Hong Kong Marine Police 1841-1950*. Hong Kong: Hong Kong University Press, p. 51.

living habits differed so much and standard of living much lower from those in England, it would be an incentive for the poor who would find the life and diet in the prison better than what they could get with their hard earn wages, which contradicted completely to the “*less eligibility*” concept guided by the Victorian penal policy at the time. As a result, the treatment of the Chinese prisoners was made much harsher than the European prisoners in Hong Kong, with the treatment of the latter group quite similar to the English practice.

The penal philosophy adopted by England at the time before the Second World War had shifted to welfarism. Social and economic condition in Hong Kong however differed from England and affected the penal policy adopted. Although there were moves in introducing the reformatory penal philosophy in Hong Kong by building a modern prison; the elimination of the non-productive penal sanctions; the classification of prisoners and the removal of the silent system, yet the punitive element had never been totally taken out from the system.

The influx of refugees from China before the War had posted a threat to the internal security of the colony and mass imprisonment was used to maintain social security by warehousing the destitute as well as labouring poor inside prison. This had caused serious overcrowding and administrative problems for the prisons in Hong Kong and once again the deterrent penal policy returned through the reduction of prison diets and the tightening of prison regime. Judicial corporal punishment, imprisonment and the speedy deportation of the non resident Chinese back to Mainland China after serving sentence formed the best available answers to law and order in the colony prior to the outbreak of the Second World War.

The British administration of Hong Kong was interrupted during the period of Japanese occupation of the colony. The prisons in Hong Kong however still continued to function although under a very different regime operated by the occupation force. Nevertheless the experience of being imprisoned in their own prison during the War time had changed the perceptions of some of the senior prison officers affecting their way and attitude in the management of the Hong Kong prisons after the War. Details of the post-War penal development are covered in the following Chapters.

Chapter Two

Post War Development of the Prisons / Correctional Services

Department

2.1 Introduction

The Prisons Department had started with basically nothing except the only surviving working prison, the Stanley Prison after the Second World War in 1945. The few British Prison Officers had gone through a very difficult three years and eight months occupation period being internees themselves. They were arranged to return to England and so were the remaining Indian prison staff that were also sent back to India for rest and recuperation. Not all of them returned to Hong Kong owing to health reasons and the Prisons Department in 1945 could be regarded as starting from scratch.

The current penal programmes in Hong Kong are rehabilitative orientated though the provision of welfare, counselling, psychological, psychiatric and after-care services by professionals to address the offenders' needs and offending behaviour. These services were introduced to the penal system in Hong Kong gradually after 1970s. Education and vocational trainings are compulsory for young offenders from 14 to 21. All adult offenders are required to engaged in work six days a week unless found medically unfit to do so. The philosophy is to cultivate a working habit to the prisoners and for them to pick up a skill through the work they involved with the prison industries.

The correctional administrators in Hong Kong emphasize that a stable and orderly penal environment is needed before any rehabilitation programme could be successfully launched. Basing on this philosophy, high degree of discipline is maintained within the penal regime and movements of prisoners are monitored at all times under direct staff supervision or through CCTV monitoring. Special intelligence networks are in place to monitor the gang and triad activities. Searching and mandatory drug tests are carried out on a regular basis to prevent the smuggling of illicit drugs inside penal institutions.

These contemporary penal philosophies are very different from what was in place in Hong Kong before 1980. This Chapter will provide a detailed discussion of the philosophies of punishment based on the development of the Prisons / Correctional Services Department from 1945 to 1997. To enable a more systematic understanding on these fifty-two years of development, this Chapter is divided into sections covering the different phases of the Department's development. The Chapter starts by firstly describing the law and order situation and the condition of the prison in Hong Kong during the period of Military Administration from 1945 to 1946. This was a unique period in the history of Hong Kong when the colony was recovering from the Second World War with shortage of material and supply on everything.

Another section is used to discuss the conditions of the prison in Hong Kong from 1946 to 1973. This would trace the post War development of Hong Kong's penal system leading right up to the time before the 1973 Stanley Prison riot. This riot was considered as the watershed of the Hong Kong prison service leading to its speedy reform. The events leading to the 1973 riot and the subsequent changes to the Prisons Department are included in another section of this Chapter.

Backgrounds leading to the change of the name of the Prisons Department to Correctional Services Department in 1982 and the emphasis on offender rehabilitation are discussed in another section of this Chapter. The section also includes the development of the Department from 1982 to 1997 with impacts of the Vietnamese refugees and the illegal immigrants from Mainland China separately discussed under two separate sections of this Chapter.

The Prisons Department and later the Correctional Services Department had since 1978 involved in the management of Vietnamese refugees who fled to Hong Kong and other South East Asian countries after the fall of the South Vietnam in 1975. With the increased numbers and later the shift from political refugees (from former South Vietnam) to later economic illegal immigrants (from North Vietnam), Hong Kong had to adjust its policies on the treatment of the Vietnamese. This shift was from the open door refugee resettlement policy in the earlier years to detention for screening and the ultimate repatriation, by force if necessary, for those considered non-refugees under the 'Comprehensive Plan of Action'. At one stage in 1991, there were more than 34,200 people held in mega detention camps managed by the Correctional Services Department.¹

The last detention camp, the High Island Detention Centre was closed on 28 September 1998 ending Correctional Services Department's twenty-two years involvement in the management of the Vietnamese. The Prisons / Correctional Services Department's involvement in this unwelcome task had strained the Department especially in resources, accommodation and manpower. Although the Vietnamese were detained, they were however not being treated as offenders and

¹ See Sinclair, K. (1999) *Society's Guardians*. Hong Kong: Kevin Sinclair Associates, pp. 41-8.

were managed in a much relaxed routine and supervised mainly by temporary staff specially employed for this task.²

Unlike the Vietnamese refugees, the illegal immigrants from Mainland China were being arrested and detained as prisoners since 1980. The change in immigration legislations and the use of imprisonment as penal policies for deterrence had direct impacts on the Correctional Services Department. Details of which are discussed in the final section of this Chapter.

2.2 From Military Administration to the Prisons Department

The British navy entered Hong Kong on 30 August 1945 after the surrender of the Japanese Government. Hong Kong's status as a British crown colony was reinstated on this date with the British Government resumed her administration on Hong Kong. A Military Administration was established on 1 September 1945 to oversee the smooth operation of the Government during this transitional period.

Within three weeks of the establishment of the Military Administration, all British and Indian prison officers and their families were repatriated back to England and India respectively.³ The Hong Kong Prison (Stanley Prison) was the only operating prison in Hong Kong whereas the other penal facilities were damaged during war time and rendered unserviceable. During the period of Military Administration, Stanley

² Ibid.

³ See Norman, J. (undated) *Unpublished Memoirs by James Norman, CBE, Commissioner of Prisons, Hong Kong, 1953-1968*. P. 39. The repatriation was mainly on health grounds as most of the internees were suffering from poor health as a result of mal-nutrition during the period of Japanese occupation.

Prison was temporarily manned by the Royal Marines of the 42nd Commando under the charge of Captain Gardner-Brown.⁴ Two British officers, assisted by a small force of Portuguese were responsible for the administration of the civil prisoners (ordinary criminals sentenced by the military courts) located inside the prison. Further assistance was later received through reinforcement staff from Shanghai.⁵

During the period of Military Administration, Mr. John Burdett was appointed by the Colonial Office in London and brought in from Africa to take up the role as Superintendent of Prisons in Hong Kong. This appointment had caused much resentment from the two remaining senior prison officers in Hong Kong, Superintendent Bill Harrison and Assistant Superintendent James Norman who believed that this post should be internally promoted amongst the senior prison officers in Hong Kong. It was felt that Burdett, despite of his brief posting as officer-in-charge of the prison in Tripolitania when the Italians surrendered, had no experience of running a prison but was given a more senior position than the more experienced senior prison officers in Hong Kong. Norman had even raised a complaint with the Governor directly but he was bluntly rebuked for doing so.⁶

Norman further made his remarks on Burdett that:

“He had however, brought from his background strong prejudices, in particular against those he chose to call “coloured” people. He detested Indians, which was not going to help him in his new job.”⁷

The first *Quarterly Review of the Civil Affairs Administration (September to November 1945)*⁸ reported that:

⁴ Ibid.

⁵ C.O. 129/595, p. 40

⁶ See Norman, C. (undated) op cit., pp. 44-5.

⁷ Ibid, p. 45.

“The prisons are controlled by one officer and one inspector out of a War Establishment of 38. A War Criminals Camp for 266 prisoners and a Quisling Internment Camp in which 98 persons are detained, have been established at Stanley under military control. 423 civil [ordinary] prisoners are at present under various sentences in Stanley Prison where the prison buildings are in a satisfactory condition. There is no female prison or reformatory.”⁹

The first Quarterly Review Report of the Kowloon Court mentioned the problem of shortage of accommodation for the male juveniles and that they had to be housed with the adult prisoners whilst on remand.¹⁰ There was an even bigger problem regarding sentencing for the male juveniles as there was only one industrial school with a maximum accommodation for 15 boys and the minimum period of stay in the school had to be two years. In view of the lack of separate facilities for the accommodation of juveniles in Stanley Prison, there was very little option left for imposing appropriate sentences for cases not requiring two years’ custody in the industrial school. The situation was better for the female juvenile offenders as the Salvation Army Home was made available for them.¹¹

During February 1946, the Chief Civil Affairs Officer formed the Child and Juvenile Welfare Committee with Assistant Superintendent Norman being appointed one of the members. The three most urgent tasks concerning juveniles faced by the Committee were remand home, hospital and the industrial school. Norman had suggested to the Committee to convert some of the pre-war food storage huts in Tai Tam (大潭) and Stanley as temporary boys’ homes but the suggestion was only taken up after the time of the Military Administration. The site was chosen at Stanley close to the Maryknoll

⁸ C.O. 129/595, p. 7.

⁹ Ibid.

¹⁰ Ibid, Appendix B.

¹¹ Ibid.

Mission¹² as the proposal of using the Tai Tam site was objected by the Lo brothers, an eminent Chinese family fearing the value of their nearby property would be adversely affected.¹³

The Judicial Section of the Military Administration stated that the number of cases dealt with by the Summary Courts was considered to be low in view of the shortage of police for law enforcement duties. A large number of cases brought to court were on charges of looting from unoccupied houses and the unauthorised cutting of trees for firewood.¹⁴

The prison population on the other hand continued to grow after the War. By the end of February 1946, “2,380 prisoners had been admitted to Stanley Prison since the beginning of the Administration. At the beginning of March, Stanley Prison housed 896 civil [ordinary] prisoners and 302 prisoners of war.”¹⁵

The overall discipline in the prison during the period of Military Administration was described as satisfactory except one case of prison escape was recorded. Owing to the shortage of prison accommodations, female prisoners had to be accommodated inside Stanley Prison but located in separated section away from the male section. The juveniles were relocated to a small reformatory within the prison precincts.¹⁶ The Military Administration ended on 30 April 1946 and the colony was returned to civil administration on 1 May 1946.

¹² The site in Stanley Peninsula, Hong Kong island where the current Ma Hang Prison (馬坑監獄) is located.

¹³ 何仲詩, (2008) 《風雲背後 香港監獄私人檔案》, 藍天圖書, p.156.

¹⁴ Ibid.

¹⁵ C.O. 129/595, p. 40.

¹⁶ Ibid.

2.3 Prisons from 1946 to 1973

The Prisons Department faced a number of difficulties immediately after the War. Apart from the shortage of material and resources, the loss of all official records during the period of Japanese occupation made the classification of prisoners impossible without their previous penal records. The growing number of prisoners admitted into the prison system, in particular the increase in the number of young male offenders, was of particular concern. Finally difficulties were caused by the lack of trained staff in running prisons, as most pre-war staff were in extremely poor state of health and were unable to return to duty after the War.

Victoria Prison was re-opened on 1 July 1946 with cellular accommodation for 150 and was used mainly to house remand prisoners in view of its proximity to the courts. Some short-term prisoners were also located at Victoria Prison to provide domestic services.¹⁷

The pre-War practice of having Justice of Peace (JP) visiting prisons resumed in 1946. On 12 August 1946, Stanley Prison was reported by the visiting JP of holding a total of 1,654 prisoners including 24 Chinese females, 96 juveniles and 290 Japanese. The JPs found the arrangement of accommodating female prisoners in the Condemned Block of the prison not a desirable practice as these female prisoners had to be moved to the prison hospital whenever there were impending executions.¹⁸

In December 1946, the reformatory age boys were moved out from Stanley Prison to the Stanley Reformatory. The women prisoners also left Stanley Prison on 1 October

¹⁷ Commissioner of Prisons, *Annual Departmental Reports 1946-47*.

¹⁸ See HKRS 41-1-1427.

1947 when the repair work at the former female prison at Lai Chi Kok was completed.¹⁹

Despite the opening of the Victoria Prison in housing the remands, juveniles to reformatory and the female prisoners to Lai Chi Kok Prison, overcrowding remained to be the major problem faced by Stanley Prison. The main cause of the prison overcrowding was due to the influx of short-sentence prisoners. The types of prisoners admitted as described in the 1947/48 Annual Departmental Report was:

*“16,160 persons were admitted to prison to serve sentence, 11,982 of which were for periods of under 3 months, 9,216 of them being for under 1 month. A total of 7,967 persons were committed for short and completely ineffective terms of imprisonment for “Obstruction” and “Hawking without a licence”, this being a big factor in causing the overcrowding of the prisons and frustrating all efforts made to classify and improve the real criminals therein. Many of these persons were well able to pay their fines but preferred to come to prison.”*²⁰

Similar problem was recorded in the 1948/49 Annual Departmental Report mentioning that 8,254 persons (5,291 males and 2,963 females) were admitted for short sentences during the year on trivial offences such as ‘Spitting’, ‘Obeying a call of nature’ and ‘Hawking without a licence’. They were accounted for 40% of the daily average penal population.²¹

Further, Commissioner Shillingford wrote to the Governor on 23 June 1948 requesting emergency measures to be taken to release certain selected groups of prisoners before the end of their sentences. This was a practice which had been

¹⁹ Commissioner of Prisons, *Annual Departmental Reports 1947-48*.

²⁰ Ibid.

²¹ Commissioner of Prisons, *Annual Departmental Reports 1948-49*.

adopted in 1939 in view of prison overcrowding. Taking note of the unsatisfactory arrangements in 1939 when most of the early released prisoners were re-admitted to prison for fresh offences even before their original sentences expired, the Governor reluctantly agreed to release prisoners serving sentences of six months or less except those committing the following offences:

- Larceny from the person,
- Working illegal wireless stations,
- Possession of dangerous drugs,
- Being a member of an unlawful society, and
- Offering a bribe to a policeman

Records kept in Hong Kong's Public Record Office revealed that 23 batches of prisoners numbering more than 1,400 were released early under such arrangements between 12 July 1948 and 13 December 1948.²²

Commissioner Shillingford made further suggestions to the central government in addressing the influx of non-fine-paying short-term prisoners by giving the offenders a reasonable allowance of time to pay their fines and, if necessary, the enforcement of fine payment through forfeiture of goods in the case of the hawkers. He also believed that a comprehensive and liberal probation system should be adopted in Hong Kong as:

“I am confident that adoption of some of these suggestions would result in the vast majority of these petty offenders paying for their offences and thus relieve the community of the cost of maintaining them to the tune of over a million dollars a year. I am equally confident that this would also have a

²² See HKRS 41-1-2916.

certain deterrent effect. At present the state is being fined, instead of the offenders, against its laws."²³

Another measure to address the prison overcrowding problem was the deportation of alien prisoners when they have completed their sentences in Hong Kong. The Commissioner of Prisons was appointed as the Competent Authority since January 1950 and to make Deportation Orders against alien convicts under the amended Deportation of Aliens Ordinance of 1935. A further amendment of the Ordinance on 16 August 1950 added the number of offences for which the Competent Authority might make Deportation Orders. As most of the prisoners in Hong Kong were from Mainland China, it was sometimes difficult for the Police to arrange the actual deportation at times when Sino-British relationship was tense and the Chinese Government had on occasions refused to accept these deportees.²⁴

Owing to the lack of resources in maintaining the prison buildings in the immediate years after the War, Stanley Prison was left in a poor state and the living conditions for the prisoners therein were bad. It was reported that:

*"During the year under report no satisfactory works of rehabilitation or maintenance have been carried out and these costly and impressive buildings are gradually rotting. Most of the roofs leak badly and the cell windows give little protection from rain if accompanied by wind because about 80% of the glass is missing from the louvers. Most of the cells have to accommodate 3 prisoners and it is not unusual to find bed-boards propped slanting against the cell wall with prisoners crouched under them for protection against the rain which is blowing in."*²⁵

²³ Commissioner of Prisons, *Annual Departmental Reports 1948-49*.

²⁴ Commissioner of Prisons, *Annual Departmental Reports 1950-51*.

²⁵ Commissioner of Prisons, *Annual Departmental Reports 1948-49*.

Two open prisons were set up in Hong Kong in the 1950s following the British practice before the War.²⁶ The Prisons Department took over the under-utilized ‘Shap Long (十壘) Home for the Disabled’ in Lantau Island (大嶼山) from the Social Welfare Office and renamed it as H.M. Prison Chimawan (芝麻灣監獄) and started to take in Star Class short-term prisoners from January 1957. In October 1958, the Prisons Department took over the former on-site staff quarters of the engineers and workers building the Tai Lam Chung Reservoir (大欖涌水塘) in the New Territories and turned this into the Hong Kong’s second open prison, H.M. Prison Tai Lam (大欖監獄).

The open prison concept was not without its drawbacks in particular the possibilities of prisoner escapes. On 2 August 1969, twelve inmates escaped from a dormitory at Tai Lam Prison and in August 1970, three prisoners escaped from Chimawan Prison; they evaded a large scale man-hunt by members of prison, police and military personnel for nine days before their recapture.²⁷

There were further signs of mass indiscipline in the prisons in the 1970s. On 27 December 1970, over 500 prisoners barricaded themselves inside the dormitories at Tong Fuk Prison (塘福監獄) and holding one warder as hostage. The stand-off lasted for three hours and only ended when assurances was given to the prisoners that an official enquiry would be convened to look into their grievances.

²⁶ The first open prison was established at New Hall in 1936. See Watts, C. (2001) ‘The History of the Prison System’ in Bryans, S. and Jones, R. (Eds.) *Prisons and the Prisoner – An Introduction to the Work of Her Majesty’s Prison Service*. London: The Stationery Office.

²⁷ Commissioner of Prisons, *Annual Departmental Reports 1969-70, 1970-71*.

The subsequent enquiry, conducted internally by the Prisons Department, did reveal a 'below standard' management of the institution and four prison staff were disciplined for failing to follow the laid down routines in the unlocking and locking up of prisoners from the dormitories. As for prisoners, none of them were disciplined for their involvement in the disturbance due to insufficient evidence.²⁸

On 28 June 1971, two inmates escaped from Tong Fuk Prison, ran towards the Shek Pik Reservoir (石壁水塘) direction and killed an employee of the Waterworks Office en-route. Both escapees were subsequently re-captured and charged with murder. They were later convicted on a lesser charge of manslaughter and sentenced to seven years imprisonment.²⁹

The state of indiscipline had continued in the open institutions with minor disturbances at Tai Lam and Ma Po Ping Addiction Treatment Centres (麻埔坪戒毒所). Stanley Prison also noted the trend of increased violence amongst prisoners involving the use of weapons and four prisoners died as a result of assaults between prisoners. As a counter-measure, the prison management tightened up the security of Stanley Prison by setting up a special searching squad; they removed metal stockpiles outside the prison until required by the workshop and prisoners involved in outside work were to be accommodated outside the prison proper. Another area of concern was the wide spread use of illicit drugs found inside prisons leading to the introduction of compulsorily rectal examinations upon prisoners' admission to the prison.³⁰ However, all these added security measures could not prevent the disturbance which took place in Stanley Prison in April 1973.

²⁸ Commissioner of Prisons, *Annual Departmental Reports 1970-71*.

²⁹ Commissioner of Prisons, *Annual Departmental Reports 1971-72*.

³⁰ Commissioner of Prisons, *Annual Departmental Reports 1972-73*.

Before moving to the next section covering the 1973 Stanley Prison riot, it is necessary to cover the development of the Prisons staff after the War. As mentioned in Chapter One on conditions of the Hong Kong Prisons Department before the War, the Prison Officer grades as well as the Non-Commissioned Officer grades were occupied by Europeans only. The latter mainly recruited from Her Majesty's Forces in Hong Kong. Prior to the War, the Warder grade was entirely filled by the Pakistani and Sikh staff and Chinese were not allowed to join as their loyalties were in doubt and the fear of their links with the undesirables in the colony.³¹ In 1938, there were over 230 Pakistani and Sikh staff in service in 1938.³²

The situation changed after the War in particular the Warder grades as localisation started to take place in Hong Kong. Indian and Pakistani Warders upon their resignation were replaced by locally recruited Chinese. However owing to poor pay and the low social status of being a prison Warder, the locally enlisted Chinese Warders were found to be of poor quality. This was further hampered by the lack of training provided to the new recruits. Tight discipline had to be exercised on the prison staff and 824 prison staff were disciplined and punished in the year 1947/48.³³

The situation improved since 1947 when the Salary Commission increased the salary of the local prison staff to be in line with that of the police. Arising from this financial improvement, better quality local Chinese were attracted to join as Warders.³⁴ Proper trainings were arranged for the newly recruited Warders since 1950. A month long training covering foot-drill, weapon training, Prison Rules and duties of a Warder

³¹ See Chan, S. (1994a) op cit.

³² See *Prisons Department Annual Report for 1938*.

³³ See Commissioner of Prisons, *Annual Departmental Reports, 1947-48*.

³⁴ Ibid.

were given before they were posted out to work in the prison, and continued to be supervised until ready to work independently.³⁵ By 1954, the number of Pakistani and Sikh staff number were down to 41 as all vacancies came up were filled by local recruitment.³⁶

Until late in 1948, the grade of 'Prison Officer' was restricted to Europeans. Starting from 1949, the 'Prison Officer' grade was split into two: 'Prison Officer Grade I' and 'Prison Officer Grade II'. The latter grade allowed for direct entry or by promotion from the Warders.³⁷

The recruitment of European expatriate prison officers was through the Crown Agent who advertised in the home press and eight of them were recruited during the year 1952-53. Through arrangement with the Colonial Office, assistance were rendered by the Prison Commissioners for these new recruits to undergo three months training courses in the United Kingdom prisons before taking up their post in Hong Kong.³⁸

This was a great improvement in preparing the new officers as no formal training was organized for the Prison Officers before in view of the small number of Officers recruited at a time. Officers joined before this arrangement had to take up the apprentice system of working alongside an experienced officer until they were readied to perform duty independently.³⁹

³⁵ See Commissioner of Prisons, *Annual Departmental Reports, 1950-51*.

³⁶ See Commissioner of Prisons, *Annual Departmental Reports, 1953-54*.

³⁷ See Commissioner of Prisons, *Annual Departmental Reports, 1949-50*.

³⁸ See Commissioner of Prisons, *Annual Departmental Reports, 1952-53*.

³⁹ See Commissioner of Prisons, *Annual Departmental Reports, 1950-51*.

During the same year, the Governor of Hong Kong approved the alternation to the cap badge and badge of the Prisons Department. The new badge incorporated the new Royal Cypher when Queen Elizabeth II became the new head of the Empire.⁴⁰ The new badge looked very similar to Her Majesty's Prison Service badge except with the addition of the letters 'Hong Kong', signifying the close resemblance of the two services.

The quality of some European Officers recruited immediately after the War was however far from satisfactory. In a memorandum from the Commissioner of Prisons to the Colonial Secretary dated 25 September 1952, he reported that 59 disciplinary reports were laid against twenty European Officer in the year with 32 of these reports being 'late for duty'. At the time there were only 58 European Officers in the service. The Commissioner explained that most of those involved were ex-Palestine policemen who were sent to Hong Kong by the Crown Agents in 1947-48 on three year contracts and so far sixteen of them had left the Service.⁴¹

With the increased number of locally enlisted staff joining the prison services, the Prisons Department established its first Staff Training School at Stanley in 1958. A four weeks training was provided to all new recruits and one week refresher training for the serving prison staff.⁴²

With the closing down of the Colonial Office, the practice of employing European prison officers from England also ceased since 1963. Recruitment for both rank and

⁴⁰ See Commissioner of Prisons, *Annual Departmental Reports, 1952-53*.

⁴¹ See HKRS 41-1-1425-1, *op cit*.

⁴² See Commissioner of Prisons, *Annual Departmental Reports, 1958-59*.

file and officer grade prison staff for the Hong Kong prison service were conducted locally.⁴³

In 1968, the new Staff Training School for the Prisons Department was completed. The first course for newly recruited prison staff started in the same year with 171 men and 4 women recruits. The basic training for the staff was extended to six months and apart from courses run by the Department, the Extra Mural Department of the University of Hong Kong⁴⁴ was involved in the training in social science subjects such as: ‘The Evaluation of Law and Punishment’; ‘The Objects and Ethics of Punishment’; ‘Delinquency and Human Nature’; ‘Theories of Deviant Behaviour’; ‘Chinese Attitudes to Law’; ‘Social Aspects of Crime’; ‘Drugs and Crime’; ‘Psychiatric Aspects of Crime’; ‘Group Counselling’ and ‘The Effects of Various Treatments in Law’.⁴⁵

Despite all these trainings, the standard of some prison staff, especially those in the junior ranks, were not the best type of staff the Department might require as reflect in the riot that happened in Stanley Prison in April 1973.

2.4 The 1973 Stanley Prison Riot and the Subsequent Changes

A riot broke out at Stanley Prison during the Easter weekend of 19 April 1973 and ended on 23 April 1973. At the time Stanley Prison was housing 2,396 prisoners

⁴³ See Commissioner of Prisons, *Annual Departmental Report 1969-70* and *A Summary of the Work of the Prisons Department by the Commissioner of Prisons, T.G. Garner, C.B.E., J.P. for the year 1981*.

⁴⁴ The ‘Extra Mural Department’ of the University of Hong Kong was re-named as the ‘School of Professional and Continuing Education’, SPACE in short.

⁴⁵ See Commissioner of Prisons, *Annual Departmental Reports, 1967-68*.

which was almost doubled its certified accommodation. The prison was staffed by 263 prison staff, including 28 on hospital and driving duties; and was 26% below its approved establishment of 361.

Around 1700 hrs on 19 April, 300 prisoners barricaded themselves in the dining hall in protest of an earlier incident when a prisoner was warned by staff. This particular prisoner was however a known triad boss and one of the major illicit drug suppliers inside the prison. Commissioner Garner stepped-in personally and persuaded the prisoner representatives that there would be an investigation to look into their allegations of undue security measures, frequent searches and poor diet. He promised to take appropriate action if they had legitimate grievances. Prisoners subsequently returned to their cells and were fed in small groups after handing out their list of complaints which concerned inadequate recreation facilities, poor quality of food and the new system of searches which had been recently introduced.⁴⁶

Riot broke out the next morning shortly after unlock. Prisoners of A Hall took three prison staff hostage, took the cell door keys and unlocked all prisoners from their cells and caused havoc inside the Hall. They had succeeded in blocking the prison officers responding to the situation from entering the Hall despite the use of tear smoke. Commissioner Garner again intervened personally and parleyed with the prisoner representatives. The three hostages were later released unharmed and an uneasy peace followed.⁴⁷

⁴⁶ *Hong Kong Commercial Daily*, 19 April 2005.

⁴⁷ *Ibid.*

Meanwhile fire broke out in other Halls as prisoners protested about the delay of the issue of the morning meal. For the next two days, there were more disturbances in the other Halls. Glass windows were smashed and thrown at staff and more fires were started by prisoners by burning their wooden cell doors. The riot finally died down on 23 April and according to the official report:

“Despite the intensity of the disturbance and the fact that two members of the staff received minor injuries, no prisoner was injured.”⁴⁸

This incident had aroused great concern from the Government and the Secretary of State was also informed of the incident by the Governor of Hong Kong. A request was also made to avail two experts from the Home Office in London to advise on the general prison architecture and fittings as well as prison administration and security. The need for having a full commission of enquiry by the Home Office was also considered whilst the Prisons Department was ordered to conduct its own initial enquiry.⁴⁹

The departmental Board of Enquiry, chaired by the Deputy Commissioner Mr. T. Ecob, submitted its report in May 1973 pointing to two key areas concerning staff and the prisoners. Staff issues included the shortage in junior rank staff, low staff morale and the involvement of corrupt staff in the trafficking of dangerous drugs. As to problems concerning prisoners, it highlighted the influx of more young and violent offenders, overcrowding, triad and gang activities and inadequate supervision. Tightening of security and discipline was recommended and improvement to the

⁴⁸ Commissioner of Prisons, *Annual Departmental Reports 1973-74*. p.1.

⁴⁹ Ibid.

physical security of Stanley Prison was urgently needed to cope with this new type of prisoner elements which had created the situation leading to the Easter riot.⁵⁰

Whilst awaiting the Home Office experts to arrive Hong Kong, the Government had taken urgent actions on 30 April 1973 for the Finance Committee to approve HK\$500,000 for security improvement at Stanley Prison. A ten feet high barbed wire fence encircling the prison was immediately erected inside the prison wall, providing a protected road round the inner perimeter of the prison. Stanley prison was divided into two sections with fence and the open space was fenced off for use as a football field.⁵¹

The two Home Office experts, Mr. J. E. Henderson-Smith, Senior Deputy Regional Director of Prisons, former Deputy Governor of Liverpool and Governor of Gloucester Prison together with Mr. J. A. Burrell, Senior Grade Architect involved in development and improvement of UK prisons, stayed in Hong Kong from 18 May to 1 June 1973. Their terms of reference were to advise on the administration of Stanley Prison in particular, and that of other prisons in general; to examine the structure of and security arrangement at Stanley Prison and to make recommendations as to their improvement; to review other building proposals in the planning stage in the Prisons Department programme, and to advise on security and structural aspects and to report their findings and recommendations to the Governor.⁵²

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² A copy of the undated Report "*Visit to Hong Kong*" by Henderson-Smith, S.E. and Burrell, J. A. is kept at the Library, Prison Service Training and Development Group, Prison Service College, Newbold Revel, Rugby, UK.

Another urgent measure taken up by the Government was for the Finance Committee to approve on 25 June 1973 the creation of 53 supernumerary posts for Stanley Prison as an interim step to beef up the staffing situation thereat before the UK experts finalised their report. The created posts included 24 Assistant Officers Class I and II as additional Hall staff for night duty, 26 Assistant Officers for the temporary Stanley Prison Annexe under construction for 80 prisoners together with one Principal Officer and two Prison Officers as supervisors.⁵³

After the Easter riot, twelve Assistant Officers were dismissed from the services mainly for refusing to obey orders to enter the Halls during the riots. Prisoners involved in the riot were disciplined and punished under Prison Rules. 65 prisoners mostly kitchen cooks or cleaners who maintained the essential services at Stanley Prison during the riot had a reduction of three months of their sentence.⁵⁴

The two Home Office prison advisors presented their report to Governor Sir Murray MacLehose in June 1973 with 53 recommendations which could be grouped into six major areas, i.e., buildings, industries and stores, management, medical, prisoners, security and staff.⁵⁵

A Steering Committee chaired by the Secretary of Security Mr. G. P. Llord with the Commissioner of Prisons, Principal Government Architect, Principal Assistant Colonial Secretary and the Principal Assistant Financial Secretary as members was formed to study the recommendations made by the UK advisors and to decide on the way forward on the implementation of these recommendations.

⁵³ See Commissioner of Prisons, *Annual Departmental Reports 1973-74*.

⁵⁴ See *South China Morning Post*, 27 November 1974.

⁵⁵ Henderson-Smith, S.E. and Burrell, J. A. (undated) op cit.

The degree of support received from the related Government branches and departments after the riot had enabled the Prisons Department to embark in a most comprehensive reform programme since the Second World War. The Department was using this opportunity to adopt a much more authoritative approach in the management of offenders under its charge. One of the priorities was the enhancement of the quality of the prison staff. Apart from getting rid of those who had refused to take orders during the riots, the Department had co-operated fully with the newly established Independent Commission Against Commission (ICAC) to remove those prison staff involved in corruptive practices.

The government gave its approval for the Prisons Department to create 540 new posts in 1974 which was almost a third of the existing staff strength with an additional HK\$9.4 million provision in respect of personal emoluments.⁵⁶ These additional posts included 3 Senior Superintendents, 8 Superintendents, 15 Chief Officers, 21 Principal Officers, 87 Officers and 406 Assistant Officers I/II. The post of Inspector of Prisons and other senior management staff to deal with narcotics, prison industries, vocational training, nursing and after-care were also created. The new posts allowed for the establishment of the Escort Unit within the Prisons Department to provide their own court escorts; departmental training reserve to enable serving staff to attend in-service training without affecting the operation and security of the institutions.⁵⁷

The post of the Inspector of Prison, at the rank of Senior Superintendent, was created in October 1973. The post was modelled on the HM Prison Services system and the designated officer was arranged to attach to the Inspectorate of the Prison Department

⁵⁶ See *Hong Kong Hansard*, 24 April 1974, p. 821.

⁵⁷ Commissioner of Prisons, *Annual Departmental Reports 1973-74*.

of the Home Office in England on training purpose. He had accompanied the Chief Inspector of Prisons in the Prison Service for England and Wales on a number of inspections of HM Prison establishments.⁵⁸

The English practices on prison inspection were brought back to Hong Kong to enable the development of a systematic inspecting and reporting system on the efficiency, shortcomings and needs of individual institutions by full inspections carried out by the Inspector of Prisons and his team once every three years. Apart from monitoring the performance of the institutions, the Inspectorate was also required to oversee the security of the department by maintaining close liaison with the Police and other law enforcement agencies and the collection and analysis of prisoner intelligence through the institutional security officers.⁵⁹

With the approval given to employ more prison staff, in particular at the officer grades, the department had approached the local tertiary institutions for graduates to join the services. It succeeded in securing a new cadre of better educated young graduates in joining the service as Prison Officers. During the year 1974-75, 29 degree holders joined the Prisons Department as Prison Officer.⁶⁰

With the enhanced staff strength, the Prison Department was able to tighten the control and management of prisoners under its charge. As a result, the problem of illicit drugs in the prisons was under control and the triads had lost their influences inside the prison.⁶¹ Other major security improvement was the adaptation of the

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Commissioner of Prisons, *Annual Departmental Reports 1974-75*.

⁶¹ See *Hong Kong Hansard*, 23 April 1975, p. 712.

prisoner categorization system used in England and Wales as per recommendations of Lord Mountbatten's Report of 1966. Prisoners are graded in one of the four categories from A to D according to their security risks and they would be appropriately located to institutions suitable to accommodate prisoners of that particular security category.⁶²

A lot of these improvements required additional funding from the central Government. As revealed from the Prisons Department Annual Reports, the expenditure for the Prisons Department was indeed increased from HK\$24.5 million in 1972 to HK\$73.9 million in 1975, an increase of over 200% in three years.⁶³

Another important change happened to the Prisons Department after the 1973 Stanley Prison Riot was the change in the chain of command within the Hong Kong Government. Acting upon the recommendations of the 'McKinsey Report' in enhancing the efficiency of the Hong Kong Government, six new policy branches, each under a newly appointed Secretary, were established to cover the: Economic Services, Environment, Home affairs, Housing, Security, and Social Services.⁶⁴

"On Monday 1st October, 1973 Security Branch [of the Government Secretariat] assumed responsibility from Social Services Branch for prisons matter."⁶⁵ All matters concerning penal policy objectives, initiatives from and resources for the Prisons Department had to be cleared by the Secretary of Security, who was also responsible all other disciplinary services in Hong Kong.

⁶² Commissioner of Prisons, *Annual Departmental Reports 1973-74*

⁶³ Calculated from Commissioner of Prisons, *Annual Departmental Reports 1972-73 to 1975-76*.

⁶⁴ Miners, N. (1995) *The Government and Politics of Hong Kong*. (Fifth Edition) Hong Kong: Oxford University Press.

⁶⁵ Management Circular no. 10/73 titled: Colonial Secretariat – Nominated Secretaries dated 11 September 1973 in HKRS 41-2-1-56

2.5 From Prisons to Correctional Services Department

By early 1980s, the Prisons Department had successfully portrayed to the public an image of a professional department specialised in providing quality rehabilitative services to offenders under its custody. The success of the Prisons Department in the work with young offenders was praised by local experts and suggestions were even made to transfer the probation service of the Social Welfare Department to be under the charge of the Prisons Department as:

“Children and young persons committed to institutional care after being found guilty by the Courts should be given the opportunity to reform themselves in a properly designated section of the Prisons Department. The Prisons Department is doing a fine job with young men and women. Visit their institution for girls at Tai Tam Gap [correctional institution] after seeing the Ma Tau Wai Girls’ Home [operated by the Social Welfare Department] and you will be in no doubt which place is giving the young offenders a second chance in life, a respect for themselves and sound training for their future return to the community.”⁶⁶

During the same Legislative Council meeting when these comments were made, it was also revealed that the Prisons Department had already planned to change its name from Prisons Department to Correctional Services in order to enhance the department’s image:

“We would support a recommendation put forward a few years ago that the Prisons Department should be renamed the Department of Correctional Services.”⁶⁷

On 1 February 1982, the Prisons Department was formally renamed as the Correctional Services Department (CSD) and the rank of Commissioner of Prisons

⁶⁶ Address by Revd. Joyce M. Bennett at the Legislative Council. *Hong Kong Hansard*, 28 October 1981, pp. 84-5.

⁶⁷ *Ibid*, p. 84.

was re-titled as the Commissioner of Correctional Services. According to the CSD, the change was made in recognition of the diverse programmes the department undertakes in addition to the management of prison, such as the drug addiction treatment centre, training and detention centre programmes and in the field of aftercare. Furthermore, the name of correctional services conveys a more positive image of the department's work and is considerably more in line with contemporary international trends.⁶⁸

Commissioner Garner in 1984 claimed that "*the Department has over the years developed into a fully professional service and is ranked very highly in the field of corrections on a world-wide basis.*"⁶⁹ Prior to his retirement in 1985, CSD hosted the first Commonwealth correctional administrators meeting from 18 - 22 March 1985. Representatives from over 30 Commonwealth countries and international organisations took part in the meeting.⁷⁰

On 1 July 1985, Mr. Chan Wa-shek succeeded Mr. T.G. Garner and became the first Chinese Commissioner of the department. Amongst the disciplined services in Hong Kong at the time, the Correctional Services Department was the first to have a Chinese head of department demonstrating the department's advance in the localisation process. Commissioner Chan joined the Prisons Department in the early 1950s and was promoted from the ranks.

Commissioner Chan retired in November 1990 and the post of the Commissioner was filled by Mr. Eric McCosh, a Senior Assistant Commissioner of the Royal Hong Kong

⁶⁸ Commissioner of Correctional Services, *A Summary of the Work of the Correctional Services Department For the Year 1982*, p. 1.

⁶⁹ *Correctional Services Annual Review, 1984*, Forward.

⁷⁰ *Correctional Services Annual Review, 1985*, p. 2.

Police Force. This arrangement was a departure from the tradition of promoting the post of the Commissioner from within the department and had generated both resentment and speculation from both within and outside the department.⁷¹

The Link between the HM Prison Services and CSD maintains. In July 1990 a study team comprising representatives from the CSD, the Architectural Services Department and the Electrical and Mechanical Services Department from Hong Kong visited the United Kingdom to gather information and ideas from HM Prison Services for planning the re-development of the Stanley Prison.⁷²

With Commissioner McCosh's Scottish background, he visited the Scottish Prison Service in early 1994 and had established with the Scottish Prison Service a staff exchange scheme between the two services. The author was the first CSD staff to stay with the Scottish Prison Service for a four-week attachment programme with particular task to study the 'Sentence Planning Scheme' in use in Scotland.⁷³

Mr. LAI Ming-kee, the Deputy Commissioner of Correctional Services, was appointed Commissioner on 20 February 1995 upon Mr. McCosh's retirement.⁷⁴

With this appointment, CSD's tradition of having a career correctional officer leading the department resumed and also it followed the Government's localisation policy for having an ethnic Chinese Commissioner to lead CSD through the time of the change of sovereignty in 1997.⁷⁵

⁷¹ See *Oriental Daily News*, 17 January 1998.

⁷² *Correctional Services Annual Review, 1990*, p. 38.

⁷³ *Hong Kong Correctional Services Annual Review, 1994*, p. 22.

⁷⁴ Sinclair, K. (1999) op cit.

⁷⁵ With Mr Lai taking over the post of Commissioner of Correctional Services, all disciplined services department heads in Hong Kong were ethnic Chinese.

As to the ‘Sentence Planning Scheme’ for long term prisoners basing on the Scottish framework, it was being modified to suit Hong Kong’s situation and launched by CSD in July 1996. In promoting this scheme, it was remarked that:

*“This recognises the fact that long-term confinement entails problems and needs that are different from those presented by short-term incarceration. Such prisoners need to structure their time wisely under the guidance of our professional staff. A special and individualized programme has been devised for these prisoners to gear them towards rehabilitation and to equip them with job skills for their ultimate discharge.”*⁷⁶

As at 31 December 1997, there were 297 prisoners taking part in the ‘Sentence Planning Scheme’.⁷⁷

Starting from 1 April 1993, the Security Bureau of the Government Secretariat had devised a ‘Framework Agreement’ between the Secretary of Security and the Commissioner of Correctional Services. The Agreement spelled out the relationship between and the respective responsibilities of these two parties and subject to review once every two years.

In the 1993 Agreement (copy attached in Appendix C), the Secretary of Security was mainly responsible to: define the core activities of the CSD; formulating and reviewing policies; securing resources for CSD; setting performance targets to achieve specified value for money objectives, reviewing CSD performance; act as Government spokesman on policy matters and processing legislative enactive or amendment.

⁷⁶ Hong Kong Correctional Services Annual Review, 1996, p. 13.

⁷⁷ Hong Kong Correctional Services Annual Review, 1997, p. 15.

The Commissioner under the Agreement was only responsible to carry out the day to day operation of the Department and to achieve the agreed performance targets. The three agreed activities for CSD were (a) Prison Management; (b) Re-integration and (c) Management of Vietnamese Migrants. Performance measurements were specified but targets were not set except on the time of response to prisoner requests (7 days) and out of cell / dormitory time per day (10 hours). Budgets provided for the Department in 1993-94 was HK\$1,552.3 million, with HK\$1,040.7 million or 67% allocated for prison management, HK\$230.5 million or 14.9% for re-integration and HK\$281.1 million or 18.1% for the Vietnamese.⁷⁸

CSD had continued to grow and by 1997, it had an approved staff establishment of 7,286⁷⁹ operating 23 penal institutions. These institutions consisted of 13 prisons, two training centres, two drug addiction treatment centres, one detention centre, one psychiatric centre and four institutions with multiple roles. The budget of the CSD was HK\$2,501.50 million for the 1997-1998 fiscal year.⁸⁰

As at 31 December 1997, there were 10,069 sentenced person and 1,043 remands under the custody of the Correctional Services Department. Furthermore, there were 252 detainees who were non Hong Kong residents who have finished their custodial sentences and awaiting repatriation as well as 969 Vietnamese Migrants awaiting repatriation.⁸¹ No penal facilities are privatized in Hong Kong up to this moment.

⁷⁸ See Appendix C.

⁷⁹ The Correctional Services Department was the 6th largest government department in Hong Kong in 1993 in term of staff strength, with the Royal Hong Kong Police at the top and the Fire Services at the 5th. *Civil Service Newsletter*, Issue No. 27, April 1994.

⁸⁰ In the 1996/97 financial year, the combined disciplined services expenditure constitutes 11.43% of Hong Kong's total annual expenditure. The Correctional Services' expenditure of HK\$2,210 million (12.3% of the disciplined services expenditure) was only second to the Police's HK\$10,066 million (56.3%). – See Legal Supplement No. 3 to the *Hong Kong Government Gazette*, 1 March 1996.

⁸¹ See *Hong Kong Correctional Services Annual Review 1997*.

2.6 The Vietnamese Saga

After the fall of South Vietnam in 1975, Vietnamese refugees began to flee their country. Hong Kong since late 1970s became one of the preferred destinations for the refugees as Britain had assigned Hong Kong as one of the first port of asylums for the refugees. The number of Vietnamese arrived in Hong Kong reached its peak of 68,695 on 11 September 1979.⁸²

At the beginning only a small number of Prisons Department staff were seconded to the Government Security Branch to assist in the management of the refugees. But with Vietnam started its ethnic cleansing programme in the cities, many Vietnamese with Chinese origins were forced to leave their country by sea and land with many chosen Hong Kong as their destination for possible re-settlement to the Western countries.

Since late 1970s, many Vietnamese reaching Hong Kong were found to be non-refugees but economic migrants from North Vietnam. The Hong Kong Government had decided to locate all Vietnamese arrivals in closed centres with movement restricted as deterrence starting from July 1982. The task of managing these closed centres fell mainly on CSD and penal institutions had to be reshuffled to make room for their detention before new closed centres could be established. CSD further set up a Refugee Unit and employed many temporary Officers and Assistant Officers to carry out the supervision duties at these centres aided by regular Correctional Officers with experience in the management of penal institutions.⁸³

⁸² *Sing Tao Daily*, 9 January 1998.

⁸³ Sinclair, K. (1999) *op cit.*, pp. 41-6.

The flow of Vietnamese however did not slow down. In 1988 and 1989, over 52,000 Vietnamese reached Hong Kong which prompted the Hong Kong Government to set up the 'screening policy' in June 1988.⁸⁴ Those Vietnamese determined to be refugees by the United Nations High Commission for Refugees (UNHCR) were relocated from the closed centres to the 'open camps' waiting to be re-settled to other Western countries. Those considered to be non-refugees would remain to be detained in the closed centres as deterrence to those non-refugees who wanted to come to Hong Kong.

Agreements were finally reached between the British, Hong Kong and the Vietnamese Government in 1989 for the non-refugees detained in Hong Kong to be returned to Vietnam. The first group of 75 Vietnamese left Hong Kong on March 1989 which started the voluntary repatriation programme for those willing to return. 'Orderly repatriations' were also arranged for those reluctant to return. Strong police escorts had to be arranged to accompany their return to Vietnam in chartered flights.⁸⁵

The management of the Vietnamese at the closed centres was extremely challenging. The detainees were not treated as prisoners but their movements were restricted to the confines of the centre area which was limited. They were not required to work unless they wanted to take up some of the paid domestic tasks within the centre. Fractional fights between the Vietnamese were common and there were two serious incidents happened in Hong Kong.

⁸⁴ *Oriental Daily News*, 9 January, 1998.

⁸⁵ *Ibid.*

On 27 August 1989, over a thousand Vietnamese took over the small island of Tai A Chau (South Soko Island) (大鴉洲) and forced the 51 police guarding the camp to retreat. The island fell into a lawlessness state with fierce battles fought between the northern and southern Vietnamese on the island and female Vietnamese being raped. When the police re-took the island the next day by force, three of the Vietnamese were not accounted for and believed to have been killed during the night.⁸⁶

Another fatal incident happened at Shek Kong Camp (石崗) on the eve of the Chinese New Year in 1992. The camp was managed by the police and a flight broke out between the northern and southern Vietnamese. The northerners retreated to their dormitory but were locked from the outside and were set fire upon with 24 killed and over 120 injured in this incident.⁸⁷

With the commencement of the ‘orderly repatriation programme’, some of the Vietnamese directed their frustration and anger towards the camp management. Many small scale disturbances and riots broke out in the camps. The worst case happened on 10 May 1996 when hundreds of Vietnamese at the Whitehead Detention Centre (白石羈留中心) started a riot and setting fire to the office buildings before rushing the gate, broke the fence and fleeing the Centre. The riot was eventually stopped with reinforcements from the Police Tactical Unit and the Emergency Support Group of the CSD. Over 1,800 rounds of tear gas grenades were fired in stopping the riot.⁸⁸

The task of managing the Vietnamese refugees for over twenty years had diverted the Prisons / Correctional Services’ resources and attention from its primary mission of

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid.

offender management and rehabilitation. The frequent large scale re-shuffling of penal facilities to make room for accommodating the refugees had caused interruption to penal facilities. Experienced CSD officers were deployed to the camps and centres to supervise the temporary staff in their performance of duty. During major disturbance in the camps, all available CSD staff were called out or asked to stand-by to render necessary assistance. When Vietnamese detainees were arranged to return to Vietnam under the 'orderly repatriation programme', large contingent of CSD staff were pulled from their normal duties to provide support.

The positive factor for the involvement of the CSD in this Vietnamese saga was the experience gained in working with non-government organisations and the tactical skills developed in dealing with major incidents and handling large scale disturbance in institutions. CSD had developed a team of seasoned specialised staff in handling emergency situations in penal institutions with lessons learnt from this era.

From 1975 to 1997, there were over 224,000 Vietnamese arrived Hong Kong. 143,000 of them were subsequently resettled as refugees to other countries. 57,000 returned to Vietnam voluntarily and 11,600 were returned under the 'orderly repatriation programme' or deported as illegal immigrants. Another 24,000 were repatriated to Mainland China as they were classified as ex-Chinese Vietnamese Illegal Immigrants.⁸⁹

By the end of 1997, only 3,400 Vietnamese remained in Hong Kong. The Hong Kong Special Administration Region Government terminated Hong Kong's status as a 'port of first asylum' for the Vietnamese on 8 January 1998. With the closing down of the

⁸⁹ Sinclair, K. (1999) op cit., pp. 41-6.

last detention centre at High Island (萬宜羈留中心) in the same year, the Correctional Services Department's involvement in this challenging task was finally concluded.⁹⁰

2.7 The Illegal Immigrants

Owing to its geographical position where Hong Kong and Mainland China are land locked at the New Territories, free crossing by Chinese between the land border of Hong Kong and China was historically permitted. Immigration control was only introduced in 1940 to stop the refugees fleeing China during the Sino-Japanese War from entering Hong Kong. This measure was suspended during the Second World War and revived in 1949.⁹¹

The 1949 border control was minimal in effect and basically Hong Kong had adopted the 'Open Door' policy on Chinese nationals from Mainland China. Anyone who evaded arrest at the border area could report to the immigration authorities in town to obtain permit to stay in Hong Kong. Between 1962 and 1972, about 60,000 Chinese persons entered into Hong Kong without permission and were subsequently permitted to stay.⁹²

The 'Cultural Revolution' in China created another influx of refugees to Hong Kong and in 1973 alone, 56,000 illegal immigrants arrived Hong Kong from Mainland

⁹⁰ Ibid.

⁹¹ Chan, J. (2009) 'Immigration Policies and Human Resources Planning,' in Siu, H. and Agnes, S. (Eds.) *Hong Kong Mobile: Making a Global Population*. Hong Kong: Hong Kong University Press, p. 152.

⁹² Ibid, p. 159.

China. This prompted the Hong Kong Government to introduce the ‘Touch Base’ or ‘Reached Base’ policy on 30 November 1974.

“Under this policy, illegal immigrants who were arrested in the border region or in Hong Kong territorial waters during their attempt to enter Hong Kong would be repatriated, but all others who evaded immediate capture, entered the urban areas and subsequently gained a home with relatives or otherwise found proper accommodation would be given permission to stay in Hong Kong when they applied to the Immigration Department. The rationale of this policy was to avoid creating an illegal community of people living outside the law who could be exploited by employers and blackmailed by unscrupulous people and who might be compelled to live on the fringe of society and be drawn to crime as a means of survival.”⁹³

The problem of illegal immigration remained in the 1970s. In 1979, 89,000 illegal immigrants from China were arrested on arrival and repatriated whereas another 107,000 had successfully evaded capture and reached base and allowed to stay. To stop the flow of the illegal immigrants, the Hong Kong Government abolished the ‘Touch Base’ policy on 23 October 1980 and all illegal immigrants arrived after this date would be repatriated.⁹⁴ In addition, there were two Sections included in the Immigration (Amendment) (No 2) Ordinance 1980 requiring all Hong Kong residents over the age of fifteen to carry in person their Hong Kong identity cards and prohibiting the employment of illegal immigrants.⁹⁵

⁹³ Ibid.

⁹⁴ In 1979-80, around 170,000 illegal immigrants from Mainland China were arrested and repatriated. The Hong Kong Government on October 1980 abolished the ‘Touch Base’ policy whereas illegal immigrants from Mainland China before this date could be registered and stay in Hong Kong if they had reached the city and were not being arrested at the border area.

⁹⁵ Chan, J. (2009) op cit., p. 160.

When the Hong Kong Government launched its massive infra-structure building projects after 1989 preparing for Hong Kong's handing over, many illegal immigrants came to Hong Kong to look for employment. The Government therefore established sentencing guidelines for imprisoning illegal workers caught in Hong Kong to fifteen months imprisonment in 1990 as deterrence. The immediate effect of this sentencing guideline was the rise in penal population and the severe overcrowding in penal institutions, especially institutions holding females. In 1990, illegal immigrants from China constituted about 40% of the total prison population. Despite this harsh sentence, there were still some 3,100 illegal immigrants from China serving sentence in Hong Kong in 1991 constituted 30% of the penal population.⁹⁶

Another important issue arising from this influx of illegal immigrants was the number of female illegal immigrants coming to Hong Kong and a large number of them were involved in the sex industry. They were arrested and sentenced not for their involvement as sex workers but mainly for 'breach of condition of stay', a measure which was described as 'bureaucratic justice' by Laidler, et.al. (2007).⁹⁷

Statistics from the Correctional Services Department showed that the total number of females sentenced by court and admitted to penal institutions had increased from 944 in 1986 to 1,287 in 1991 and 3,966 in 1996. The number of male prisoner admissions had also increased during this period but the rate was not as high as the female prisoners, i.e., 9,718 in 1986, 12,361 in 1991 and 13,654 in 1996.⁹⁸ This high

⁹⁶ *Hong Kong Hansard*, 23 October 1991, pp. 38-45.

⁹⁷ Laidler, K., et. al. (2007) 'Bureaucratic Justice: The Incarceration of Mainland Chinese Women Working in Hong Kong's Sex Industry', *International Journal of Offender Therapy and Comparative Criminology*, Volume 51 Number 1, pp. 68-83.

⁹⁸ See Table 8.3, 'Sentenced Persons Admitted into Penal Institutions by Age Group and Sex' in Census and Statistics Department, (2011) *Women and Men in Hong Kong, Key Statistics 2011 Edition*, p. 218.

admission rate had push up the overall penal population for both male and female prisoners. The average daily penal population for all sentenced female prisoners jumped from 676 in 1991 to 1,438 in 1996 and for male sentenced prisoners, the average daily population was increased from 9,407 in 1991 to 10,011 in 1996. As to the prisoner composition, female prisoners from Mainland China had outnumbered the local female prisoners by around four to one in 1996. ⁹⁹

2.8 Conclusion

This Chapter has traced the path of the development of the prison services in Hong Kong from immediately after the post-War days until 1997 when Hong Kong was no longer under British administration.

The end of the Pacific War in 1945 had given the Prisons Department in Hong Kong the opportunity to have a fresh start. Most of the experienced prison staff were replaced by local staff after the War. A few senior British prison officers had rebuilt the Department at the time when resources were in short supply and the prisons in Hong Kong were being used as warehouses for the destitute and poor in addition to those committed for criminal offences.

The prisons services had always been considered an important agency by the colonial service in the maintenance of law and order in the colonies. Until late 1960s, the Colonial Office was still actively monitoring the work of the colonial prison service

⁹⁹ Figures obtained from Commissioner of Correctional Services Department, *Departmental Annual Reports, 1986, 1991 and 1996*.

through its Advisory Committees. In Part II of this thesis, more discussion will be given on the roles of the Colonial Office in shaping Hong Kong's penal policies.

At operational level, Hong Kong was under strong British influence and had maintained very close linkage with Britain in particular the recruitment and training of senior officers and European officers for the Prisons Department. These arrangements had ensured the elites in the Hong Kong Prisons Department were in full conveyance with the penal philosophies and practices in England. Prison Ordinances and Prison Rules covering the work of the HM Prison Service were adopted in Hong Kong if there were no contradictions with the local situation.

With the shrinking of the British Empire in the 1960s and the deletion of the Colonial Office in 1969, the Prisons Department, along with the other Government departments in Hong Kong, began to pick up pace in the localisation process. This however did not prevent the Prisons Department from seeking professional advices from the Home Office and transporting British penal management philosophy from the HM Prisons Service as evident from the aftermath of the 1973 Stanley Prison riot. On the other hand, the removal of the Colonial Office had enabled the Prisons Department to have more flexibility in the selection and adaptation of penal practices both within and outside England.

As illustrated in this Chapter, the Prisons Department in Hong Kong had gone through tremendous changes since 1945. Progressive English penal practices in the management of prisoners were introduced to Hong Kong in the 1950s and 1960s. This Chapter also discussed how the Prisons Department had shift from the English welfare model to that of a deterrent tool in maintaining law and order in Hong Kong

during the 1970s following the rise of crimes in Hong Kong and the 1973 Stanley Prison riot.

This shift towards discipline and control in Hong Kong's penal system received no opposition from the community. On the other hand, this highly regimented environment had provided a stable platform for the Prisons Department to develop rehabilitation programmes for the offenders under custody, leading to the change of the name of the Prisons Department to Correctional Services Department on 1 February 1982.

With the strain on resources in dealing with the Vietnamese refugees, the uncertain future of the Department after 1997 and the apparent effective penal programmes that were in place in the 1980s, there were no longer any urgent needs to follow changes that occurred in the British penal system thereafter. Hong Kong's penal system remained to adopt the Framework Agreement of prison management and re-integration by maintaining order and discipline within the penal establishments as primary task followed by the rehabilitation of offenders. By 1997, the Correctional Services Department had grown into a key government department in Hong Kong earning international reputation in the management and rehabilitation of offenders.

The following two Chapters will describe in detail how young offenders and adult offenders were being managed in Hong Kong from 1945 to 1997.

Chapter Three

Management of Young Offenders after the War

3.1 Introduction

The penal policy and treatment for juvenile and young offenders in Hong Kong is distinctively different from that of the adult offenders after the Second World War and remained very much so until today.

The bifurcation of penal policy and treatment on adults and juveniles in Hong Kong began in the early 1900s with the provision of the Belilios Reformatory at Causeway Bay,¹ the first residential institution for juveniles in the colony of Hong Kong. This early arrangement for the juveniles in Hong Kong was indeed following Britain's move of providing a separated punishment regime for the juveniles corresponding with the rise of the philanthropic and welfare philosophy in the beginning of the twentieth century. Under the Young Persons (Death Sentence) Ordinance in 1909, no person under 16 should be sentenced to death in Hong Kong but would be detained under His Majesty's Pleasure. This was a mirrored Ordinance following the enactment of the Children Act of 1908 in Britain.

Despite this move of assigning juveniles to the Reformatory, the harsh penal philosophy still applied to the youth and juveniles in Hong Kong. It was revealed by Legislator Kotewell during a Legislative Council meeting in Hong Kong in 1930 that

¹ See *Hong Kong Hansard*, 11 March 1900, pp. 74-5.

of the 985 boys and 137 girls under the age of 16 brought to court in 1929, 131 boys and 5 girls were sentenced to prison terms and 433 boys, including 125 convicted of hawking without a licence, were ordered to be whipped.

When the Prison Ordinance was amended in 1885 under Ordinance 18, there were already provisions in the Ordinance for the separation of prisoners under the age of 16 from the adult prisoners in the Gaol.² However in view of the limited penal facilities at the time, it was revealed that it was common for juveniles to be mixed with adult prisoners in the Gaol.³ Kotewell's proposal of setting up a juvenile court in Hong Kong, following the British model, gained the support of not only his English colleagues but also the Chinese Legislators quoting the teaching of the Confucius that "*Chinese are taught to bear kindly with the faults of the young.*"⁴

The Government's response to this proposal was positive and agreed to set up a Committee to plan for its implementation. It was also revealed by the Government that the establishment of the Juvenile Court "*was one of the subjects of discussion at the recent Colonial Office Conference, and it is expected that a model Ordinance dealing with this question will shortly be circulated to this and other Colonies for the consideration of their legislatures.*"⁵

The 1930s could be regarded as the new era for Hong Kong's juvenile and youth justice system when the colony finally developed a separate penal policy and programme for the juvenile delinquents and the young offenders. The first Industrial

² S. 6 of Ordinance No. 18 of 1885 stipulates that "*In a prison where prisoners under the age of 16 years are confined, they shall be kept separate from prisoners of or above that age.*"

³ See *Hong Kong Hansard*, 2 October 1930, pp. 155-8.

⁴ See statement by the Hon. Mr. S. W. Tso, *ibid*, p. 157.

⁵ See statement by the Hon. Colonial Secretary Mr. E. R. Halifax, *ibid*, p. 158.

and Reformatory Schools Ordinance was passed in 1932 to empower the court to send convicted adolescents under 16 to a reformatory or certified industrial school. On 20 November the same year, the first Juvenile Court was set up under the Juvenile Offenders Ordinance to deal with cases of juvenile and to assess the provision of probation services to them.⁶ In 1938, the probation service was put under the administration of the Prisons Department. In 1941, the Prisons Department had taken over the management of the Juvenile Remand Home in Causeway Bay from the Police.⁷

In practice, the separation of juveniles from adult offenders, as stipulated by these Ordinances, might only be the physical separation of these two groups in different wings under the same roof of the prison in view of the lack of designated institutions for juveniles. Special programmes were however designed to allow the juveniles to receive educational classes and vocational training sessions during their sentences. This had become the blue print for the treatment of young and juvenile offenders in Hong Kong.

With the closing in of the Pacific War when resources in the colony of Hong Kong were being diverted to defence installation, there were no further injection of capital for the improvement of the juvenile justice system in Hong Kong⁸. The situation however changed rapidly after the end of the Second World War in 1945.

⁶ See the Juvenile Offenders Ordinance No. 1 of 1932 and the Reformatory Schools Ordinance No. 6 of 1932.

⁷ See para. 31 of the Commissioner of Prisons, *Annual Departmental Reports 1946-47*. The Colonial Office had strong views on the Police managing Juvenile Remand Home in Hong Kong.

⁸ See Chan, H. Y. (2003) *The Institutional Control and Care of Young People in Colonial Hong Kong 1932-1997: A Social History. PhD Dissertation*, University of Hong Kong, p. 88.

The post-War approach towards juvenile delinquency continued to follow the British experience as expressed in 1948:

*“Juvenile Remand Homes, antecedent investigators, Probation Officers, Approved Schools and Borstals with an after-care system on the lines of the Borstal Association of England and Wales provide the only ultimately satisfactory solution and there is little doubt that the capital expenditure of money on such projects would be justified by the dividends of human salvage in the early stages of deterioration.”*⁹

3.2 The Stanley Reformatory

The pre-War Juvenile Remand Home at Causeway Bay, which had the combined function of a remand home and an Approved School or Reformatory, was totally destroyed after the War. The decision was made not to rebuild the reformatory on the site as the location was considered not suitable for this purpose. As a result, all reformatory age children sentenced to custody were sent to Stanley Prison after the War but were separately located from the adult prisoners.¹⁰

Despite the shortage of supplies and the tight fiscal condition at the time when Hong Kong was still recovering from the carnage of the Japanese occupation, arrangement was made by the Hong Kong Government in December 1946 to set aside four former food storage huts near the Maryknoll Mission at Stanley (current site of Ma Hang Prison) (馬坑監獄) to be used by the Prisons Department as a Reformatory for boys under the age of 16. They were required to stay in the Reformatory for a minimum period of two years.¹¹

⁹ Commissioner of Prisons, *Annual Departmental Report 1948-49*, para.7.

¹⁰ *Prisons Department Annual Report for 1946-47*.

¹¹ *Ibid.*

For delinquent girls of the reformatory age, they were “*committed to the care of the Salvation Army, which conducts a special institution for their training. Financial support is given by Government and the whole is supervised by the Social Welfare Officer.*”¹²

Until the end of March 1947, a total of 531 boys aged from 10 to 17 were admitted to the Reformatory with a daily average population of 76. The admission slowed down to 40 – 50 cases per year from 1948 onwards. From the inception of the Reformatory in December 1946 until its closure on 23 February 1953, a total of 915 boys were admitted to the Stanley Reformatory with an average daily population of around one hundred.¹³

This Reformatory was indeed Hong Kong’s first ‘open’ delinquent institution as physical security for the institution was minimal and the buildings were not surrounded by walls or fences. The initial staff complement for manning the Reformatory included two European Prison Officers, two Chinese Principal Discipline Officers, twelve Chinese Discipline Officer, one school master and two instructors responsible for the trade of rattan and carpentry. They were under the general direction of Superintendent Norman from Stanley Prison who was once a Schoolmaster in North Sea Camp for delinquent boys in Britain before joining the Hong Kong Prisons Department. Staff working in the Reformatory wore plain clothes instead of prison officer uniform to induce a boarding school than a penal

¹² Commissioner of Prisons, *Annual Departmental Reports 1949-50*.

¹³ Figures compiled from Commissioner of Prisons, *Annual Departmental Reports 1946-53*.

environment atmosphere for the boys.¹⁴ From 1951 onwards, Stanley Reformatory was called Stanley Reformatory School to reflect its reformatory and training nature.¹⁵

Boys in the Reformatory had three hours classroom education daily from Monday to Friday. Subjects taught included English, Chinese and Mathematics. With the increase of an additional School Master, other subjects like Geography and Hygiene were introduced. For vocational training, some boys were engaged in rattan work and carpentry trade while the others were engaged in gardening, vegetable growing and domestic work. A new trade of motor mechanics was introduced since 1951. For hobby classes, the Reformatory had set up a dark room for the boys to learn the skill of photography and to develop films. A very successful scout troops, the 8th Hong Kong Scout Troop was formed in the Reformatory on 13 September 1951 and the Scout Troop took part in all major scouting events and competitions in Hong Kong.¹⁶

Activities for the boys included football, ping pong and chess in the Reformatory and the boys were taken out to Stanley beach for swim during summer and hill walk during other times. Owing to the open nature of the Reformatory, it was difficult to maintain total security in this institution particularly during its first year of operation. There were a total of 24 escapes from the Reformatory in 1947, with 17 boys escaped on 8 September 1947 by breaking out of the dormitory. Eleven of them were re-captured by the Police the next day.¹⁷

¹⁴ Details compiled from Commissioner of Prisons, *Annual Departmental Reports 1946-53*.

¹⁵ Commissioner of Prisons, *Annual Departmental Report 1950-51*.

¹⁶ Commissioner of Prisons, *Annual Departmental Report 1951-52*.

¹⁷ Commissioner of Prisons, *Annual Departmental Report 1947-48*.

Despite these small set backs, the Reformatory programme was well received by the public with well wishers and visitors coming to the School regularly to give support to the boys. This included ex-reformatory boys who came back to visit the School during the annual sports meets and on other social event occasions.¹⁸ There was no statutory after-care follow-up upon the boys' release but the after-care officers would ensure they would either return to their parents or arrange to stay in orphanages if they have no parents or next-of-kin in Hong Kong.

Unfortunately, there are no statistics covering how successful the Reformatory School programme was. It was once reported in 1950 that seven of the ex-Reformatory boys joined the Chinese section of the British armed force in Hong Kong with one of them won the title of the 'Best Recruit' in the class.¹⁹

Stanley Reformatory was closed on 23 February 1953 when all the boys were transferred to the new Boys Home at Castle Peak under the administration and management of the Social Welfare Officer. The former reformatory school site was converted to become Hong Kong's first Training Centre for boys.²⁰ The Prisons Department and its staff had in these seven years learnt a lot through the Reformatory School programme on how to work with young offenders. This allowed the Prisons Department to lay a solid foundation for setting up the Training Centre programme in Hong Kong.

¹⁸ Commissioner of Prisons, *Annual Departmental Report 1950-1*.

¹⁹ *Ibid.*

²⁰ Commissioner of Prisons, *Annual Departmental Report 1952-3*.

3.3 The Training Centres

The plan to set up a Training Centre for boys of Borstal age of 16 to 21 in Hong Kong was conceived as early as in 1948 with the proposed Training Centre Ordinance forwarded to the Secretary of State for the Colonies for consideration in 1951.²¹ The proposed Training Centre Ordinance contains similar legal provisions as to the ‘Borstal’ section of the Criminal Justice Act, 1948 in Britain but the target age group of detainees in Hong Kong was from 14 to 18 rather than the 16 to 21 years age group as in Britain’s Borstals. This age difference as well as the rationale of not adopting the term ‘Borstal’ in Hong Kong was explained by the Commissioner of Prisons as follows:

“The reason for this is that in Hong Kong “young persons” (i.e. 14-16) may still be sent to prison if there is no alternative means of dealing with them, and there are many boys in this category who are not suitable for “approved school” treatment. It is most important that boys of this group should not find their way into prison. The upper age limit was dictated solely by the limitations of space and the facilities at our disposal.”

*“The word Borstal has been avoided throughout, and it is not intended to attempt to reproduce the Borstal system, but rather to evolve a method of training to which Chinese boys will respond most readily and which will have the best results. The experience gained at Stanley Reformatory School, and the continuity implied by the transfer of the staff as a whole to the new Centre, will stand us in good stead.”*²²

Before the Training Centre Ordinance became law in Hong Kong, the Prisons Department had already experimenting this programme in 1951 by having young male prisoners aged from sixteen to eighteen separately accommodated in the former

²¹ Commissioner of Prisons, *Annual Departmental Reports 1946-47, 1951-52.*

²² Commissioner of Prisons, *Annual Departmental Report 1952-53.*

Printing Workshop of Stanley Prison. They were managed by a selected team of prison staff and sent out of the prison to two war-time food storage huts outside Stanley Prison before the adult prisoners were unlocked from their Halls, and returned to Stanley Prison only after the adult prisoners returned to their cells.

The young prisoners had a routine similar to that of the Reformatory boys as they would attend education and vocational classes conducted by the school master and the instructor as well as having meal and recreation inside the two huts. Outdoor works included reclamation work, minor repair work on the prison buildings and manning the vegetable garden.²³

With the endorsement from London, the Training Centre Ordinance became law on 6 March 1953 providing character training for male young offenders aged from 14 - 18. The period of detention in the Training Centre was from nine months to three years with the actual release date to be decided by the Commissioner of Prisons taking into consideration the progress of the inmate towards training. The training centre inmates were required to undergo statutory after-care supervision upon release from the training centre by Prison Department After-care Officers and were subject to recall if found in breach of the supervision conditions. Stanley Training Centre (site of the former Stanley Reformatory School) commenced operation on 24 February 1953 with a total of four admissions sent by the courts by the end of March 1953.²⁴ The Centre could accommodate up to 148 boys and activities organised at Stanley Training Centre were very similar to what Stanley Reformatory School had provided previously.

²³ Commissioner of Prisons, *Annual Departmental Report 1950-51*.

²⁴ Commissioner of Prisons, *Annual Departmental Report 1952-53*.

In October 1954, the huts outside the Stanley Prison perimeter, formerly known as Stanley Prison Extension where the experimental training centre programme was conducted, were gazetted as a second Training Centre. This place was renamed as Tung Tau Wan Training Centre (東頭灣教導所) and admission commenced on 1 February 1955. The opening of the second training centre tied in with the lifting of the upper age limit of the training centre inmates from 18 to 21. The younger age group training centre inmates were accommodated at Stanley Training Centre whereas the older age groups were located at Tung Tau Wan. With the provision of two training centres, it was the intention of the Prisons Department that:

“It should now be possible for all young men under 21 who are suitable for training to be received into one of the Centres, only the most intractable being committed to prison. With the co-operation of the Courts it is hoped that most of the under-21's appearing before them will be committed on Training Centre remand warrants for a report as to whether they are suitable for this type of training.”²⁵

On 8 September 1958, Tung Tau Wan Training Centre was relocated to Cape Collinson, a former Royal Artillery gun position in the eastern tip of Hong Kong Island. This new site was vacated by the army and Commissioner Norman took the initiative to secure this site from the Government as the building in this site were more permanent in nature than the go-down buildings at Tung Tau Wan. The Cape Collinson Training Centre provided accommodation for 166 boys living in small army bunkers and inmates receiving educational and vocational classes in army Nissen huts. Both training centres were open institutions with no fences and it was the practice of both training centres that boys of the intermediate and leavers grades were not locked up in the evening.

²⁵ Commissioner of Prisons, *Annual Departmental Report 1954-55*.

On the evening of 17 November 1958, four intermediate grade training centre inmates broke out from a dormitory at Cape Collinson Training Centre and a prison warder, called staff leader in the training centre, was injured by the escaping inmates during the course of the break-out. The staff member later died as a result of the injuries sustained and became the first prison staff killed on duty after the War.²⁶

The four inmates were later arrested and charged with murder, with one convicted at the end of the murder trial and executed.²⁷ This incident had deep impact on the prison staff at Cape Collinson Training Centre with allegations of assault and ill-treatment on the training centre inmates reported on the nights of 19 and 20 November 1958. These allegations together with the murder of the prison staff led to a full Commission of Inquiry ordered by the Governor in April 1959.

The Commissioners' Report was presented at the Legislative Council on 3 February 1960 with most of the recommendations accepted.²⁸ Three prison staff involved in the alleged maltreatment of inmates were dismissed from the service and the Chief Officer in charge of Cape Collinson Training Centre was allowed to retire from the Prisons Department. The Council disagreed with the Commission's recommendations which found Cape Collinson unsuitable for use as the site for the training centre and that the leaver grades should be locked up at night. The Council felt that the murder incident was an act on the spur of the moment and should be regarded as an isolated incident which should not discredit the good performance of the training centre programme. As revealed in the Commission Report, it was reported that:

²⁶ Commissioner of Prisons, *Annual Departmental Report 1958-59*.

²⁷ Prisoner Choi To, age 22, was executed on 15 September 1959 on charge of Murder.

²⁸ Cape Collinson Training Centre - *Report of the Commission of Enquiry* submitted on 5 September 1959.

“...in the five years of this Training Centre's existence (including the period during which it was located at Tung Tau Wan) the percentage of the trainees who have not subsequently been reconvicted stands at 72%, a record which compares most favourably with the results achieved by comparable institutions in the United Kingdom and elsewhere.”²⁹

Commissioner Norman in 1960 proposed to build the third training centre in Hong Kong taking note of the impending United Kingdom legislation of not passing prison sentences in excess of two years for offenders under 21 years old except for some very serious offences. He supported Hong Kong to have similar amendments which meant training centre sentence would replace most of the medium term prison sentences for young offenders in Hong Kong. He foresaw the additional demand for training centre accommodation and suggested to taking over the site office and accommodation buildings left by the construction workers after the completion of the Shek Pik reservoir (石壁水塘) project at Lantau Island. He had the support from the Colonial Secretary but this proposal was objected by the Financial Secretary on grounds that there were already five prison projects in hand and “...these cheap starts could easily lead to expensive follow-ups.”³⁰

This did not deter Commissioner Norman from pressing the need for getting this site for use as the third training centre as the number of admissions to the training centre had exceeded 200 during the financial year 1961-2 and this trend continued in the following two years with annual admissions of 191 and 184 respectively. (Appendix D refers.) Shek Pik Training Centre (石壁教導所) (the third Training Centre) was finally approved by the Government and was gazetted for operation on 15 May 1964. The Centre was established on the foreshore below the Shek Pik Reservoir on Lantau

²⁹ See *Hong Kong Hansard*, 2 March 1960, pp. 26-8.

³⁰ See HKRS 41-1-10051.

Island. The bungalows, formally occupied by engineers and contractors' staff, were modified to provide dormitories, classrooms, workshops, etc. for 185 boys aged 16-18.³¹

The new multi-function female institution Tai Lam Centre for Women (大欖女懲教所), became operational on 1 November 1969, had the provision of a Training Centre Section for the accommodation of 30 girls. The female training centre was operated under the same Training Centre Ordinance as the boys and by the end of March 1970; four girls were sentenced to the training centre.³²

In April 1971, a Wardress of the Tai Lam Centre for Women was attacked and subsequently died from injuries sustained during an escape attempt by five female training centre inmates. She was the second staff who was killed in the line of duty after the War and both incidents were connected with the escape of training centre inmates. Three of the five female training centre inmates were found guilty and convicted of Manslaughter. They were sentenced to a period of detention in a Training Centre under a new Training Centre Order. On appeal, the Training Centre sentence of the three was changed to three years imprisonment.³³

With all the female offenders transferred to Tai Lam, the Prisons Department made use of the vacated Lai Chi Kok Women Prison (荔枝角女子監獄) as the remand and recall centre for the training centre boys and named the place as Lai Chi Kok Training Centre (荔枝角教導所).³⁴ However owing to the dilapidated condition of the

³¹ Commissioner of Prisons, *Annual Departmental Report 1969-70*.

³² *Ibid.*

³³ Commissioner of Prisons, *Annual Departmental Report 1971-72*.

³⁴ Lai Chi Kok Training Centre had never been a training centre for girls as suggested by Chan, H. Y. (2003) *op cit.*, p. 175.

buildings and the lack of officially approved staff establishment for its operation, the Centre was closed on 29 July 1972. The site was returned to the Government for building a new Reception Centre. Inmates of Lai Chi Kok Training Centre were moved to the new Tai Tam Gap Training Centre (大潭峽教導所) which began operation on 1 May 1972 with facilities for 170 inmates. To focus on the delivery of the training centre programme, the training centre remand section was relocated to Victoria Reception Centre. Parts of the Victoria Reception Centre were gazetted as a Training Centre on 22 July 1972 and training centre remands began to be admitted from 1 November 1972.³⁵

The Training Centre Ordinance and Regulations were amended on 29 March 1974. The new minimum period of detention was reduced from nine months to six months but the maximum period of stay at the Centre remained at three years. The statutory supervision period was changed to three years counting from date of release (previously up to four years from date of admission). This amendment had literally extended the maximum period of custodial training plus after-care supervision of an inmate from four to six years, not counting a possible period of recall on top of the maximum period.³⁶

It is of interest to note that the highest number of training centre boys admitted in a year was 598 which was recorded in the financial year of 1972-1973. The number of training centre admissions was on the decrease after the 1974 amendment with the annual admission dropped to less than 400 until 1987. The number of girls sentenced to the training centre was low in number, with the highest of 53 recorded in 1976. In

³⁵ Commissioner of Prisons, *Annual Departmental Report 1972-73*.

³⁶ Commissioner of Prisons, *Annual Departmental Report 1973-74*. Also see Hansard 9 January 1974, pp. 372-3.

1997, there were a total of 209 boys and 33 girls sentenced to the training centre. (Appendix D refers.)

One possible suggestion for this decrease in the training centre admission was owing to the introduction of the Detention Centre programme to Hong Kong in 1972. In addition, the new detention period of the training centre programme under which it was possible to keep a young person in custody and after-supervision for six years was regarded by some magistrates or judges as too lengthy for a young person and should only be used for those who had committed very serious offences.

In the same 1974 amendment to the training centre programme, the award of caning (12 strokes maximum) was added to the list of punishments the Superintendent could award to the male training centre inmates found in breach of the centre discipline.³⁷ When the training centre amendments were tabled at the Legislative Council, the legislators made no comments despite the fact that the training centre programme had been in existence since 1956 without the need for physical punishment to uphold discipline in the centres. Very little information was available to the public on the extent of training centre inmates being punished with caning as statistics were only reported in the 1974 and 1975 Prisons Department Annual Departmental Reports where 28 and 89 inmates were caned respectively. The award of caning as a disciplinary award was only repealed in 1990.³⁸

Other available punishments that the Officer-in-charge of the training centre could award included caution, deprivation of privileges, delaying promotion, stopping visits

³⁷ Training Centre Regulations S. 20 (g) refers.

³⁸ See Legal Notice 192 of 1990.

and letters, deduction of earnings for the lost or damaged government property and the dietary punishment for a period of not more than seven days. The dietary punishment was repealed in 1983, which was years ahead before the repeal of caning in Hong Kong.³⁹

The open and relaxed borstal type of training centre programme shifted towards a more deterrent regime from 1972. Prior to 1973, training centre leaver grade inmates were given regular leave passes of 48 to 72 hours for them to return home to prepare for jobs or re-establishing relationship with their families before their release. The number of leave passes granted was drastically reduced from 2,105, 1581, 1396 to 417 in 1970, 1971, 1972 and 1973 respectively.⁴⁰ Training Centres were no longer open institutions from the 1970s with chain-link fences topped with barb-wire erected around the centres.

On the other hand, the rehabilitative programmes offered to the training centre inmates were enhanced considerably in the areas of education, vocational as well as character training. Formal education classes were arranged mainly in arts, language and IT technologies and inmates were encouraged to take part in public examinations. The same applied to the vocational training programmes where training centre inmates were arranged to take part in internationally accredited qualifications such as Pitman Examination and London Chamber of Commerce and Industries Examinations. Training facilities at Pik Uk Correctional Institution as well as the other training centres were greatly enhance through internal funding as well as outside donations. For character trainings, training centre inmates, apart from joining the scouting

³⁹ See Legal Notice 167 of 1983.

⁴⁰ Commissioner of Prisons, *Annual Departmental Reports 1970-74*.

activities, also took part in the ‘Duke of Edinburgh’s Award Scheme’⁴¹ as well as attending ‘Outward Bound’ courses.

There were no major changes on the training centre programme since the 1980s. In 1997, there were a total of 209 young males (21 under 16 years and 188 from 16 to 20 years) and 33 girls below the age of 21 admitted to the training centres. 68% of those new inmates had no previous institutional experience and for those with previous institutional experience, most were having no more than two previous institutional sentences.⁴² The daily average training centre population in 1997 was of 427 males and 61 females. Male training centre boys were located mainly at Cape Collinson Correctional Institution and Lai King Training Centre (勵敬教導所). Training centre remands as well as special management cases were located at Pik Uk Correctional Institution (璧屋懲教所); a maximum security multi-purpose young offender institution. Young females were all accommodated at the multi-purpose Tai Tam Gap Correctional Institution (大潭峽懲教所).⁴³

There have been a number of academic studies carried out on the effectiveness of the training centre programme which suggested the training centre programme effective.⁴⁴ Success rates for the training centre from 1982 to 1997 indicate a range of 59% to 71% for males and from 86% to 94% for females.⁴⁵ ‘Success Rate’ is defined by the Correctional Services Department that the supervisees did not commit any criminal

⁴¹ The Correctional Services Department was licensed as an Operating Authority of the Scheme since July 1986.

⁴² See Table 36, Correctional Services Department, *Annual Statistical Tables on Receptions 1997*.

⁴³ Commissioner of Correctional Services, *Annual Departmental Report 1997*.

⁴⁴ Prisons Department (1974); (1980); Chan, H. Y. (2003) op cit.; Tam, K. Y. and Heng, M. A. (2008) Rehabilitation for Young Offenders in Hong Kong Correctional Institutions, *The Journal of Correctional Education*, 59 (1) and Lo, T. W. et. al. (1997) *Research on the Effectiveness of Rehabilitation Programmes for Young Offenders: Full Report*. Hong Kong: City University of Hong Kong.

⁴⁵ Commissioner of Correctional Services, *Annual Departmental Reports 1982-97*.

offences during the three years after-care supervision period and had complied with the supervision requirements. Appendix D also contains success rates for the Training Centre programme from 1988 to 1999 which indicates a positive response from young offenders that had gone through this long term character training programme.

3.4 The Detention Centres

The beginning of 1970 noted the public's growing concern on the rising of youth crime in Hong Kong. In one way it was the direct result of the post War baby boom when half of Hong Kong's population in 1972 was under 25 years old. (Appendix F refers) The memories of the 1967 riot, with most of the rioters being young people, was also very much in the minds of the locals. The Legislators had on more than one occasion called for tougher sentences in dealing with the young offenders, especially those who were involved in violent crimes.⁴⁶

The crime rate for 1970 had gone up significantly with robbery cases increased from 220 cases per year in 1961-66 to 3,000 cases in 1970. Young persons prosecuted in 1970 for robbery was a 12 fold increase compared to early 1960 figures. The reduced use of corporal punishment by the courts and the restriction of sentencing young offenders to imprisonment in the 1967 legislation were also blamed for this increase.⁴⁷

Apart from bringing back corporal punishment for the young offenders (See later Chapter on the subject of Corporal Punishment), the Government was also at this time

⁴⁶ See *Hong Kong Hansard*, 7 October 1970, 6 January 1971 and 15 November 1972.

⁴⁷ *Hong Kong Hansard*, 6 January 1971, pp. 329-335.

considering the Chief Justice's proposal to introduce the detention centre programme, similar to that in practice in United Kingdom after the 1948 Act, to Hong Kong to deal with the young offenders.⁴⁸

Apparently the Hong Kong Government had written to London regarding the proposal for setting up the detention centre programme in Hong Kong. The Foreign and Commonwealth Office (Hong Kong and Indian Ocean Department) wrote on 21 July 1972 to the Acting Deputy Colonial Secretary informing Foreign and Commonwealth Office's 'non-disallowance' for the Detention Centres Ordinance but reminded Hong Kong to comply with Article 1 of the International Labour Organisation's Forced Labour Convention No. 105 of which labour performed by young offender should be subject to the requirement of the Factories Ordinance, etc.⁴⁹

The memo further mentioned that Mr. Prosser, the Foreign and Commonwealth Office Advisor on Social Development, would visit Hong Kong in August of the same year. He would discuss the operation of the detention centre programme with the Commissioner of Prisons during his visit.

During the subsequent meeting on 8 August 1972, Mr. Prosser did not comment on Hong Kong Government's intention of setting up the detention centre programme. He agreed that International Labour Organisation's Convention did not apply to Hong Kong's case after noting the Commissioner of Labour's comments that:

“the labour performed by these young detainees is of a physical nature and involves sometimes the use of simple tools. All work is done outdoors and there is no employment as such, nor do the hours of work exceed eight

⁴⁸ *Hong Kong Hansard*, 9 February 1972, p. 389.

⁴⁹ See HKRS 1018-2-6. In fact the Detention Centre Ordinance was passed in March with Sha Tsui Detention Centre in operation since June 1972 before London's endorsement was received.

in any one day. In all these circumstances, the Factories and Industrial Understandings Ordinances and its subsidiary legislation do not apply to these centres."⁵⁰

The Attorney General introduced the Detention Centres Bill to the Legislative Council in 1972. He stated that *"I can assure honourable Members that it is the intention of the Commissioner of Prisons to submit to the Governor in Council recommendations for a Spartan regime, under which the detainee will be subjected to rigorous discipline and required to perform hard physical work, consistent with his age and state of health, and will be sharply dealt with for any breaches of discipline."*⁵¹

The Bill was in general well supported by the legislators who were in favour of providing a short period of deterrent sentence for young offenders and felt that the maximum detention period of six months was appropriate. Legislator Wang commented that:

*"The limitation of the maximum detention periods to six months will have two advantages. First, it will make it unsuitable for the more hardened criminals whose proper places should still be the prison and, secondly, none of the detainees will have a chance to establish themselves as the "big brothers" of the centre."*⁵²

The Detention Centres Bill was passed on 15 March 1972 and the first Detention Centre, the Sha Tsui Detention Centre (沙咀勞役中心) was set up on 16 June 1972 at the former site of the Shek Pik Training Centre on Lantau Island providing a 'Short, Sharp, Shock' programme for 80 detainees aged from 14 to 18. The Chinese translation of the 'Detention Centre' means 'Centre for Hard Labour'.

⁵⁰ Ibid.

⁵¹ *Hong Kong Hansard*, 9 February 1972, p. 391.

⁵² *Hong Kong Hansard*, 1 March 1972, p. 466.

Only young male offenders without previous penal institution experience, certified fit for the rigorous detention centre programme by the prison Medical Officer and considered suitable for admission by the Commissioner of Prisons could be sent by the court to this programme. This is the only correctional programme that the sentencing judge needed the consent of the Commissioner of Prisons before they could commit a young person to the detention centre under the respective Detention Centre Ordinance.⁵³ The period of detention was between one and six months and detainees were required to undergo six month statutory after-care supervision by Prisons Department After-care Officers on release and were subject to be recall if found in breach of the supervision requirements.

The detention centre programme in Hong Kong adopted the same ‘short, sharp, shock’ spirit of the British detention centres with an aim to “*deter them, during the earliest stage of their deviation from law and order, from future criminal activity. Emphasis is placed on the strictest discipline and hard work with little or no privileges. Whatever is done must be done well and no excuses from detainees are accepted for failure to maintain a high standard.*”⁵⁴

The second detention centre, the Tong Fuk Detention Centre (塘福勞役中心), was opened on 1 June, 1973. The additional centre provided capacity for the Prisons Department to extend the admission of young people up to the age of 21. The courts

⁵³ S. 4 (4) of the Detention Centre Ordinance states that “A court shall not make a detention order against a young offender unless the Commissioner has not earlier than 1 month before the date of the order informed the court that in his opinion the young offender is suitable for detention and that a place is available for him in a detention centre.”

⁵⁴ Commissioner of Prisons, *Annual Departmental Report 1972-73*. Detainees do receive small grants calculated on a weekly basis but they are not entitled to use the amount for canteen purchase and would only be given on day of discharge as pocket money.

responded well to this new programme and by the end of March 1974, both centres were holding a total of 224 detainees with the younger boys located at Tong Fuk.⁵⁵

Strict discipline was maintained in the detention centres and caning was the main form of punishment for detainees found in breach of Detention Centre discipline in the 1970s. The average award passed down by the Superintendent was two strokes of the cane.⁵⁶

Detention Centres Regulations 9 (1), Cap. 239, Laws of Hong Kong specifies that:

Every detainee, unless excused by a medical officer on medical grounds, shall undertake such work or instruction, for not more than 10 hours a day, as may be required by the Officer-in-charge, and

9 (2) Such work shall, as far as possible, involve physical effort.

One of the tasks performed by the detainees was the one hour rock and aggregate breaking session when detainees had to hammer big piece of rocks to aggregates. This non productive manual task was only ceased after an internal review conducted by the Correctional Services Department in 1992. Grass cutting and gardening work were introduced as replacement.⁵⁷

From the inception of the detention centre programme in 1972 till the end of 1977, 2,621 young males had been released from the detention centres with 2,336 or 89% successfully completed the six months after-care supervision without reconviction. The period of after-care supervision was extended to twelve months from August

⁵⁵ Commissioner of Prisons, *Annual Departmental Report 1973-74*.

⁵⁶ Commissioner of Prisons, *Annual Departmental Report 1975*. Also refer to Chapter Six of this thesis on Corporal Punishment.

⁵⁷ Commissioner of Correctional Services, *Detention Centre Programme Working Party Review, 1992*.

1977 as the Prisons Department's findings indicated that the most vulnerable period for reconviction was between seven to eleven months after discharge.⁵⁸

With such a high success rate recorded, the detention centre programme was further extended to young adults aged from 21 to below 25 years of age from September 1977. They were separately located from the younger boys and the new Ordinance provided for a longer custodial period than the younger age group with a minimum training period of three months to a maximum of one year. This was followed by one year after-care supervision including nightly curfew requirements. The average period of detention at detention centres, as reported in the Commissioner's Annual Report of 1979, was 4.8 months for young offenders and 8.6 months for young adults.

Similar to what had happened to the training centres, a number of correctional institutions had been used as detention centres from 1970s to 1990s to cater for the demand of accommodation for different groups of persons under custody, in particular the Vietnamese detainees.

The detention centres' admission numbers had exceeded those of the training centres from 1974 until 1993 when the training centre admission caught up again. The highest annual admission for the detention centre was 758 in 1974. The admission of young adults to the detention centre was on the contrary not many in numbers when compared with those under the age of 21. The highest admission for young adults was 78 in 1980 and the lowest was 38 in 1981. The detention centre admission trend had started to drop from 1989 and there was a 60% decrease in admission by 1997 when there were only 249 admissions to the detention centre, of which 202 were young

⁵⁸ Commissioner of Prisons, *Annual Departmental Report 1977*.

offenders under 21 and 47 young adults aged from 21 to 25.⁵⁹ The author in 1997 explained to the media on the decline of the detention centre admission despite of its very high success rate. It was suggested that the decline was due to the courts' preference in passing non-custodial sentences to young offenders as well as the increasing number of young offenders found medically unfit for the strenuous detention centre programme.⁶⁰

Population chart showing the admission of detention centre detainees from 1992 to 1997 is attached at Appendix G as reference. Success rates for the Detention Centre from 1988 to 1999 remained to be very high as illustrated in Appendix E.

3.5 The Young Prisoners

As suggested in the earlier sections of this Chapter, the Prisons Department had in the years immediately after the Second World War, despite the shortage of resources, put in extra measures to separate the young offenders from the adults inside Stanley Prison. With the establishment of the Reformatory School programme in late 1946, young prisoners aged 16 to 18, who had exceeded the age limit of the reformatory school, were located in the old Printing Workshop inside Stanley Prison from 1 October 1947. Two food storage huts outside Stanley Prison were converted for these boys who were sent out from Stanley Prison after unlock to work in the areas immediately outside the prison and only returned to the prison after the adult prisoners were locked up. The Prisons Department was using this as an experimental

⁵⁹ Compiled from Commissioner of Prisons, *Annual Departmental Report 1972-81*. Commissioner of Correctional Services, *Annual Departmental Reports 1982-97*.

⁶⁰ *The Hong Kong Daily News*, 23 March 1997.

‘Borstal’ type of open institution for the young offenders and named the two huts ‘Young Prisoners Training Centre’ well before the Training Centre Ordinance was enacted in Hong Kong.⁶¹

The establishment of the training centres in Hong Kong in 1953 and 1954 allowed the Prisons Department to advocate in 1954 the use of the training centre programme as the preferred method for dealing with young delinquents. It was thought prison sentences should only be left to the worst cases or the incorrigibles or those serving a very short sentence. In April 1955, there were only 17 young prisoners under 21 being kept inside Stanley Prison and they were separated from the adult prisoners. In view of the small numbers, very little could be done to assist this group of young prisoners apart from segregating them in cells and working parties.⁶²

The situation with male young offenders remained very much the same during the next decade with majority of the young offenders being sentenced to the training centres. Young prisoners, as remarked by the Commissioner of Prisons in 1958, had become “*increasing rare species*”⁶³ as the courts appeared to have accepted the training centre sentence more suited for the young offenders. From 1960 onwards, male young prisoners were transferred away from Stanley Prison to Chi Ma Wan Prison, an open prison for adults situated in Lantau Island. They were located in a separate dormitory and worked in a separate working party from the adult prisoners. By the end of 1966, there were 93 young prisoners serving sentence in the open prisons at Chi Ma Wan and Tong Fuk in Lantau Island whereas there were 569 young offenders under training in the training centres.⁶⁴

⁶¹ Commissioner of Prisons, *Annual Departmental Report 1947-48*.

⁶² Commissioner of Prisons, *Annual Departmental Report 1954-55*.

⁶³ Commissioner of Prisons, *Annual Departmental Report 1957-58*.

⁶⁴ Commissioner of Prisons, *Annual Departmental Reports 1954-67*.

In 1965, Commissioner Norman was appointed member of a Working Party appointed by Government to investigate the adequacy of the law in respect of crimes of violence committed by young people. The Working Party recommended that all young men under 21 should, on conviction, be remanded for a background report on their suitability for treatment other than imprisonment. In view of the proven success of the Training Centre programme, the expected effect would be a further reduction on the number of young prisoners.⁶⁵ The Working Party's recommendation was finally put into practice starting from April 1967, a time between the two riots in Hong Kong.

In April 1966, riot broke out in Kowloon which was sparked by a rise in the Star Ferry fare. At least 332 rioters were convicted for offences such as riotous assembly and curfew breaking and sentenced to imprisonment up to six months. Most of them were sent to Chi Ma Wan Prison. Amongst this group of 332 prisoners, 43 (12.95%) were aged from 14 to 16, 77 (23.19%) were from 17 to 18 and 68 (20.48%) were from 19 to 21.⁶⁶

Just a year later, Hong Kong was facing another major social, political and public order crisis with the outbreak of the Communist inspired riot which broke out in May 1967. This riot was much more serious in nature when compared to the previous disturbances. Improvised explosive devices were planted in Hong Kong on a grand scale causing havoc to the community. The riot was eventually put down in November of the same year with more than 1,700 rioters given custodial sentences by the courts. The young offender population at year end of 1967 was 456 young prisoners and 547 training centre inmates. The young prisoner population had a five-fold increase when compared

⁶⁵ Commissioner of Prisons, *Annual Departmental Report 1964-65*.

⁶⁶ Commissioner of Prisons, *Annual Departmental Report 1966-67*.

with 93 in year end 1966 whereas the training centre inmate number remained rather stable.⁶⁷

During an Establishment Sub-committee meeting in 1968, it was remarked that:

“The disturbances and unrest in the Colony, particularly among young people, have produced a new type of young prisoners and consequently new problems for the Prisons Department which must be resolved promptly if young persons with long prison sentences to serve are not to become more embittered and eventually return to the community with their prejudices more deeply rooted than ever.

The ideal solution to this problem would be a maximum security Training Centre, but no such institution exists nor can one be improvised.”⁶⁸

The trend towards a younger penal population continued. The number of young offenders under 21 years of age sentenced to prisons, training or treatment centres had gone up from 1,015 (1970-71) to 1,340 (1971-72), 1,740 (1972-73) and 1,830 (1973-74), more than 80% increase in three years. The increase was due to the rise of crime in these years especially on violent crimes committed by young offenders. With such a large admission of young offenders, young prisoners were no longer kept at Chi Ma Wan Prison alone but scattered in several prisons including the Stanley Prison.⁶⁹

Following the 1973 disturbance at Stanley Prison, the Departmental Board of Enquiry had identified the rise of a new group of violent offender in Hong Kong, particularly in the younger age group, as one of the causes of the disturbance that took place in Stanley Prison.⁷⁰

⁶⁷ Commissioner of Prisons, *Annual Departmental Report 1966-68*.

⁶⁸ See *HKRS 41-2-819*.

⁶⁹ Commissioner of Prisons, *Annual Departmental Reports 1970-74*.

⁷⁰ Commissioner of Prisons, *Annual Departmental Report 1973-74*.

To relieve the overcrowding situation at Stanley Prison, young prisoners therein were transferred out to the Chatham Road Centre starting from 20 March 1973. Other young prisoners were located at Chi Man Wan Prison where full time education classes were provided. As resources was limited, young prisoners were divided into two groups during educational classes; those above Primary 6 standard (equivalent to Year 7 and above in England) in the Senior Class and the Junior Class for those with qualification below Primary 6.⁷¹

The accommodation of young prisoners had greatly improved with the completion of the first maximum security young offender institution in Hong Kong, the Pik Uk Correctional Institutions (壁屋懲教所) located in the country side of Sai Kung (西貢) on 20 January 1976. This was a purpose built multi-function institution with a certified accommodation for 398 young offenders, with majority of the accommodations in single cells. The institution serves as the remand centre for all male young offenders under 21 with separate sections for Training / Detention / Drug Addiction Treatment Centre remands as well as holding young prisoners of high security category. All sentenced young prisoners at Pik Uk Correctional Institution are receiving half-day education and half-day vocation training.⁷²

In Hong Kong, the number of young offenders being sentenced by the courts to receive custodial sentences was much fewer than those being placed on remand. For example, of the 1,097 young persons remanded for Training / Detention Centre suitability reports during the year 1977-78, 330 or 30% were sentenced to the detention centre, 242 or 22% were sentenced to the training centre and 105 or 10% for

⁷¹ Ibid.
⁷² Ibid.

imprisonment. 420 or 38% were given non-custodial sentences.⁷³ Apparently some of the sentencing judges preferred to use a short period of remand by detention to a correctional institution to shake up the young offender. A District Court Judge at the time, wrote in his findings that:

*“He has lost about 25 days of liberty already. It may not have the same short sharp shock effect of a detention centre order, he has a sufficient taste of the clang of the prison gate. I order the defendant to perform 180 hours of unpaid work under a Community Service Order.”*⁷⁴

At Pik Uk, the education programme covers academic subjects comprising English, Chinese, Mathematics and Social Studies were taught from Primary 3 to Form 2 levels (equivalent to Year 3 to Year 8 in England). Creative subjects such as Art and Music were introduced during the evenings in form of hobby classes. Young prisoners are required to take the Attainment Test on admission and are allocated to classes appropriate to their standard. Monthly tests are held to decide on their progression to a higher class. Young prisoners in the illiterate, semi-illiterate or over-qualified groups are to receive separate tuition. Moral training of traditional Chinese family values, etc. are provided during educational classes.⁷⁵

Starting from 1986, the Hong Kong Examination Authority recognized inmates from Pik Uk Correctional Institution as ‘School Candidates’ to participate in the ‘Hong Kong Certificate of Education Examination’⁷⁶ inside the prison. This arrangement allowed the young prisoners to be treated on equal terms as students of the other schools with a

⁷³ Commissioner of Prisons, *Annual Departmental Report 1977-78*.

⁷⁴ Deputy District Judge A WONG, *HKSAR v. CHUNG KWAN LEONG* [2009] HKDC 1207; DCCC1043/2008 (16 February 2009).

⁷⁵ Commissioner of Prisons, *Annual Departmental Report 1973-74*.

⁷⁶ The standard of this public examination is equivalent to the GCE O Level examination in UK.

much expanded range of courses that could be examined rather than the limited courses they could take as private candidates.⁷⁷

After-care was not provided for young prisoners upon release before 1980 but they could obtain help from voluntary agencies including the Discharged Prisoners' Aid Society whose workers visited the institutions on a regular basis. This situation was rectified with the enactment of the Criminal Procedure (Amendment) Ordinance in May 1980 providing statutory after-care supervision for young prisoners sentenced to three months or more who were under 21 on admission and under 25 on discharge. After-care supervision, same as other correctional programmes, was provided by the Prisons Department. The success rate for the young prisoners as illustrated in Appendix E is considered satisfactory as the young prisoners were only given prison sentences as the last resort when no other correctional programmes were deemed suitable.

3.6 Half-way Houses for Young Offenders

The concept of providing half-way house programme for discharged offenders was not new for the Prisons Department. The programme began not with the young offenders but the addicted offenders, who had completed their drug treatment centre programme. (Programmes for the addicted prisoners will be discussed in more detail in the next Chapter.)

⁷⁷ Commissioner of Correctional Services, *Annual Review 1986*.

The first half-way house for young offenders in Hong Kong operated by the Correctional Services Department; 'Phoenix House' (豐力樓) was opened on 5 July 1983. It provided accommodation for up to 120 young male and female offenders who had completed their period of custodial training and were in need a period of adjustment before returning home, or provided temporary accommodation for those who had difficulties in finding lodging after release from the institutions. It was reported that:

“The half-way house programme is a continuation of the work carried out within the community aiming at reinforcing the sense of responsibility and the cultivation of good working habit for this group of young supervisees. Period of residence would not exceed their statutory supervision period and would normally in excess of one month.”⁷⁸

Prior to the setting up of the Phoenix House, young offenders in need of such residential services were normally referred to the non-government voluntary agencies by the after-care officers.

Majority of the residents of Phoenix House are from the detention centres and are directed by the Board of Review to take accommodation as part of their supervision conditions.⁷⁹ The main reason for such an arrangement was because of the need for the detention centre discharges to 'de-regiment' from the 'Short, sharp, shock' experience. It also allowed the residents to be placed under a period of close supervision when the after-care officers could monitor their adaptation to work or

⁷⁸ Commissioner of Correctional Services, *Annual Review 1983*.

⁷⁹ The Board of Review is formed in accordance with the respective Training Centres, Detention Centres and Drug Addiction Treatment Centres Ordinances for evaluating the inmates progress whilst undergo treatment, to decide on their release dates from the custodial training and the supervision conditions required during the period of statutory after-care supervision. The respective Boards are chaired normally by a Senior Superintendent from the Correctional Services Headquarters with the Head of the Institution, the Medical Officer, and staff representing the custodial, after-care and education services as Board members.

studies. Their average period of stay at Phoenix House was short and normally not more than two months.

The experiment on placing female young offenders in Phoenix House ended when a designated half-way house, the 'Bauhinia House' (紫荊樓) was made available to the female supervisees in August 1984.

3.7 Young Offender Assessment Panel

In August 1984, a 'Working Group on Youth' under the Fight Crime Committee was established to study ways of improving the work with young offenders in Hong Kong. The Working Group was chaired by the Secretary for Security with the Secretary for Health and Welfare and representatives from the Education and Manpower Branch of the Government Secretariat, Social Welfare, Correctional Services, Legal and the Police as members.⁸⁰

It was reported in the media that the Working Group had met members of the Californian Youth Authority when they visited Hong Kong in 1984. The Group was interested in the Authority's approach in dealing with young offenders in California and was considering whether some of the American approach could be adopted in Hong Kong.⁸¹

⁸⁰ *South China Morning Post*, 24 June 1985.

⁸¹ *Ibid.*

The Working Group did not put forth the recommendation on adopting the American model at the end, and instead “...recommended that an inter-departmental Panel comprising professionals directly involved in the treatment of young offenders should be set up. The panel would provide magistrates with a co-ordinated view on the most appropriate rehabilitation programme for a particular young offender.”⁸² The Working Group’s proposal of setting up the ‘Young Offender Assessment Panel’ or YOAP in short, was endorsed by the Fight Crime Committee on 5 July 1986.

The Californian Youth Authority was set up as an independent department which decided the most appropriate treatment programme for the young offenders, to follow-up on their progress and to make changes on their treatment programmes as deemed appropriate. The subsequent Hong Kong model emphasised that “*the Panel serves solely as a source of additional assistance to the courts and it is not intended in anyway to interfere with the ultimate discretion of the magistrates*”.⁸³ The Terms of Reference for the YOAP were:

“(a) to assist the courts in the sentencing of convicted young offenders through the provision of a co-ordinated view on the most appropriate programme of rehabilitation; and

(b) to provide a forum for detailed examination of a young offender under treatment when the supervising authorities consider a change in treatment programme is desirable, and to make recommendations for further action to be taken.”⁸⁴

⁸² Social Welfare Department & Correctional Services Department, (1988) *Review of the Young Offender Assessment Panel Pilot Scheme*, Hong Kong, p. 1.

⁸³ Ibid, p.2.

⁸⁴ Ibid.

The Panel consisted of professional members including clinical psychologists, education officer / senior school master, probation or after-care officers from the Social Welfare Department and the Correctional Services Department. YOAP meetings were chaired by the Deputy/Assistant Director of Social Welfare and the Deputy/Assistant Commissioner of Correctional Services alternatively once every six months.

The Panel commenced operations on 1 April 1987. As a pilot scheme, the Panel had only taken up referrals from two magistracies as well as cases from all juvenile courts. After assessing the case through joint interview whilst the offender was remanded in custody of the Correctional Services Department, the Chairman submitted a report to the magistrate with a co-ordinated view on the most appropriate programme for the young offender.

An evaluation was conducted in 1988 after the YOAP was in operation for fifteen months. The review found the services of the Panel regularly used by the magistrates and meeting had to be conducted on a weekly basis to meet the courts' needs. A total of 278 referrals were received with 87.6% of the recommendation made by the Panel accepted by the courts.⁸⁵ Some of the decisions made by the courts basing on the YOAP's recommendations were challenged by the defendants through appeal but in general the High Court was in support of the professional views made by the Panel.⁸⁶

⁸⁵ Ibid., p. 18.

⁸⁶ See HKSAR v CHAN HOI SHAN, 1998 HKCA 56; CACC161/1998 (13 May 1998) and HKSAR v LEE KWONG LAP, Magistracy Appeal No. 1117 of 2002.

3.8 Conclusion

Reformatory mirrored after the British system was established in Hong Kong in the early twentieth century as alternatives to imprisonment for young offenders. In 1932, the Industrial and Reformatory Schools Ordinance was enacted to further regulate the disposal of young offenders. In the same year, the juvenile court was formed to deal with young offenders as well as to consider the needs for the provision of probation services to the young offenders.

On the other hand, Hong Kong in the 1930s to 1940s had adopted a harsh stance on young offenders as evident by the frequent use of imprisonment and whipping as sentence by the courts. This was mainly due to the influx of refugees from Mainland China both before and after the War who came to Hong Kong to escape war and look for better living.

The Prisons Department in Hong Kong had a long history in the management of young offenders. Apart from keeping juveniles sentenced by court to serve terms of imprisonment, young boys of reformatory age were under the management of the Prisons Department as the probation service was placed under the administration of the Prisons Department as early as 1938. Before the Second World War, the Prisons Department was also responsible for the operation of the Juvenile Remand Home.

Immediately after the War, the Prisons Department had taken up the duties of managing the Reformatory School and succeeded in diverting young offenders from imprisonment to this welfare based treatment programme. The programme was successfully operated by the Prisons Department until 1953 when the Reformatory

School programme was transferred to be under the care of the newly set up Social Welfare Officer in line with the British practice.

Penal elites in Hong Kong, especially the senior prison officers with experience with the English Borstal system, had monitored the development at home closely. With experience gained from running the Reformatory, the British Borstal system under Criminal Justice Act 1948 was modified to fit into the local situation and became Hong Kong's training centre programme. Since its inception in 1953 until early 1970s, the training centres in Hong Kong were operated on welfare model with minimal restrictions. The programme was being used as the preferred sentencing option for the courts in dealing with young offenders.

The post War baby boom had altered the population composition of Hong Kong. Young people formed the bulk of the population in Hong Kong in the early 1970s and with this came the rise in youth crime. The public outcry on the rise of crimes, especially violent crimes committed by young offender, turned into moral panic and demanded response from the Government and the Judiciary. Penal elite scavenged the out-dated detention centre programme from England and launched it in Hong Kong in 1972. The programme was modified on lessons learnt from the English experience by giving the Commissioner of Prison the power to select who to be admitted. This proved to be a successful move. The 'short, sharp, shock' programme, cope with one year compulsory after-care supervision with recall sanctions executed by officers of the Prisons Department turned this programme into the most successful young offender programme in Hong Kong with success rates exceeding 90%.

Corporal punishment formed part of the disciplinary awards the Superintendent could order onto the detention and training centre boys in 1970s in response to the hard-line penal policy on crime. This was however quietly removed from the Detention and Training Centre Regulations in 1981 to conform with the international standards when the Prisons Department was aspired to become an internationally recognized correctional service. This move was taken by the Prisons Department well before judicial corporal sentence was abolished in Hong Kong in 1990.

There were no major changes in the way young offenders were managed under the Correctional Services Department from 1980s to 1997 despite the introduction of the youth custody system in England. Only minor enhancement of the programmes were made which included the provision of half-way houses and the establishment of the Young Offender Assessment Panel in providing expert opinions for the courts in sentencing young offenders. The public seemed to have accepted the disciplinary welfare model for young offenders in Hong Kong effective. The management of adult offenders, as seen in the next Chapter, is rather different.

Chapter Four

Management of Adult Offenders after the War

4.1 Introduction

Compared with the young offenders under the custody of the Prisons and later Correctional Services Department, the treatment of adult offenders in Hong Kong was more focused in the maintenance of custodial discipline and the positive engagement of prisoners through work. There were initiatives taken by the Prisons Department in providing separate treatment programmes for addict prisoners and prisoners with mental problems starting from the 1950s and the 1960s respectively. It was in the 1980s that the Correctional Services Department had really adopted a more rehabilitative approach in dealing with the adult offenders in Hong Kong.

This Chapter will examine the changes occurred from 1945 until 1997 when the role of the Hong Kong prisons were changed from the warehousing of prisoners to correctional facilities with structured programmes providing full rehabilitative services for the offenders. Possible explanations will be suggested to account for such changes in penal policies and practices.

A section in this Chapter is used to describe the conditions of the Japanese war criminals incarcerated in Hong Kong after the Second World War. They were treated not as prisoners of wars but as ordinary prisoners and were a very unique group of prisoners in Hong Kong's penal history.

4.2 The Japanese War Criminals

Stanley Prison, apart from holding local criminals sentenced by the courts, was also keeping a small group of Japanese prisoners admitted under war crime charges when the War ended in 1945. They were located in F Hall of Stanley Prison under the direct control of the British military personnel and their custody and management were outside the jurisdiction of the Prisons Department. The British military personnel responsible for the management and supervision of the Japanese War criminals were provided with accommodation at the European Prison Officers quarters located just outside Stanley Prison. Meals for this group of prisoners were different from the prison diets provided to other prisoners in Stanley Prison. They were the responsibilities of the British military and at one time they were provided with army rations as prison diet. On 17 July 1947, all the remaining Japanese War criminals, 87 in total, were handed over by the British military authority to the Prisons Department for management.¹

This group of prisoners were visited by the Red Cross on a number of occasions. During the Red Cross' visit to Stanley Prison on 6 September 1949, it was recorded that 85 Japanese prisoners were still being detained. Amongst this group of prisoners, 60% were officers; four serving life sentences with the remaining serving sentences of two years and more. They were treated as ordinary prisoners and not prisoners-of-war and were subject to the same restrictions and regulations as other prisoners at Stanley Prison. They were all located in a separate block and most of them were employed in running a large vegetable, fruit and flower garden. They also run a piggery, keep hens and attending the lawns, gardens of government buildings outside the prison

¹ See HKRS 125-3-406.

compound. They ran their own kitchen but had the same prison diet as the other prisoners in the prison. According to record, they had applied to be transferred back to Japan to serve their remaining sentences and were waiting for decision from the Hong Kong Government.²

A follow-up visit by the Red Cross to Stanley Prison was made on 25 January 1951. 61 Japanese prisoners were noted to be still serving their sentences in Hong Kong. The Red Cross report noted that conditions for this group of Japanese prisoners were very similar to that of the last visit.³

Arrangement was finally made for this group of Japanese prisoners to be repatriated back to Japan. They were sent off by sea on board S.S. Hai Lee in the latter part of 1951 under the escort of Principal Officer Blumenthal and three other Prison Officers.⁴

4.3 Adult Prisoners after the War

Stanley Prison was the only functional prison in Hong Kong immediately after the War, accommodating not only male adult offenders, but also children of Approved School age and women prisoners. War time damages and neglect had made both Victoria Prison and Lai Chi Kok Female Prison not suitable for occupation. Urgent repair and renovation work was made to parts of Victoria Prison with a purpose to house the remand prisoners therein as it was becoming a heavy burden for the

² See HKRS 41-1-5179.

³ Ibid.

⁴ See file HKRS 125-3-408.

department to transport remand prisoners between the courts in town and Stanley Prison daily.⁵

Victoria Prison was repaired and re-opened in July 1946. The prison was used mainly to house remand prisoners in view of its location to the courts. A small number of short-term prisoners were also located in this prison to provide domestic services as remands were normally not required to work.⁶

During these immediate years after the War, penal policies and practices in Hong Kong were gradually brought back to align with the British system. One of the examples was the interpretation of the court sentences. Starting from 1935, some Magistrates in Hong Kong had been sentencing prisoners to ‘Simple imprisonment’ instead of ‘Hard Labour’. As a result, these prisoners were only employed in light labour as opposed to hard labour whilst imprisoned.⁷ On 14 November 1946, the Chief Justice informed the Governor that he had given instructions to the magistrates that the use of the expression “Simple imprisonment” was incorrect and should cease.⁸

Hong Kong did not follow the Prison Visitor system in England but having a system of prison visits by the appointed Justice of Peace (JP) who were required to pay regular visits to the prison and reported their findings to the Governor. This system of visits by the Justice of Peace resumed after the War and the first JP visit to Stanley Prison was conducted on 12 August 1946 by J.M. Gray and D. Bension. The report of

⁵ See HKRS 41-1-1427

⁶ *Commissioner of Prisons, Annual Departmental Reports 1946-47.*

⁷ See HKRS 146-13-5. There was no such provision of ‘Simple imprisonment’ in the statutes. Hard labour was abolished in England under the Criminal Justice Act 1948.

⁸ *Ibid.*

the JPs showed the condition of the prisoners inside Stanley Prison at the time was rather unsatisfactory. The prison was extremely overcrowded with male and female, juvenile and adult prisoner all located inside one prison, though in separate sections.

After the departure of the reformatory age boys in December 1946 and the women prisoners to Lai Chi Kok Female Prison on 1 October 1947, Stanley Prison resumed its role as prison for the male prisoners.⁹ Despite these remedies, overcrowding continued to be a major concern for Stanley Prison. In 1948 Stanley Prison had recorded the daily prisoner muster reaching 3,032, which had doubled the designed capacity of the prison.

The pre-War 'Mark System'¹⁰ in practice in Hong Kong was continued in the post-War years as incentive for prisoners to behave and perform. This was however a cumbersome system involved in recording individual prisoner's performance and the workload greatly increased in view of the large penal population. Commissioner Shillingford wrote to the Chief Secretary on 22 March 1948 saying that the eight clerks in Stanley Prison were unable to cope with the calculating of the 'Mark System' and their work was two months in arrears. To address this situation, Commissioner Shillingford had devised immediate means by granting all prisoner one third remission and only prisoners serving sentence of two years or more might receive gratuities.¹¹

⁹ Commissioner of Prisons, *Annual Departmental Reports 1947-48*.

¹⁰ The 'Mark System' required a daily record and evaluation on prisoner's work performance for calculating the remission earned. See Chan, S. (1994a) *op cit.*, pp. 58-9.

¹¹ See HKRS 146-13-5.

To further address the problem of acute prison overcrowding, Commissioner Shillingford requested the Governor in 1948 to take emergency measures to early release certain selected groups of prisoners before they had completed their sentences. The Governor reluctantly agreed and more than 1,400 prisoners were released early between 12 July 1948 and 13 December 1948.¹²

Overcrowding of the prison also caused difficulties in the management of the prison and resulted in the deterioration of prison discipline. The use of home made weapons and fractional fights involving triads and clans were frequent amongst the Chinese prisoners. Most of these fights were related to unlawful trafficking of unauthorized articles including illicit drugs and triad societies' fight for dominance of interests inside prison. As a result, the Prison Rules were amended to make violence towards fellow prisoners a disciplinary offence for which corporal punishment could be awarded.¹³

For the first two years after the implementation of this policy, 14 and 25 cases of corporal punishments were awarded to prisoners for committing violence inside prison. There was no award of corporal punishment on prisoner in 1949 and there was 1 case in 1950 and two cases in 1951. No corporal punishment on adult prisoners was recorded after 1951.¹⁴ The low usage of corporal punishment on prisoner by the Prisons Department, despite the regular judicial corporal punishment passed down by the courts, was probably under the influence of the strong anti-corporal punishment sentiment of the penal elites in the Prisons Department. Further discussion on corporal

¹² See HKRS 41-1-2916.

¹³ Commissioner of Prisons, *Annual Departmental Reports 1947-48*.

¹⁴ Commissioner of Prisons, *Annual Departmental Reports 1947-48; 48-49; 49-50; 50-51 and 51-52*.

punishment in Hong Kong is given under Chapter Six in view of the complexity of the issue.

By 1951, the Prisons Department had built up enough post-War prisoners records to resume the pre-War practice of classifying the prisoners into “Star Class” and “Ordinary Class” prisoners as adopted from England. The classification of ‘long term imprisonment’ was also changed from 2 years to one year starting from November 1951. It stated that *“The object of this re-organization is to increase the possibility of educational and other training, and to prevent undue contact between habitual criminals and first offenders.”*¹⁵

A long-term sentence prisoner review system was also established in 1950. Lists of prisoners sentenced to more than six years were submitted to the Governor after the prisoner had served four, seven, ten and twelve years and thereafter at the completion of further periods of two years. The Medical Officer of the prison would also report on his mental and physical state and to comment on whether further period of imprisonment would have an injurious effect on the prisoner. The Commissioner would report on his conduct and industry in prison and on any matter which might affect consideration of his case.¹⁶ Any prisoner who was considered by the Medical Officer to be unsuitable for imprisonment on health reasons, or may not survive his sentence would be reported to the Commissioner, who would report such case to the Governor for consideration of early release.¹⁷

¹⁵ Commissioner of Prisons, *Annual Departmental Reports 1951-52*.

¹⁶ Ibid.

¹⁷ Ibid.

The modern practice of granting privileges in full to a prisoner on admission was also adopted from 1950. Privileges for prisoners included smoking, football and soft-ball matches, indoor games, educational films and concerts. Privileges may be withdrawn as a punishment and as means of incentives for the prisoners to behave whilst imprisoned. Prisoners entitled to privileges would wear 'Privilege' badges so that they could be identified by staff.¹⁸

The Colonial Office had encouraged the Colonies to follow the English practice in providing after-care services for their prisoners. However the official attitude of the Hong Kong Government in 1951 was not positive on reason that:

“Generally imprisonment does not carry the same stigma with Chinese that it does with Europeans. There is not therefore the same urgency for after-care as there is in England. Nevertheless it is essential that there should be some form of after-care.

Since more than half our prisoners are deported from the Colony on completion of their sentences and a large proportion of the remainder returning to their families, probably would not require assistance. It should not be difficult for interested social workers to make a start. Tentative inquiries have already been made, and it may be possible to report next year that a discharged prisoners' after-care society has been or is being formed.”¹⁹

Acting Commissioner Burdett did not elaborate why he thought imprisonment would not carry the same stigma with Chinese than the Europeans. One possible explanation was that many Chinese were facing poverty at the time and were willing to risk imprisonment in order to make their ends met through working as hawkers. Another possible reason was that a lot of these Chinese prisoners were from the Mainland and

¹⁸ Ibid.

¹⁹ Commissioner of Prisons, *Annual Departmental Reports 1950-51*, p. 22.

without links in Hong Kong. Europeans on the other hand were having no difficulties in securing employment in the Colony and not many Europeans were imprisoned in Hong Kong. This was evident in the large number of Chinese prisoners admitted for minor non-crime offences or for non-payment of fine during the early years after the War.

A six-month pilot after-care scheme was started at Stanley Prison and Lai Chi Kok Female Prison in November 1951. This was arranged by the 'Discharged Prisoners' Aid Sub-committee' of the Hong Kong Council of Social Services with caseworkers sent from the Salvation Army and the Family Welfare Society.²⁰

When Norman took up the post of Commissioner of Prisons in February 1953, there were further moves to introduce a more reformatory regime within the Hong Kong prisons in addition to his personal interest in the rehabilitation of young offenders. The pilot after-care scheme was allowed to continue after the six month trial period. Furthermore, an improved diet scale was introduced on 1 September 1952 and no more award of corporal punishment to prisoners found in breach of prison discipline.²¹ The 'Earning and Canteen Scheme' for prisoners was also introduced from 1 May 1953 and it was reported that there was a noted improvement in prison discipline, industrial production and the general atmosphere of the prisons.²²

In the following year, open visits were introduced at Stanley and Lai Chi Kok Prison. Visitors could have their visits with their imprisoned relatives or friends sitting across a table in the prison garden. This was a huge improvement as "*Previously prisoners*

²⁰ Commissioner of Prisons, *Annual Departmental Reports 1951-52*.

²¹ Commissioner of Prisons, *Annual Departmental Reports 1952-53*.

²² Commissioner of Prisons, *Annual Departmental Reports 1953-54*.

had to shout to their visitors through double wire mesh with a warder patrolling in between inside a cage like structure in the main gate.”²³

1957 saw further improvements in the treatment of prisoners. Prison Rules were amended to allow the Commissioner to grant home leave for up to five days at a time for prisoners in the last six months of a sentence over four years. The rationale for such arrangement was for the prisoner to re-adjust himself to a normal life after a period of institutional treatment as well as repairing family relationships and looking for employment.²⁴

The Discharged Prisoners' Aid Society (DPAS), a voluntary group was set up in 1957. The main function was for co-ordinating and extending the work done by voluntary agencies, notably the Salvation Army in providing help and hostel services for the discharged prisoners. The Commissioner and some senior officers of the Prisons Departments were appointed to be the Vice-President and Advisors of the Society, and DPAS started to receive subsidies from the Social Welfare Department since 1959. From its inception until today, the Discharged Prisoners' Aid Society, renamed the Society of Rehabilitation and Crime Prevention (SRACP) in 1982, has been the main non government organisation providing welfare and supportive services to the ex-offenders.²⁵

Commissioner Norman was also the key figure in setting up open prisons in Hong Kong. The colony's first open prison, the H.M. Prison Chimawan located at Lantau

²³ Commissioner of Prisons, *Annual Departmental Reports 1955-56*.

²⁴ Commissioner of Prisons, *Annual Departmental Reports 1956-57*.

²⁵ Commissioner of Prisons, *Annual Departmental Reports 1957-58*. Also see Justice Tong's Keynote Speech (2011), *An Overview of the Offender Rehabilitation and Crime Prevention in Hong Kong*. China Prison Association & The Society of Rehabilitation and Crime Prevention Hong Kong: 2011 International Conference: Crime Prevention and Offender Rehabilitation-Prospects and Challenges.

Island, started to take in Star Class short-term prisoners from January 1957. This was indeed an open prison without physical security; windows of the prison were not barred and there was no surrounding fence enclosing the site. Condition at the Prison was however rather primitive in the beginning. Lighting at Chimawan Prison was by kerosene pressure lamps as electric mains were yet to be supplied at the time of its inception. Works performed by those able-body prisoners included forestation and road work.²⁶

In October 1958, the Prisons Department took over the staff quarters of the engineers and workers building the Tai Lam Reservoir in the New Territories and turned this into the Hong Kong's second open prison, H.M. Prison Tai Lam. As a high proportion of the newly admitted prisoners either confessed to be or were found to be drug addicts, the Prisons Department started an experiment by assigning only drug addict prisoners to this new open prison. Four full-time Social Welfare Officers were assigned to Tai Lam for the provision of after-care services to those with the greatest needs.

At Tai Lam, all prisoners upon admission who were found suffering from drug withdrawal symptom or from deficiency and malnutrition were admitted to the prison hospital. After a period of resting and medication, the prisoners were arranged to take part in occupational therapy sessions and eventually engaged in outdoor physical works aiming to build up their physique. The Medical Officer commented that in the majority of cases, there had been a marked improvement in physical condition before their discharge.²⁷

²⁶ Commissioner of Prisons, *Annual Departmental Reports 1956-57*.

²⁷ Commissioner of Prisons, *Annual Departmental Reports 1958-59*.

The successful experiment at Tai Lam Prison has led to the development of the unique Drug Addiction Treatment Centre programme in Hong Kong with details to be discussed in the next Section.

After the 1973 Stanley Prison riot, the Department was provided with extra staff and this enabled the tightening on control and management of prisoners under its charge. Illicit drugs were no longer a major problem in the prisons and was basically under control with the arrest or the broken up of the corrupted syndicates.²⁸ The triads had also lost its influences inside the prison when the supply of illicit drugs had dried up. The Prisons Department also adopted the close supervision approach on prisoners with the adequate provision of staff. All prisoners must be properly supervised and were not allowed to leave the sight of the duty staff.²⁹ Amidst the move in tightening up of prison disciplines, the practice of open visits for prisoners at Stanley Prison was ceased. This change was to minimise physical contact to prevent trafficking between visitors and inmates and this practice continues until today.³⁰

Another measure that affects prisoners in Hong Kong after the 1973 Stanley Prison riot was the security classification in line with the British practice after the Lord Mountbatten's Report of 1966. Prisoners are classified from category A to D (highest to lowest) according to their assessed security risks. They are assigned to institutions suitable to accommodate prisoners of that particular security category.³¹ These security grading are subject to regular reviews but in general, the high security category prisoners would require strong escort when removed from the institution and

²⁸ See *Hong Kong Hansard*, 23 May 1973, p. 798 and 17 July 1974, p. 1041. Also see *Hong Kong Standard*, 6 October 1975.

²⁹ See *Hong Kong Hansard*, 23 April 1975, p. 712.

³⁰ *South China Morning Post*, 27 November 1974.

³¹ Commissioner of Prisons, *Annual Departmental Reports 1973-74*

would not be mixed with low security grade prisoners. The Prisons Department adopted a rather conservative approach on prisoners' security classification and it is not uncommon to find elderly or fragile prisoners still being classified as category A prisoners whilst still on life or long sentences.

There were no major changes in penal policies for the adult offenders thereafter apart from the introduction of the Release under Supervision Scheme in 1987 and the Post Release Supervision Scheme in 1996. These two programmes will be discussed in more detail in the latter part of this Chapter.

4.4 The Drug Addiction Treatment Centre Programme

Opium was legally traded and consumed in Hong Kong until the related Opium Ordinance was repealed by the British Military Administration under Proclamation No. 13 of 1945.³² It was in fact the dispute arising from the trading of opium which led to the ceding of Hong Kong to the British.

With this historical background, Hong Kong's prison after the Second World War was keeping a large number of prisoners with drug problems or committed for narcotic offences. Of the 17,479 prisoners admitted during the year 1958-59, 7,099 or 40.6% were on drug related offences.³³ When the Prisons Department took over the site office and the workers' quarters of the completed Tai Lam reservoir and turned

³² See Note 7 of Traver, H. (1992) 'Colonial Relations and Opium Control Policy in Hong Kong, 1841-1945' in Traver, H. and Gaylord, M. (Eds.) "*Drugs, Law and the State*". Hong Kong: Hong Kong University Press, p. 148.

³³ Commissioner of Prisons, *Annual Departmental Reports 1958-59*, p. 9.

the place into the Tai Lam Prison, the Prisons Department had embarked in an experimental project by filling the entire prison with addicted prisoners with less than three years sentence. After a short period of medical treatment for the addicted prisoners to overcome their withdrawal systems, the prisoners would be sent out to perform mainly outdoor tasks such as forestation work. Upon discharge, they could volunteer for after-care follow-up. From 1958 to 1968, a total of 17,501 prisoners had passed through Tai Lam Prison, which was re-named Tai Lam Treatment Centre from 1965.³⁴

With experience gained from operating the Tai Lam Prison, the Prisons Department proposed to the Government in putting up a new legislation to specially deal with the treatment of addicted offenders. The Drug Addiction Treatment Centres Ordinance became law on 17 January 1969 which authorised the Prisons Department to run these treatment centres.

The legislation provided that the court could sentence a confirmed addict, male or female from 14 years and above and guilty of an offence, to a drug addiction treatment centre for a period of compulsory treatment in lieu of imprisonment. The period of detention was from six months to a maximum of eighteen months to be followed by twelve months compulsory after-care supervision by the Prisons Department. The actual release from the drug treatment centre would be determined by a Review Board similar to that of the Training Centre with the inmate's progress towards treatment, his health and the likelihood of abstention from drugs upon release being assessed for consideration.³⁵

³⁴ Garner, T. (undated) *Drug Addiction – Narcotics Treatment and Rehabilitation within the Correctional System – The Hong Kong Approach*. Hong Kong: Prisons Department, p. 5.

³⁵ See Drug Addiction Treatment Centre Ordinance, Cap. 244, Laws of Hong Kong.

In 1974, the Drug Addiction Treatment Centre Ordinance was amended to allow conviction not to be recorded against an offender sentenced to treatment unless a court so orders on grounds that *“Treatment is medical rather than punitive, and rehabilitation is more likely to succeed if offenders, particularly young and first offenders can return to normal life with clean sheets.”*³⁶ The other amendment was to empower the Commissioner of Prison to recall supervisees back to the treatment centre if found in breach of supervision conditions.

The Drug Addiction Treatment Centres Ordinance was further amended in 1977 to reduce the period of detention from the former minimum of six months and a maximum of eighteen months to a new minimum of four months with a maximum of twelve months. *“This shortening in the period for treatment was justified based on the average length of treatment which was between 7 and 9 months in 1976.”*³⁷

From the commencement of the Drug Addiction Treatment Centres programme in January 1969 up to 31 December 1977, a total of 11,850 persons were treated and discharged. Of the total of 9,788 persons who completed the twelve months’ period of statutory after-care supervision, 6,005 or 61.4% were considered as successful in that they had completed the supervision period without further reconviction, recall or relapse to drug use and remained gainfully employed. A random sampling of 10% of all those discharged were involved in a three-year follow-up study, and at the end of this three years period, 41.6% were certified drug-free and had not been reconvicted of a criminal offence or recalled for further treatment.³⁸

³⁶ See *Hong Kong Hansard*, 9 January 1974, p. 374.

³⁷ Commissioner of Prisons, *Annual Departmental Reports 1977*, p. 22.

³⁸ *Ibid.*

From 9 May 1986, the minimum detention period for the drug addiction treatment centre programme was further reduced to two months, allowing a “*greater flexibility within the programme to cater for those addicts who respond well to treatment.*”³⁹

Various correctional institutions had been used as drug addiction treatment centres. The Government in April 1975 allocated the former leprosarium, located in Hei Ling Chau (喜靈洲), a remote island opposite Lantau Island to the Prisons Department. This had enabled the Prisons Department to use this island as the base for running the compulsory drug addiction treatment programme in Hong Kong.

The number of females involved in drug addiction used to be small in Hong Kong. According to figures kept by the Security Bureau, there were 797 reported female drug abusers in Hong Kong in 1981. From 1980s onward, Hong Kong witnessed the increased number of females involved in abusing illicit drugs. The number of female addicts jumped to 1,236 in 1986; 1,283 in 1991 and 2,433 in 1996.

More than half of the reported female drug abusers (1,310 or 54%) in 1996 were under the age of twenty-five.⁴⁰ Corresponding to this increased trend was the number of females sentenced by court to undergo compulsory treatment at the Correctional Services Department’s drug addiction treatment centres (DATC). In 1991, the average number of female DATC inmate was 64 whereas this daily average figure was increased to 224 in 1996.⁴¹

³⁹ Commissioner of Correctional Services, *Annual Departmental Reports 1986*, p. 16.

⁴⁰ See Table 8.6, ‘Reported Drug Abusers by Age Group and Sex’ in Census and Statistics Department, (2011) *Women and Men in Hong Kong, Key Statistics 2011 Edition*, p. 221.

⁴¹ Figures obtained from Commissioner of Correctional Services Department, *Departmental Annual Reports, 1991 and 1996*.

In 1997, the Correctional Services Department was operating two drug addiction treatment centres at Hei Ling Chau and Chimawan⁴² for male and female addicts respectively. Separate sections were set up in these centres for young addicts under 21. During the year 1997, a total of 1,916 persons were admitted to the DATC programme whereas 2,215 were discharged after treatment. The average period of stay in the centres was 5 months 28 days for young addicts and 5 months 15 days for adult addicts. Of the 2,515 cases that had complete the one year supervision period, 68% did not reconvict of a fresh offence or relapse to drugs.

Appendix H shows the admission of males and females offenders to the Drug Addiction Treatment Centres from 1970 to 2000.

4.5 The Release under Supervision Scheme

The Prisoners (Release under Supervision) Ordinance, enacted in 1987, became operational on 1 July 1988 with the establishment of the Release under Supervision Board. This “Release under Supervision Scheme” was Hong Kong’s version of parole arrangement for prisoners and it had taken fifteen years for this Scheme to secure the necessary support from the public and the Government’s endorsement to become law.⁴³

The parole scheme in England started on 1 April 1968 under the provisions of the Criminal Justice Act 1967. The scheme was basing on the assumption that some

⁴² Correctional Services Department, *Report on Drug Addiction Treatment Centre Admissions, 1997*, p. 1.

⁴³ See *Hong Kong Hansard*, 8 July and 14 October 1987.

prisoners would have a better chance of reformation if they could be released earlier than their scheduled release dates whilst subject to some form of supervision. All prisoners serving a sentence of imprisonment of eighteen months or more were eligible to be considered for early release on parole when they had completed one-third of the sentence or twelve months, whichever longer. Most prisoners had chosen to have their cases reviewed and 49% of the eligible prisoners were granted parole at some time in their sentences. A small number of those were recalled whilst on parole for breach of licence conditions.⁴⁴

Garner, Commissioner of Prisons in Hong Kong, found this United Kingdom scheme interesting and had similarities to Hong Kong's Training and Detention Centres programme of the young offenders as well as the Drug Addiction Treatment Centre programmes for both adults and young addicts. Under these programmes, the inmates were normally released before their maximum detention period to undergo a period of compulsory after-care supervision. Commissioner Garner proposed to the central Government as early as 1972 that a similar parole scheme should be introduced to the adult prisoners in Hong Kong. With the support of the Colonial Secretary, a number of Government departments, which included the Judiciary, the Police, the Home Affairs, the Social Welfare and the Medical and Health Services were asked to study the Commissioner of Prison's proposal.

The deliberations of this proposal were held behind closed doors and kept within the concerned Government Departments only. It was generally felt at the time that the public should not be informed of this topic being deliberated within the Government.

⁴⁴ Home Office, (1977) *Prisons and the Prisoners – The Work of the Prison Service in England and Wales*, London: HMSO, pp. 64-65.

Public misgivings would arouse on Government's apparent leniency to criminals at a time when crime rates were high. It was only in 1975 that Commissioner Garner stated openly in the newspaper of his support on the proposed parole scheme.⁴⁵ The Governor in his Address to the Legislative Council on 8 October 1975 however stated that: *"The question of release under supervision is being looked into. There is merit as well as danger in such a scheme and it will be necessary to examine the proposal from every angle before arriving at any firm recommendation."*⁴⁶

Nothing happened after the Governor's reveal of the proposal until the subject was brought up again this time by a new Governor Sir Edward Youde during his annual address at the Legislative Council on 1983 saying that:

*"Other important developments will include the introduction of the parole and pre-release employment schemes, which will help offenders on their release to integrate themselves properly into society and not to turn again to crime. These schemes represent an extension of existing correctional programme, and will, we hope, eventually lead to a reduction in our penal population."*⁴⁷

It was eventually reported in the media that the matter was being considered by the Security Branch, the Correctional Services and the Legal Department but this news had attracted little publicity. It was also explained by the media of why nothing had happened on this proposal after 1975 as *"In 1975 the idea came before the Executive Council but was rejected – after an influential working party had spent three years debating and wrangling over the details."*⁴⁸

⁴⁵ See *South China Morning Post*, 23 March 1975.

⁴⁶ *Hong Kong Hansard*, 8 October 1975, p. 32.

⁴⁷ *Hong Kong Hansard*, 5 October 1983, p. 32.

⁴⁸ See *South China Morning Post*, 31 December 1983.

It was in 1985 when the Attorney General Michael Thomas revealed that a Bill providing for the early release of prisoners under supervision was being drafted.⁴⁹ The debate on this draft Bill was again laborious and it was reported in the media again at end of 1986 that the proposal was revised and would take another six months before the Bill could be ready for legislation. It was mentioned that “*A tight lid of secrecy was clamped on the matter as it was considered highly sensitive*” and “*the Government is concerned that the crime rate would soar once people got wind that a parole scheme was imminent.*”⁵⁰

The Prisoners (Release under Supervision) Bill 1987 was finally tabled at the Legislative Council for the 1st and 2nd reading in 1987. It was explained by the Secretary of Security that:

*“The idea of introducing a system of parole in Hong Kong has been under consideration for more than 15 years. We have long considered that there are considerable benefits both for society and for the persons involved in such a scheme. The problem has been, in the past, a lack of experience in this field and a doubt as to whether the public would support it. I am pleased to say that I believe both problems have been overcome.”*⁵¹

There were two separate Schemes included under the Bill for prisoners to be released on parole, namely, the ‘Release under Supervision Scheme’ and the ‘Pre-release Employment Scheme’. Under the first Scheme, a prisoner who has served half of his sentence or twenty months of a sentence of three years or more, whichever is longer, may be released to live and work outside the prison. A prisoner opts for release under this Scheme would forfeit his entire remission which equals to one third of his sentence. He is required to undergo supervision by the after-care officers of the

⁴⁹ See *Hong Kong Standard*, 19 March 1985.

⁵⁰ See *Hong Kong Standard*, 19 December 1986.

⁵¹ *Hong Kong Hansard*, 8 July 1987, p. 1935.

Correctional Services Department until the expiration of his full sentence. He may be required to reside in the Correctional Service Department operated hostels and is subject to be recalled back to prison if found in breach of his supervision conditions.

For the 'Pre-release Employment Scheme', a prisoner with a sentence of two years or more may be released within six months of completing his sentence with remission allowed. He is allowed to go out to work during day time and required to return to the Correctional Service Department operated hostels after work. He is again liable to be recalled back to prison if found in breach of his supervision conditions.

It was emphasised during the Legislative Council meetings that the Schemes would be highly selective for the prisoners and was estimated that successful applicants within the first year of operation would be less than 90 in total as "*no more than 5 percent of those eligible will be granted release under supervision on their first application.*"⁵²

The Prisoners (Release under Supervision) Ordinance became operational on 1 July 1988 with the establishment of the Release under Supervision Board. The Board consists of not less than five members appointed by the Governor and chaired by a High Court Judge with members including a medical practitioner with experience in psychiatry and the others to have experience or interest in the rehabilitation of offenders. The Board would consider applications from prisoners and refer the recommended cases to the Governor for early release from prison.⁵³

⁵² *Hong Kong Hansard*, 14 October 1987, p. 101.

⁵³ See *Prisoners (Release under Supervision) Ordinance*, Cap. 325, Laws of Hong Kong.

In the first year of operation, a total of 103 prisoners applied for the Release under Supervision Scheme and only four were successful in their application. 174 prisoners applied for the Pre-release Employment Scheme and 14 of them were approved. As after-care supervision could only be extended to prisoners who could remain in Hong Kong after discharge, non Hong Kong prisoners who are subject to deportation after release are excluded from these two early release schemes.

With such a low approval rate, the applications from prisoners dropped sharply and from 1988 up to the end of 1997, there were only 309 prisoners applied for the Release under Supervision Scheme with 45 or 14.6% successful in their applications. There was a higher rate of applications for the Pre-release Employment Scheme with 1,014 applications and 170 or 16.8% of them were successful during the same period.⁵⁴ These figures were much lower than the original estimation given by the Correctional Services Department.⁵⁵

On the other hand, owing to the small number of cases being released under supervision, the Correctional Services Department's after-care officers were able to provide more intense supervision over these cases. Up to 30 September 2000, a total of 228 prisoners were early released to undergo either one of these two Schemes. Only one supervisee's supervision order was revoked by the Release under Supervision Board and he was recalled back to prison.⁵⁶

⁵⁴ Calculated from Annex III, Table showing 'Release under Supervision Board Number of Applications and Approvals to join the Two Early Release Schemes (1988-2000)' in *Release under Supervision Board Fourth Report*. Hong Kong: Government Printer.

⁵⁵ See Table (3.3) and (3.4) in Chan, T.T. (1990) *An Anatomy of Parole System in Hong Kong*. MSc Dissertation, University of Hong Kong.

⁵⁶ *Release under Supervision Board, Fourth Report*, (2000), Hong Kong, p. 9.

4.6 The Post Release Supervision Scheme

Another scheme for the supervision of adult prisoners, the Post-release Supervision Scheme was introduced in Hong Kong at the end of 1996. The idea of requiring adult prisoners to undergo a period of after-care supervision began in 1986 with the Research Sub-Committee of the Fight Crime Committee⁵⁷ calling for studies to be conducted on services provided to the discharged prisoners to ensure they would receive sufficient help so that they would not revert to crime.⁵⁸

The Report, completed in May 1988, revealed that the use of services provided to the discharged prisoners were low because many ex-prisoners disliked the stigma of being linked to these services. For the hard-core criminals and recidivists, they had no intention to use the services at all as they would revert to illicit activities soon after discharge. The Report considered a statutory supervision scheme should be introduced in Hong Kong to ensure sufficient assistance would be given to the adult ex-prisoners to keep them away from crime.⁵⁹

The Correctional Services Department on the other hand put forth a separate proposal in May 1987 calling for a 'Care and Control Scheme' for the adult hard-core prisoners after their release from correctional institutions. The idea was modelled upon the newly enacted provision for the supervision of young offenders under the Criminal Procedure Ordinance (Cap. 221) on 2 May 1980. The proposal aimed at providing

⁵⁷ The Research Sub-Committee was chaired by the Secretary for Security with members including representatives from the Correctional Services Department, the Royal Hong Kong Police Force and the Senior Statistician of the Security Branch.

⁵⁸ See Chan, K.W. (1996) Attitudes of Hong Kong Legislators towards Crime and Punishment: An Exploratory Study on the Post-Release Supervision of Prisoners Ordinance. *MSc Dissertation*, University of Hong Kong.

⁵⁹ *Ibid.*, pp. 40-41.

assistance to the discharged prisoners and more importantly, offered protection to the public by monitoring the progress of the discharged prisoners through a period of compulsory after-care supervision.

Unlike the proposed provisions under the Release under Supervision Scheme which was still being considered by the Legislative Council at the time, prisoners in the proposed Care and Control Scheme would not get early release for joining the scheme. In fact, prisoners identified by the Correctional Services Department as hard-core criminals according to risk assessment and with sentence of one year or more were to be considered by a Board to undergo a period of compulsory after-care supervision after they have completed their normal period of sentence with remission. The proposed supervision team would consist of both Correctional Services Department after-care officers and a Police sergeant. In a sense, those prisoners being placed into this Scheme were subject to a longer period of monitoring and control by the law enforcement agencies than what they used to get without this legislation.⁶⁰

The Fight Crime Committee examined the proposal submitted by the Correctional Services Department in great detail. It was reported during a discussion on the problem of triads in Hong Kong at the Legislative Council session on 6 June 1990 that the Government would require further examination on the proposed introduction of a post release supervision scheme for ex-offenders owing to divergent views from the public.⁶¹ The Fight Crime Committee in July 1991 finally endorsed the proposal

⁶⁰ Correctional Services Department, (1987), *Care and Control for Adult Prisoners after Release from Custodial Sentences*, Hong Kong.

⁶¹ See *Hong Kong Hansard*, 6 June 1990, pp. 16-7.

and the Government had undertaken to prepare a draft Bill for legislation which was presented to the Legislative Council for its 1st and 2nd readings on 19 January 1994.⁶²

The Bill in essence adopted many of the original proposals made by the Correctional Services Department in 1987. The major difference between the draft Bill and the original Correctional Services Department proposal was on the type of prisoners to be included in the scheme, which would include all local prisoners with sentence of six years or more and prisoners sentenced to two years or more on specific offences like sexual offences, triad-related offences and offences of violence. Period of compulsory supervision would be between one to two years by the Correctional Services Department and the Police.⁶³

As this proposed Bill would not release prisoners early as in the Release under Supervision Scheme but instead the element of compulsory after-care supervision was added upon the high risk prisoners, the Government expected few opposition from the public as this legislation “*will help and encourage prisoners to reintegrate into society as law-abiding citizens, and thereby reduce recidivism.*”⁶⁴

A Bills Committee was formed to study the proposal in detail. Nine meetings were held between June 1994 and May 1995 when legislators meet with Government officials; heard comments from the NGOs involved in the rehabilitation of offenders and also studied the representations from over a hundred prisoners. Their main concern was on the proposed retrospective aspect of the legislation; the feeling of having double punishment as well as the loss of remission. The issue of having the

⁶² See *Hong Kong Hansard*, 19 January 1994, pp. 1894-95.

⁶³ *Ibid.*

⁶⁴ *Ibid.*, p. 1894.

police involved in the supervision of discharged prisoners was strongly contested by the Legislators at the Bills Committee feeling a social worker would be more useful in the rehabilitation of the offender than the police. During the meeting on 23 February 1995, the Administration gave in and agreed to amend the Bill by replacing the post of Police in the supervision team with a social worker from the Social Welfare Department as well as setting a lower tariff of supervision period for those serving prisoners when the Ordinance was enacted.⁶⁵

The Legislators raised few questions during the 3rd Reading of the Bill on 31 May 1995 when it became law. The Post Release Supervision Board was set up on 30 November 1996 to consider which prisoner should be granted post-release supervision. The first Board was chaired by a retired High Court Judge with a former District Judge as deputy. There were six members with backgrounds in psychiatry, psychology, social work and law. Representatives from the Correctional Services Department and the Police were sitting in the Board as ex-official members. The Board would normally consider the cases thorough the submitted reports from the Correctional Services Department, the police and the trial judge but a prisoner could request to present his representation in person to the Board.⁶⁶

From December 1996 to 30 June 1999, the Board had considered 1,412 prisoners meeting the requirement of the Scheme and a total of 1,386 supervision orders were issued, representing 98.2% of the considered cases. The length of supervision granted was from 6 months to a maximum of 18 months. Up to 30 June 1999, only 25

⁶⁵ See Chan, K.W. (1996) op cit.

⁶⁶ *Post-Release Supervision Board, First Report.* (1998)

supervisees were re-admitted to prison and six lost contact during the supervision period.⁶⁷

4.7 Conclusion

This Chapter highlighted the development of the penal policies and programmes on adult offenders operated by the Prisons Department from end of the Second World War in 1945 to 1997. Hong Kong had suffered greatly during the War and had to rebuild its community and infrastructure from scratch. The Prisons Department faced the same difficulties after the War and had to cope with the situation with whatever resources the Department could salvage in 1945 and the immediate years afterwards.

The War had produced not only the unique group of prisoners, the war criminals sentenced by the Military Tribunals, but casted a long lasting and unforgettable experience onto those senior British Prisons Officers who became civilian internees during the War themselves. As internees, they were confined to the prison staff quarters and the St. Stephen's College at Stanley. They had also personally experienced the life of prisoners as they had for a short period of time being locked up inside Stanley Prison by the Japanese keepers.

During the late 1940s, China was embroiled in civil wars and the colony was flooded with refugees fleeing from mainland China. The community had adopted a hard-line approach in maintaining law and order at the time resulting in the mass incarceration of the young and the underclass and the extensive use of corporal punishment by the

⁶⁷ *Post-Release Supervision Board, 1998-1999, Second Report.* (1999), p. 6.

courts as means of social control. Prisons for the male adult offenders could only serve the function of containment. Even this role was unable to be attained with the large admission numbers and extra-ordinary measures had to be taken to release prisoners early before their scheduled release dates.

The penal elites within the post-War prison service however took a rather liberal view in line with the welfare approach at home when dealing with offenders under its charge since the 1950s. For adult prisoners, open prisons were established not only for relieving prison overcrowding but to provide a more open environment for the Star Class prisoners. Prisoners were assigned constructive prison labours and received earning for their labour for canteen purchase. Open visits and home leaves were arranged for well behaved prisoners which were all practices copied from England. When the courts at the time still sentenced prisoners to undergo corporal punishment, the Prisons Department had refrained from using the cane as means of punishing prisoners for breach of discipline. On the other hand, rehabilitative measures such as after-care services were mostly absent for the adult prisoners in Hong Kong. These services were mainly left to be rendered by voluntary agencies and religious groups.

In view of the long history of the legitimate use of opium in the colony before the War, the size of the addicted population in Hong Kong was significant. With the use of opium outlawed after the War, a high percentage of prisoners were on drug charges and many of them were drug abusers. The Prisons Department had since late 1950s initiated to experiment with the special treatment programme on these addicted prisoners. This had led to the enactment of the Drug Addiction Treatment Centres Ordinance and the setting up of the Treatment Centre at Tai Lam providing compulsory drug treatment as alternative to imprisonment since 1969.

The 1973 Stanley Prison riot had resulted in the major revamp on both organisational and operational aspects of the Prisons Department. With the support of the central Government, the Department was being injected with much needed resources in particular additional staffing and accommodation provisions. The up-to-date techniques and systems in prison management were transported from England on advices given by the Home Office experts. The regimes for the adult offenders were tightened and security became the paramount concern of the Prisons Department especially at the time when the Department had to deal with the additional task of managing the Vietnamese detainees when large scale riots broke out from time to time inside the detention camps.

The Prisons Department still believed in the rehabilitation of offenders despite from operating a highly disciplined regime since 1973 as evidenced by its success in the addicted offender programmes. This happened at the time when the Western world was questioning the effects of their own penal systems in the rehabilitation of offenders with the resultant feeling of 'Nothing Works'. The change of the title from Prisons Department to Correctional Services Department in 1982 further signified the Department's commitment towards the work on offender rehabilitation.

Penal elites were forthcoming in proposing new ideas on penal policies for Hong Kong but their belief in offender management and rehabilitation were not always acknowledged or accepted by the Administration or the general public. The enactment process of the Release under Supervision Scheme and the Post Release Supervision Scheme were good examples to illustrate how the community leaders perceived penal policies as 'soft' or 'hard' on offenders and the response of the Government to the public opinion in the formulation of penal policies.

The Government apparently was not only sensitive but also showing great apprehension on public opinion on penal policies, in particular those programme regarding offender rehabilitation. The Administration would not wish the public to have the impression that the Government was soft on offenders and weak in the tackling of crimes. These would be seen as giving out wrong signals to the community in particular the criminals which might lead to the rise of crimes in Hong Kong. Changes and adaptation to penal policies in Hong Kong in particular offender rehabilitation was therefore cautious and the resultant changes were often borne with the hallmark and characteristics of 'disciplinary-welfare'.⁶⁸

This Chapter has portrayed penal policies and programmes developed in Hong Kong for adult offenders from 1945 to 1997 indicating both similarities and differences with what had happened in England and Wales after the War. More detailed examinations will be made in Part II of this thesis on the policy aspects. Two topics have been omitted from this Chapter, i.e. the death sentence and corporal punishment. These two forms of punishment reflects the conflicting views of the West and the East, need more detailed discussion and are presented in the following two Chapters separately.

⁶⁸ See Gray, P. (1997) The Emergence of the Disciplinary Welfare Sanction in Hong Kong, *The Howard Journal*, 36(2), pp.187-208.

Chapter Five

Death Sentence, Execution and Life Imprisonment in Hong Kong

5.1 Introduction

In the study of penal policy development in Hong Kong whilst a British colony, it is necessary to draw special attention on how physical punishments, in particular capital punishment and corporal punishment, were used by the colonial administrators as “means of repression” as described by Spierenburg (1984) over the natives in maintaining law and order.¹

The death sentence, the most severe form of punishment the law could prescribe, is used in this chapter to illustrate how policies relating to the sentence of death were formed, executed, changed and reviewed in Hong Kong. This is a topic of particular interest as it illustrates how political, social and cultural factors had contributed to shaping this extremely important penal policy whilst Hong Kong was under the British Administration. Explanations are given on how and under what circumstances Hong Kong followed the British approach in dealing with capital punishment cases and why Hong Kong had total abolition of capital punishment on 23 April 1993 under the Crimes (Amendment) Ordinance 1993 before Britain removed the same in 1998.²

¹ See Spierenburg, P. (1984) *The Spectacle of Suffering – Executions and the Evolution of Repression: From a Pre-industrial Metropolis to the European Experience*. Cambridge: Cambridge University Press.

² The death penalty was abolished by the Crime and Disorder Act 1998 for treason and piracy with violence. See Radzinowicz, L. (1999) *Adventures in Criminology*. London: Routledge, p. 273, Notes 41.

Examinations are also made on how the public in Hong Kong perceived the value on human lives and the impact of public sentiment and opinion on penal policy as suggested by Walker (1968)³ on capital punishment against the backdrop of the handing over of Hong Kong to China in 1997. This helps to explain why Hong Kong had become one of the rare territories in Asia Pacific region with the majority of population being Chinese that had abolished death sentence for all crimes at the time,⁴ and in contrast to other former British colonies like India, Malaysia and Singapore where death sentences are still being carried out.

5.2 Executions in Hong Kong prior to 1941

Hong Kong followed the English practice of having capital punishment in its statutes as the ultimate punishment the law could impose on convicted criminals. Following the English practice, the execution method adopted in Hong Kong was judicial hanging⁵ and the first execution was carried out in Hong Kong on 4 November 1844, two years after Hong Kong was ceded to the British.⁶ Early executions were carried out in the open at West Point for maximizing the deterrent effect on the natives. Public execution was in practice in England at the time and described by Spierenburg (1984) as the '*pearl in the crown of repression*'.⁷ The exact number of public executions held in Hong Kong was difficult to establish as there were no standardized

³ As cited in Blom-Cooper, L. (Ed.) (1974) *Progress in Penal Reform*. Oxford: Clarendon Press, p. 36.

⁴ Amnesty International in 1995 listed 56 countries / territories as abolitionists for all crimes, 15 countries as abolitionists for ordinary crimes only and 30 countries as abolitionist de facto. 93 countries / territories were listed as retentionists. Apart from some Pacific Island countries, Hong Kong and Macau (under Portuguese administration), were the only abolitionists for all crimes in the region.

⁵ There was at least a Court-martial case where execution was carried out at sea by the Navy on 5 November 1858. See Norton-Kyshe, W. (1898) *History of the Laws, Etc., of Hong Kong*. London: T. Fisher Unwin, p. 553.

⁶ Ibid, p. 70.

⁷ Spierenburg, P. (1984) op. cit., p. 206.

official records kept for these figures.⁸ In the ‘1869 Gaol and Prisoner Report’, Superintendent of Victoria Gaol, F Douglas stated that between 1862 and 1869, a total of 60 prisoners were executed, 15 for murder and 45 for piracy and murder.⁹

Shortly after England had ceased public execution in 1868,¹⁰ the Hong Kong Government was asked by the Colonial Office to consider adopting the same practice. The matter was brought up at the Executive Council with the decision “*that any change in the mode of carrying out Capital Sentences in this Colony appears to the Council at present uncalled for by any local necessity and is otherwise inexpedient.*”¹¹ Governor McDonald in his letter to the Secretary of State further elaborated that “*because none of the disgraceful scenes which almost invariably accompanied Public Executions in England, especially in London, ever take place here, and for other reasons I do not think it advisable amongst so suspicious a race as the Chinese, and so incapable often of appreciating the real motives of the actions of Foreigners, to invest with the least appearance of secrecy the mode of conducting Executions, which in China take place publicly.*”¹²

With the changes made in England, Hong Kong as a colony had to follow the home practice and execution was eventually moved away from the public eyes and carried out inside Victoria Gaol in 1882. The first recorded execution inside the gaol was of

⁸ Miners, N. (1987) mentioned a Circular Despatch in 1922 requiring the colonies to submit not only the annual return of capital sentences carried out but also the precise cause if death such as asphyxia, dislocation of the vertebrae, or otherwise.

⁹ *Hong Kong Blue Books* v. 1869.

¹⁰ Chan, S. (1995) *Development of the Hong Kong Penal Policy and Programme Under the British Administration (1841-1945)*. MA Thesis, University of Leicester, p. 59.

¹¹ C.O. 129/132, pp. 324-6.

¹² *Ibid.* There were in fact a number of recorded incidents when the bolts of the trap were jammed and one prisoner took more than 20 minutes to die as he had freed one of his tied hands and held on to the rope during the execution. See Norton-Kyshe, W. (1898) *op cit.*, pp. 349-50, 385-6.

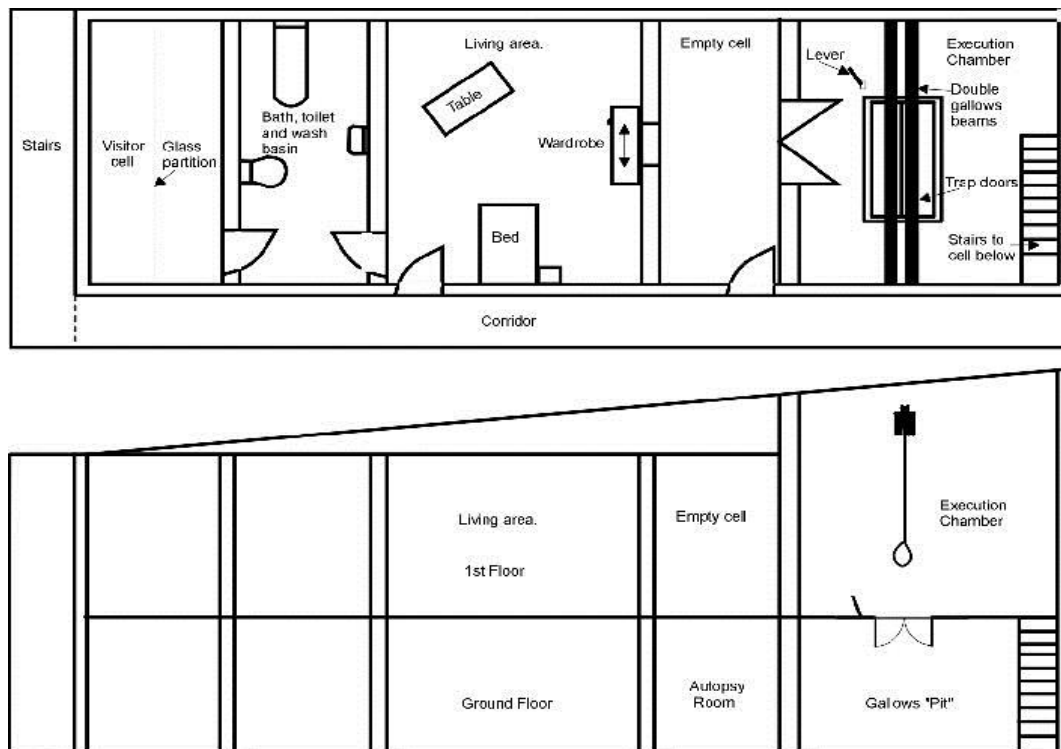
an Indian prisoner.¹³ Executions were conducted inside Victoria Gaol until 1937 upon the completion of the new Hong Kong Prison¹⁴ and the vacation of the entire Victoria Gaol to this new prison.

Stanley Prison, when built in 1935, had incorporated in its design an execution chamber within the ‘Punishment / Condemned Block’ complex or ‘H Block’ as it was officially named within the prison. The design of the condemned block was very similar to that of the Holloway Prison in England and consisted of a two storey building with 18 cells on the ground floor, 9 on each side facing each other with the bathroom located at the rear of the hall. There were six cells on the upper floor with a doorway linking the first floor condemned cell block to the execution chamber as illustrated in Diagram 1:

¹³ *Hong Kong Blue Books* v. 1882; Colonial Surgeon’s Report in Administrative Reports Hongkong 1882.

¹⁴ Renamed Stanley Prison after the War.

Diagram 1 Holloway Prison's "Execution Suite" ¹⁵



The six cells in the upper floor of the condemn block were at least twice the size of the normal cells in the prison proper which measures around 50 square feet each. There were no beds for the first floor cells but there was raised wooden floor on one side of the cell for use as sleeping area with mattress placed on top. Staff complement for the condemned block was one to three, i.e., one Warder (renamed to Assistant Officer in the 1970s) watching three cells with an Officer posted inside the block as the officer in charge. A logbook was kept for each condemned prisoner and the staff had to make entries therein once every fifteen minutes to confirm the state of the prisoner. Prisoners sentenced to death were not required to work under the Prison Rules and they spent most of their time reading or listening to radio. When televisions

¹⁵ This was the standard design for the British prisons at the time. See Fielding, S. (2007) *The Executioner's Bible*. London: John Blake, pp. 10-11.

were available at Stanley Prison, watching television became the favourite pass time activity. Condemned prisoners were given one hour outdoor exercise per day at the adjoined enclosed exercise area, weather permits or they would have their exercise inside the block. They were arranged with daily showers at the shower room located at the rear of the block. Similar prison meals as other prisoners were provided except meat and fish were deboned to ensure the safety of the condemned prisoners. For condemned prisoners declared to be smokers, they would be issued with one pack of cigarette per day at government expense.¹⁶

The prison authority paid particular attention to the security of the condemned prisoners and the block where they were located. Daily searching on the area around the condemned block, inside the cells as well as the prisoners themselves were conducted. All incoming and outgoing mail for the condemned prisoners were read and censored by designated prison officials.

Condemned prisoners awaiting execution were located in the first floor cells and taken to the execution chamber through this linking doorway normally around seven in the morning upon receipt of the 'Warrant for Carrying Out Sentence of Death' signed by the Governor the previous day.¹⁷ When there was more than one execution held in a day, the first execution would normally start at around half-past six in the morning with around 15 to 30 minutes interval for each execution thereafter.

¹⁶ Other prisoners were provided with three sticks of cigarettes per day on government expense. This practice has been ceased for health reasons.

¹⁷ 'Death Warrants' for the War Criminals were signed by the Major-General, Command Land Forces, Hong Kong. See the sample Warrants of Ho Chung Poon in HKRS 125-3-52 and Lt Kishi Yasuo in HKRS 125-3-406.

Equipment and procedures for the execution were adopted from England similar to what is described in *The Royal Commission on Capital Punishment (1949-1953)*.¹⁸ The condemned prisoner was standing on the trap door with the hanging loop placed round his neck. When the executioner pulled the lever, the trap door opened and the condemn prisoner would drop down the chamber. The hanging rope would break his cervical vertebrae in the process of the fall leading to a quick death.¹⁹ The length of the rope required for the drop was calculated carefully in accordance with the 1913 Home Office table taking into consideration the body weight and height of the condemned prisoner to ensure the drop would instantly break the prisoner's neck bone without decapitating him.²⁰

¹⁸ See *Royal Commission on Capital Punishment 1949-1953 Report*, London: HMSO, (1953), pp.249-50.

¹⁹ See the Chapter on 'The Ritual of Execution' by Babington, A. (1968) *The Power to Silence, A History of Punishment in Britain*. London: Robert Maxwell.

²⁰ An up-dated procedure for execution was circulated from the Secretary of State for the Colonies on 27 March 1953 as '*Memorandum of Instruction for Carrying Out an Execution for Colonies*' to follow. (HKRS163-1-1384: Encl. 7)

Diagram 2: Stanley Prison Execution Chamber



The inside of the execution chamber inside Stanley Prison is shown in the above photo. (Diagram 2) The trap door for the execution was located in the centre of the chamber. The canvas sand bags were used to simulate the weight identical to the condemned prisoner for mock runs the day before the actual execution took place.²¹

Starting from 1882 when executions were no longer carried out in public but inside Victoria Gaol till the commissioning of the Stanley Prison in 1937, at least 140

²¹ Photo taken in 1996 before the Condemned Block at Stanley Prison was demolished to make way for building the new prison hospital. (Personal collection). A mock execution chamber is being set up at the CSD Museum.

prisoners were executed inside Victoria Gaol and at Stanley Prison.²² There were no records on the execution of any female prisoners in Hong Kong as ‘decency forbids’ and their death sentences commuted.²³ There was no official record of the number of executions carried out during the period of Japanese occupation in Hong Kong.

5.3 Executions in Hong Kong after the War

Immediately after the War in 1945, Hong Kong was placed under Military Administration and Military Courts were set up in September 1946. These courts “*exercised no civil jurisdiction but dealt with all offences committed by civilians against the Proclamations or subsidiary enactments and with all offences committed by civilians against the ordinary law of the Colony.*”²⁴ Seven new offences carrying capital punishment were introduced in Hong Kong on 18 September 1945 by the Military Administration. These offences included armed resistance to the Force, possession of arms or explosives during the commission of crime, assist prisoner of war to escape, etc.²⁵ There was however no record on cases sentenced to death and executed under these charges. Any cases sentenced to death, with imprisonment exceeding two years or fine exceeding two thousand dollars or forfeiture of goods of an equivalent value required the confirmation of sentence by the Chief Civil Affairs Officer.²⁶

²² *Hong Kong Blue Books v. 1882-1910, 1913-1938; Hong Kong Administration Reports v. 1911-12, Prisons Department Annual Report 1939.*

²³ See remarks made by Chief Justice F T Piggott on 23 May 1908. (C.O. 129/347, p. 481)

²⁴ Hong Kong Government (1947), *Annual Report on Hong Kong for the Year 1946*, Hong Kong: Local Printing Press Ltd., P. 68.

²⁵ *The China Mail*, 19 September 1945.

²⁶ Hong Kong Government (1947), *Annual Report on Hong Kong for the Year 1946*, Hong Kong: Local Printing Press Ltd., P. 68.

Judicial hanging remained as the method of execution in Hong Kong after the War. However the gallows inside Stanley Prison was found to be out of order because of damage of the trap and the beam whilst under the Japanese occupation. Drawings had to be obtained from London and the gallows were repaired and readied for use on 16 March 1946.²⁷

The first execution after the War was carried out at 7.02 am on 1 April 1946.²⁸ The Military Court sentenced Prisoner 1809 Lam Tim Cheung to death for the charge of murder and he was the only person executed during the period of Military Administration. Hong Kong returned to civil administration on 1 May 1946.

The last execution in Hong Kong was held at 7.01 am on 16 November 1966 on prisoner Wong Kai Kei, who was also sentenced to death on a charge of murder. According to the records kept by Stanley Prison and the Government Records Service, a total of 125 prisoners,²⁹ all of them males, were executed inside the prison after the War, including twenty-four Japanese military personnel sentenced under various war crime charges. Apart from these twenty-four Japanese prisoners, there was only one out of the remaining executed prisoners bearing an English name (James Richard Becker) who was executed in 1955 and another executed prisoner with a non-Chinese name (Inouye Kanau) was a Canadian Japanese interpreter of the Japanese Gendarmerie who was executed in 1947 on a charge of High Treason.³⁰ The remaining 98 executed prisoners all bore Chinese names and were aged from 20 to 67.

²⁷ (5) in HKRS 125-3-145.

²⁸ Stanley Prison Journal dated 1 April 1946.

²⁹ Gaylord, M. and Galliher, J. (1994) in their article 'Death Penalty Politics and Symbolic Law in Hong Kong' in *International Journal of the Sociology of Law*, 22 (1) quoted the figure of 106 executions of convicted murderers between 1946 and 1966 in Hong Kong. This figure was given by the Correctional Services Department on 14 January 1993 which was unfortunately incorrect.

³⁰ *The China Mail*, 21 May 1946.

Apart from the Japanese military personnel on war crime charges, four of the executed prisoners were on offences of ‘High Treason’ and the rest were executed for ‘Murder’. (List of the 125 executed prisoner in Appendix I)

When prisoner George Wong was executed 10 July 1946 for High Treason, his body was placed in a coffin and buried at the Stanley cemetery closed to Stanley Prison. The burial spot was later found to be outside the area designated for deceased / executed prisoners. Further there were legal issues regarding the burial of the executed prisoner on sentences other than murder. Paragraph 4 of Ordinance No. 2 of 1865 stipulates that “*The body of every person executed for murder shall be buried in such place as the Governor may order, and the sentence of the Court shall so direct.*”³¹ To enable the coverage of prisoners executed for offences other than murder as in this case, the said Ordinance was amended in conjunction with a clear designated site for use as prison cemetery which was not spelt out in the legislation before. The designated prison cemetery site was on 13 May 1947 approved by the Executive Council,³² which locates within an enclosure of about 5,000 square feet of land within the boundaries of Stanley Cemetery, some 250 yards to the south of St. Stephen’s College Preparatory School Building in Stanley and within walking distance of Stanley Prison.

The twenty-five Japanese military personnel were executed by the prison staff although they were sentenced by the War Crime Courts and were under the direct charge of the military whilst kept in Stanley Prison. British military personnel were present at their executions and their bodies, sew inside canvas, were transported from

³¹ No information was found on the burial of prisoner Lam Tim Cheung on 1 April 1946.

³² See *Gazette Notice 381/47* of 13 May 1947.

Stanley to the Naval Yard at Admiralty by the military and then transferred to naval launch where sea burials were held in the southern waters of Hong Kong Island.³³

All other executed prisoners and those who died inside the prison with bodies not claimed by relatives were buried at the prison cemetery. Their graves were not marked and were only identified by numbered grave stones. In accordance with the practice in Hong Kong where burial grounds are scarce, their remains were to be exhumed after five years. For the executed prisoners, their bones were placed inside urns and reburied in another section of the prison cemetery to save space. Remains of the executed prisoners would not be released to their relatives for fear of demonstrations if an execution was generally unpopular, a practice which was in line with that in Britain. Those prisoners buried in the prison cemetery for reasons other than execution could have their remains handed over to their relatives if they were claimed. Unclaimed bodies of this category, upon exhumation, would be cremated and ashes kept at Sandy Ridge cemetery, a public cemetery in the New Territories. The prison cemetery was fenced off in 1957 to prevent trespassing. In 1967, the practice of burying unclaimed prisoners who died of natural causes in the prison cemetery was ceased and all unclaimed deceased prisoners were removed and dealt with in the same way as ordinary Hong Kong citizen by the Urban Services Department.

On 27 October 1972, the coffin section of the prison cemetery was cleared and all executed prisoners' remains, except two, were located in the urn section of the prison cemetery.³⁴ Although there had not been any execution since 1966 and the death

³³ HKRS 125-3-146.

³⁴ It was reported by the Prison officials that two executed prisoners' coffins could not be located during exhumation properly due to the grave stones being misplaced when new graves were being dug.

sentence was repealed in 1991, with 'H' Block together with the Execution Chamber demolished in 1996 to make way for the new Stanley Prison Hospital, the Correctional Services Department is still charged with the up keep of the prison cemetery.

5.4 Commutation of Death Sentences and the Life Sentences

The Governor of Hong Kong, under Article XV of Hong Kong Letters Patent 1917 to 1995 “...*may grant to any offender convicted of any crime or offence by any court of law in the Colony (other than a court martial established under any Act of Parliament), either free or subject to such conditions as the Governor may think fit to impose, a pardon or any remission of the sentence passed on such offender, or any respite of the execution of such sentence for such period as the Governor thinks fit, and may remit any fines, penalties, or forfeitures due or accrued to Us.*”³⁵

Furthermore, Clause XXXIV of the *Royal Instructions* requires the Governor of Hong Kong to examine all sentences of death cases and “*not to pardon or reprieve any such offender unless it shall appear to him expedient so to do, upon receiving the advice of the Executive Council thereon; but in all such cases he is to decide either to extend or withhold a pardon or reprieve, according to his own deliberate judgment, whether the Members of the Executive Council concur therein or otherwise, entering nevertheless on the Minutes of the Executive Council a Minute of his reasons at length, in case he*

³⁵ See *Hong Kong Legal Institute*, HKU@ <http://www.hklii.org/hk/legis/en/ord/2701.txt>.

*should decide any such questions in opposition to the judgment of the majority of the Members thereof.”*³⁶

From available records, it is noted that not all death sentences passed by the court were carried out and a significant number of these cases being commuted. Chan (1988) in his research on Hong Kong Government's policy on capital punishment³⁷ nevertheless believed that prior to 1966 when execution was still being practiced in Hong Kong, the Governor seldom took pro-active action in reviewing these death sentence cases unless the condemned prisoners petitioned to him for clemency. When going through the Executive Council papers from 1954 to 1956, Chan found that all the fifteen petitions from the condemned prisoners during this period were turned down with a standard remark written in the meeting minutes that "*Council advised and the Governor ordered that the law should take its course.*"³⁸

In Hong Kong, as in England, the death penalty could only be passed on prisoners who committed the offences of treason, piracy with violence and murder.³⁹ England in 1965 had basically abolished the death penalty for murder under the Murder (Abolition of the Death Penalty) Act 1965 and in 1969 abolition was made permanent by resolution of both Houses of Parliament. Similar legislation was however not being initiated in Hong Kong as the government in Hong Kong had received no such pressure from the public to amend the existing ordinances.

³⁶ Miners, N. (1995) *The Government and Politics of Hong Kong*, Hong Kong: Oxford University Press, p.79.

³⁷ See Chan, W. K. (1988) 'An Analysis of the Hong Kong Government's Policy on Capital Punishment.' MSc (Public Adm.) Thesis, University of Hong Kong.

³⁸ Ibid, p.12.

³⁹ Apart from the seven offences carrying death penalty enacted during the period of Military Administration.

Chan (1988) noticed that the Governor in Hong Kong had since the last execution in November 1966 commuted all death sentence cases to that of determined sentences.⁴⁰ This practice was the result of the Governor acting either on instructions from the Secretary of State or anticipating his adverse reactions to the infliction of the death penalty after it had been abolished in Britain.⁴¹ The commutation of death sentence had generated discontent and negative feelings in Hong Kong and there had been from time to time calls to reactivate the death sentence in Hong Kong.⁴²

In 1973, the Governor had taken the rare move in refusing to exercise the prerogative of mercy on the death sentence of Tsoi Kwok-cheung in view of the mounting public pressure. There was opposition to the Governor's move and seventy signatures were collected from church leaders, lawyers, academics etc in Hong Kong asking the Queen to exercise pardon when Tsoi petitioned the Queen for clemency. There were on the other hand strong views expressed by the people of Hong Kong including students and even Buddhist leader backing the Governor's decision.⁴³ The Queen did intervene on the advice of the Secretary of State and a pardon was granted to Tsoi on 15 May 1973.⁴⁴ This result came as no surprise as the pro-death sentence groups in England were once again being defeated in the House of Common on 11 April 1973 on the move of reintroducing death penalty in Britain.⁴⁵

This rare intervention from Britain, not based on the concern for a possible miscarriage of justice, was regarded by Liu (1992) as "*an attempt to procure Hong Kong's conformity with the United Kingdom Parliament's decision to abolish the*

⁴⁰ Chan, W. K. (1988) op cit., p. 12.

⁴¹ Minor, N. (1995) op cit., p.79.

⁴² *South China Morning Post*, 2 May 1973.

⁴³ *Ibid*, 3 May 1973.

⁴⁴ *Ibid*, 16 May 1973.

⁴⁵ *The Economists*, 14 April, 1973.

*death penalty in the United Kingdom.*⁴⁶ The Chinese press in Hong Kong expressed great dissatisfaction with London's interference and feared such action would fume up more violent crimes in Hong Kong, especially when Hong Kong had just commenced its Fight Violent Crime Campaign.⁴⁷ No further attempts by the successive Governors in refusing to exercise the prerogative of mercy on the death sentences happened after 1973 "*as it seems extremely unlikely that any Governor will risk such an open rebuff again, now that both the major political parties in Britain have made their position on executions clear.*"⁴⁸

Life imprisonment was on the other hand being introduced as an alternative for some of the commuted death sentence cases after 1973. This move was promoted by one of the leading English newspaper in Hong Kong with its editorial commenting the jurors were reluctant to convict murder charges and preferred to opt for the lesser charge of manslaughter for which they do not have to pass the mandatory death sentence to the convicted murderers.⁴⁹ With an increase of serious crimes in Hong Kong, the demands from the community, including Legislators, The Hong Kong General Chamber of Commerce and civic groups to resume capital punishment were raised time and again.⁵⁰ A senior police officer on the other hand commented that "*the desire for the death penalty is motivated by social vengeance not justice*" as the murder cases in Hong Kong had in fact dropped from 115 to 110 and 102 cases in 1972, 1973 and 1974 respectively.⁵¹

⁴⁶ Liu, A. (1992) 'The Right to Life' in Wacks, R. (ed.) *Human Rights in Hong Kong*. Hong Kong: Oxford University Press, p. 272.

⁴⁷ See *Wah Kiu Yat Po* and *Ming Pao*, 19 May 1973.

⁴⁸ Minor, N. (1995) *op cit.*, p.84.

⁴⁹ *South China Morning Post*, 16 October 1974 and 19 April 1975.

⁵⁰ See *South China Morning Post*, 24 July 1974, 1 May 1975, 25 August 1975, 21 October 1975, 23 October 1975 and *Hong Kong Standard*, 12 October 1975.

⁵¹ *Hong Kong Standard*, 26 October 1975.

The public sentiment in favour of resuming capital punishment in Hong Kong was addressed by the Colonial Secretary at the Legislative Council meeting held in November 1975. He remarked that the *“great majority of the Hong Kong population are convinced that the death penalty would serve as a substantial deterrent to violent crime. It is also the common view that even if it does not deter, then it should be imposed as a measure of the outrage of the community and because it is widely believed that evil conduct should be visited by punishment.”*⁵²

The Colonial Secretary on the other hand explained to the Legislators the practical difficulties on why capital punishment could not be re-activated in Hong Kong owing to the opposition in England, in particular views of the House of Commons. As condemned prisoners could petition to the Queen for clemency and her decision would have to be based on the advice of the Secretary of State for Foreign and Commonwealth Affairs, who, in making his advice to the Queen, had to take heed of the reaction of the Parliament. It was of the opinion that *“they would not be supported in the House of Commons if they were to advise that death sentences should be carried out in Hong Kong. Moreover, there are no signs that this attitude of the House of Commons is likely to change in the immediate future.”*⁵³ To address the concerns in Hong Kong, the Colonial Secretary raised the motion in the Legislative Council in 1975 that:

*“In future, whenever he commutes a death penalty, the Governor will impose the alternative punishment of life imprisonment, unless, in exceptional circumstances, he feels able to accept advice from Executive Council that a lesser sentence should be imposed.”*⁵⁴

⁵² *Hong Kong Hansard*, 6 Nov 1975: 224.

⁵³ *Ibid.*

⁵⁴ *Ibid.*, p. 225.

The Attorney General further clarified that life sentence “*will mean precisely what it says and a prisoner will not be released to society again for the term of his natural life. The only exception will be where there are very compelling humanitarian grounds.*”⁵⁵

5.5 Debates on Executions in Hong Kong

This assurance from the Attorney General however was unable to pacify the local community. The calls for bringing back the death penalty were sounded out from time to time and were even taken up with the Foreign and Commonwealth Office in London but the pleas from the community leaders were rejected.⁵⁶

The legal quarter also criticized Hong Kong’s approach to sentencing the murderers as unofficial repeal of the law without the necessary legislative process being followed. When Lord Denning lectured at the University of Hong Kong in 1977, he commented on Hong Kong’s death penalty for murder as a farce as all murderers sentenced to death were granted automatic reprieve by the Governor-in-Council.⁵⁷

On the other hand, there was a concern that the practice of commuting the sentence of death penalty to life sentence would lead to the growing numbers of lifers in the prison and added pressure to the administration of the prison system.⁵⁸ The latter remark was also echoed by the prison administrators at the time. The then

⁵⁵ *South China Morning Post*, 15 November 1975.

⁵⁶ See *Hong Kong Standard*, 8 July 1976, *Kung Sheung Daily News*, 18 August 1977.

⁵⁷ *South China Morning Post*, 16 April 1977.

⁵⁸ *Hong Kong Standard*, 21 January 1976.

Commissioner of Prisons, even up to 1980, still expressed his support in carrying out death penalty in Hong Kong.⁵⁹

The hope for bringing back the death penalty to Hong Kong was once again raised when Margaret Thatcher became the Prime Minister in the United Kingdom in view of her pro death penalty attitude.⁶⁰ When the House of Common again voted to drop the death penalty in the United Kingdom, two of the local urban councillors urged the Hong Kong Government not to follow the decision of the British Parliament as “*it was a Chinese tradition to execute people convicted of homicide and South East Asian countries with large Chinese population saw harsh penalties effective in fighting crime.*”⁶¹

Every time when there were noise from Britain calling for reinstating the death penalty, hopes were raised in Hong Kong for bringing back the death penalty. However such hopes were turned into disappointment as the House of Common had voted down such appeals again and again. With the belief that death penalty would never be carried out again in Hong Kong, Sir Alan Huggins, the Acting Chief Justice remarked that the pantomime of the death sentence only brings the law into disrepute and considered the courts not the place for pantomime⁶² and even called for the removal of death penalty from Hong Kong’s statute law books as soon as possible.⁶³

⁵⁹ *South China Morning Post*, 22 November 1975 and 9 May 1980.

⁶⁰ *Hong Kong Standard*, 30 May 1979.

⁶¹ *The Star*, 30 July 1979.

⁶² See *Hong Kong Standard*, 19 March 1982, *South China Morning Post*, 8 September 1982 and *The Star*. 3 June 1983.

⁶³ *Hong Kong Standard*, 15 July 1983.

Though the call for ending the death penalty was supported by Legislator Lydia Dunn and the leading English newspaper,⁶⁴ the community on the other hand also felt that death penalty could deter crime and the police even blamed the increase of violent crime the result of the suspension of the death penalty in Hong Kong.⁶⁵ When convicting the “Hong Kong Butcher”, a taxi driver who murdered and butchered four females, the community’s outcry was to carrying out death penalty onto this evil person.⁶⁶

The Hong Kong Government’s position on death penalty at this juncture could best be summarized by the Attorney General Michael Thomas, himself an abolitionist, at the Legislative Council meeting in 1983 that:

“I have previously made known my personal conviction that society has no right deliberately and in cold blood to kill one of its members unless there is some necessity for doing so. And so long as there is the fearful prospect of life imprisonment, there is no need to kill merely to punish. Equally I have previously made known that I share Miss DUNN’s concern that in retaining capital punishment, we unfairly impose upon judges and those who guard condemned prisoners under sentence of death awesome and morbid responsibilities.

But given the feelings of the ordinary people of Hong Kong and of Parliament in Westminster, I can see no immediate prospect of action here in Hong Kong to satisfy either of Miss DUNN’s demands. The Government therefore takes note of her points but the political realities are well known to her and indeed to all honourable Members.”⁶⁷

⁶⁴ *South China Morning Post*, 27 October 1983 and 29 October 1983.

⁶⁵ *Hong Kong Standard*, 1 October 1982.

⁶⁶ *Ibid*, 11 April 1983.

⁶⁷ *Hong Kong Hansard*, 10 Nov 1983: 219.

5.6 Change of Sovereignty and the Death Sentence Debate

The fate of Hong Kong was sealed with the Draft Agreement for the return of Hong Kong to China in 1997 signed on 26 August 1984. With the understanding that Hong Kong would become A Special Administrative Region (SAR) of China, there was a general believe that death penalty would remain in Hong Kong until and after the handing over of the sovereignty. Whether death penalty would be carried out after 1997 should be a matter to be decided by the future Chief Executive of the Hong Kong SAR Government.⁶⁸

In December 1986, the leading English newspaper in Hong Kong conducted a survey and found that 68% of the Hong Kong population supported the restoration of the death penalty on convicted murderers and another 15% might or might not support the death penalty depending on the nature of the crime.⁶⁹ With the findings of the survey, the newspaper further suggested referendum on death penalty to end this “*official hypocrisy and charade*”.⁷⁰

These pro death penalty sentiments had, on the other hand, caused great concerns on the condemned prisoners whose death sentences were yet to be commuted by the Governor of Hong Kong as well as those prisoners with death sentences already commuted to life sentences. They were concerned on their fate after 1997 as nothing concrete were mentioned in the Draft Agreement with China on this matter and there was the high possibility that they could be executed by the future SAR Government.⁷¹

⁶⁸ *Hong Kong Standard*, 29 September 1984 and 5 November 1984.

⁶⁹ *South China Morning Post*, 15 December 1986.

⁷⁰ *Ibid*, 16 December 1986.

⁷¹ *Ibid*, 8 November 1986.

The Legal Department on the other hand assured that the Hong Kong Government would take appropriate action to deal with the 23 young murderers being sentenced under Her Majesty's Pleasure with length of sentence yet to be determined by the Queen.⁷²

In Hong Kong, no young person under the age of eighteen was executed after the War. As to death sentences passed on young offenders, the Colonial Office in London sent a despatch on 22 August 1952 asking colonies and territories to give consideration to introduce legislation to bring their respective local law concerning passing death sentence for those below 18 years into line with that of the United Kingdom.⁷³ Under Section 53(1) of the Children and Young Persons Act 1933, a person convicted of murder committed before reaching the age of 18 is sentenced to be detained during Her Majesty's Pleasure and liable to be detained in such place and under such conditions as the Secretary of State may direct.⁷⁴

In Hong Kong, the Executive Council considered this matter on 21 October 1952 and the Criminal Procedure (Amendment) Ordinance 1952 was passed on 20 November 1952 incorporating the English practice in dealing with young offenders committing murders whilst under the age of 18.⁷⁵ This new ordinance was introduced with such expediency which could only be explained by the nature of its sensitivity involving death sentences on young persons.

⁷² Ibid, 22 January 1987.

⁷³ HKRS 41-1-7338.

⁷⁴ See Home Office, (1977) *Prisons and the Prisoners – The work of the Prison Services in England and Wales*, London: HMSO, p.88.

⁷⁵ HKRS 41-1-7338.

The Legislative Council members were themselves also divided on the issue of the death penalty and the issue of carrying out the death penalty were from time to time brought up in the Council whenever there were increases in serious crimes. During a Legislative Council meeting in 1986 when options in dealing with the triad problems were discussed, Legislator Mrs Selina Chow Liang Shuk-yee (周梁淑怡) states that “*it is time to seriously consider the reinstatement of the death penalty for masterminds of gang wars as well as syndicated drug trafficking.*”⁷⁶

From 1987 onwards, all murderers sentenced to death were having their sentences automatically reviewed six months after the expiration of the appeal period if they had chosen not to appeal or their appeal being rejected. This arrangement would ensure all death sentences passed would be dealt with according to the established guideline leading to the commutation of sentence.

During another Legislative Council session in the late 80s, the Government was again asked why death sentences were not being carried out in Hong Kong. The Chief Secretary repeated the 1975 decision on this matter by saying that there was no change in the House of Commons on attitudes towards death penalty at this moment and as such the situation in Hong Kong would remain unchanged. On the other hand he would not speculate on what would happen after 1997.⁷⁷ The cultural arguments on death penalty was further brought up by a Chinese Legislator saying that there is the Chinese teaching that “*the murderer deserves the death penalty*” and as people of ethnic Chinese origin constitutes the majority of the population in Hong Kong; the public order policy should be in line with the Chinese ethnical thinking.⁷⁸

⁷⁶ *Hong Kong Hansard*, 9 July 1986: 1471-2.

⁷⁷ *Ibid*, 15 March 1989: 19-21.

⁷⁸ *Ibid*.

Legislator Martin Lee then raised the question of why the death penalty was not scrapped under such circumstances and was responded to by the Chief Secretary that “*public opinion is in favour of the death sentence*” and as such it would not be “*opportune to abolish the death penalty*”.⁷⁹ As death penalty also applied to the offence of treason in Hong Kong, Mr Lee then raised the issue on “*whether the government Members of this Council would be given a free vote if there is a private Member’s Bill proposing to abolish the death penalty*” of which the Chief Secretary refused to respond to on the assumption that it was a hypothetical question.⁸⁰

The same issue was being played up by Legislator Lee and it was immediately reported by the media that a private Member’s Bill to remove death penalty would be raised as a safeguard to civil liberty after 1997. After all treason was still a capital offence and some members of the Democratic Party were being portrayed as traitors by their opponents.⁸¹

Hong Kong’s return to Mainland China in 1997 suddenly became a major confidence crisis in Hong Kong after the Chinese Government’s forceful crack down on the demonstrators in Beijing on 4 June 1989. Fearing the same degree of political control would be exercised in Hong Kong after the handing over, there was an exodus of talents and capitals from Hong Kong and a special debate was held at the House of Commons on 13 July 1989 to find ways to restore Hong Kong people’s confidence in 1997.⁸²

⁷⁹ Ibid, p. 21.

⁸⁰ Ibid.

⁸¹ *South China Morning Post*, 17 March 1989.

⁸² *Parliamentary Debates, House of Commons*, 13 July 1989.

The call for the abolition of the death penalty in Hong Kong picked up its momentum after the 1989 incident as it was feared that the Hong Kong SAR Government would certainly reinstate execution after 1997 when the hindrance from the House of Commons were gone and executions were common in China with death penalties covering a wide range of offences other than murder.⁸³

Public opinion on the whole was still in support of having death penalty in Hong Kong despite the fact that China had been executing the highest number of prisoners amongst all countries still carrying out death penalty. The local branch of the Amnesty International had tried to rally public support to abolish death penalty by calling a signature campaign in 1989 but received only lukewarm response.⁸⁴ According to surveys conducted by the Fight Crime Committee and the South China Morning Post, over 70 % of the local population want the death penalty to be kept in Hong Kong's statute books with only 25% of the population in favour of abolishing death penalty.⁸⁵

5.7 The Abolition of Death Sentence in Hong Kong

On 26 June 1991 legislator Kingsley Sit proposed the Member's motion to the Legislative Council that "*in view of the increasing concern caused by the present law*

⁸³ *South China Morning Post*, 17 November 1989, 14 June 1990, 15 June 1990 and 16 June 1990.

⁸⁴ *Ibid*, 5 June 1990.

⁸⁵ The Fight Crime Committee conducted a survey between 8-22 January 1990 to gauge the public opinion on death penalty and the result indicated 70% in support of the death penalty. *South China Morning Post's* poll indicated 71% in support of death penalty with 25% against, which indicated an increase from a similar poll in 1986 with 68% in support of death penalty. See *South China Morning Post*, 5 June 1990 and 5 November 1990.

and order situation, this Council urges the government to resume immediately the carrying out of the death penalty."⁸⁶

Mr Sit's motion was raised after a gang of five masked robbers raided five goldsmith shops consecutively in a busy street in Kowloon on 9 June 1991. The leader of the group was captured in picture waving an AK 47 assault rifle in the commission of the crime and fled from the scene by firing at the arriving police.⁸⁷ A local poll was conducted at the district where the armed robberies took place and found 84% of the respondents supported death penalty.⁸⁸

It was ironic that the Hong Kong Bill of Rights Ordinance had only become law on 8 June 1991, one day before the shoot out.⁸⁹ The Hong Kong Bill of Rights is mirrored after the International Covenant on Civil and Political Rights (ICCPR) with almost exact wordings being used in the Bill of Rights. Article 6 of the ICCPR which covers the right to life is being adopted in Article 2 of the Bill of Rights Ordinance in Hong Kong without amendment. Though the Article still accepts death penalty for the most serious crimes (S. 2) and should not be imposed on young offenders under eighteen years old or on pregnant women (S. 5), yet it states in S. 6 that "Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant."⁹⁰

In the Legislative Council, legislator Martin Lee tabled an amendment to counter Mr. Sit's motion by proposing:

⁸⁶ *Hong Kong Hansard*, 26 June 1991: 75.

⁸⁷ *Hong Kong Standard*, 10 June 1991.

⁸⁸ *South China Morning Post*, 28 June 1991.

⁸⁹ Wacks, R. (ed.) (1992) *op cit.*, p. 2.

⁹⁰ Liu, A. (1992) *op cit.*, p. 264.

*"That in view of both the need to deter and prevent crime and the importance of Hong Kong maintaining the highest standards of a modern, humane community, this Council urges the Government to strengthen the capability of the police force to fight crime and calls for legislative measures to be introduced into this Council which would abolish the death penalty and replace it with life imprisonment."*⁹¹

It was a heated and emotional debate starting from half-past five in the afternoon till nine minutes to ten in the evening. Arguments of the pro death penalty group stressed that the majority of the Hong Kong people are in support of the death penalty which is also the traditional Chinese belief that murderers should be executed. They believed that only by resuming the death penalty in Hong Kong would the tide of the violent crime be stopped. To abolish the death penalty in Hong Kong would send a wrong signal to the criminals that they could kill without the fear of being sentenced to death, which is most unfair to the victims.

The abolitionists' arguments were mainly focused on the possibilities of wrongful execution of innocent persons, the unproven deterrent effect of the death penalty and the fear that Hong Kong, after 1997, would resume executing offenders on offences not limiting to murder as practiced in China. Other opinions such as those expressed by the Bar Association felt that the current practice of passing death penalty and then commuted by the Governor had already amount to a de facto abolition. Others felt that life sentence should have adequate deterrent effects for the potential offenders.

⁹¹ *Hong Kong Hansard*, 26 June 1991.

During the course of the debate, it was also revealed that “*a total of 243 convicted murderers’ death sentence has been commuted by the Governor in Council since 1966. Some 28% got a jail sentence of about 20 years or more.*”⁹²

Before putting the motion to vote, the Secretary for Security promised that the Administration would consider bringing forward legislation to abolish death penalty if the majority of Members of Council voted in favour of abolition. When the votes were cast, Legislator Martin LEE’s amendment gained the majority support of 24 votes against 12, with another 5 abstentions from the members.

A few days before this Legislative Council’s debate on death sentence, the University of Hong Kong organized an international conference on the Bill of Rights Ordinance in Hong Kong from 19-22 June 1991. The international participants attending the conference petitioned to the legislators by signing a letter stating that “*We are people of many countries in Hong Kong to speak at the International Conference on the Bill of Rights. We believe that the death penalty is incompatible with human rights and that its reinstatement would be against the best interests of the people of Hong Kong.*”⁹³ The letter was circulated to the Legislative Council members before the meeting and its effect was not known as only Martin Lee had mentioned the petition in his speech. The editor however suggested that it was “*one of the rare occasions when an international conference may have played some practical part in local lawmaking by reason of the coincidence of its concerns with proposals for law reform in the local legislature.*”⁹⁴

⁹² Ibid.

⁹³ *Commonwealth Law Bulletin*, Volume 17 (3), 1991: 1105

⁹⁴ Ibid, p. 1106.

Governor Wilson when addressing the Legislative Council on the topic of rule of law and human rights on 31 October 1991 stated clearly for the Government *“to maintain the confidence of the people of Hong Kong in our future, we must ensure the rule of law and judicial independence now and in the years beyond 1997”*. Amongst other actions, to *“Amend as soon as possible the law to replace the death sentence with life imprisonment”*.⁹⁵ However there was not much progress on this issue up till his departure as Governor of Hong Kong in June 1992.

Chris Patten arrived in Hong Kong on 9 July 1992 as the last Governor representing the British Government’s interest over this colony before the handover. When addressing the Legislative Council the first time on 7 October 1992, he had affirmed his plan to abolish the capital punishment as part of his law, order and justice initiatives by saying:

“Any society based on the rule of law must ensure that its laws reflect the realities of contemporary life and thought. I think it is wrong in principle to leave laws on the statute books which are out of date, which we do not use and which we have no intention of using. I am referring here to the law on capital punishment.

*On 26 June last year, the Council voted for a motion in favour of the repeal of capital punishment. In the debate, many Members recognised that laws which are not used or out of date should be repealed. We have therefore prepared draft legislation to replace the penalty of capital punishment with life imprisonment. This amending legislation will be presented to the Council during this new session.”*⁹⁶

⁹⁵ *Hong Kong Hansard*, 31 October 1991: 108.

⁹⁶ *Hong Kong Hansard*, 7 October 1992: 33-34.

The Administration, based on Martin Lee's amendment, prepared the Crimes (Amendment) (No. 3) Bill 1992 and tabled it for the First and Second Reading at the Legislative Council on 11 November 1992.⁹⁷

The Bill proposed to abolish the death sentence currently being the mandatory penalty for murder, treason and piracy with violence and to be replaced by life imprisonment. The power of the Governor to impose death penalty under the Emergency Regulations would be replaced by life imprisonment as the maximum sentence. The Bill also proposed the trial judge to indicate in a written report the special considerations or mitigating circumstances and the recommended minimum sentence to be served if a life sentence were to be handed down.

The sentence reviewing mechanism was also proposed for all life sentences to be reviewed by the Board of Review initially after five years and subsequently every two years unless the Governor directs that a case should be reviewed earlier after considering the trial judge's report. As for the 32 condemned prisoners under the sentence of death, it was proposed that their death sentences were to be commuted to life imprisonment once the Bill becomes law.

A Committee was set up by the Legislative Council to study the Bill in detail and representations were received from the Bar Association and the Law Society, both supporting the abolition but the Bar Association suggested to limit mandatory life sentence to murder cases only whilst the Law Society proposed life imprisonment should only be used as the maximum sentence. The Committee also received

⁹⁷ *Hong Kong Hansard*, 11 November 1992: 641-2.

representation from the Hong Kong Citizens Alliance who opposed any move in abolishing capital punishment.⁹⁸

Four meetings were held by the Bills Committee including meeting with the Administration. The Committee proposed and was eventually agreed by the Administration that the penalty for treason and piracy with violence should be changed to discretionary life sentence as these are offences of a category entirely different from murder and therefore not appropriate for the mandatory life sentences. It was also agreed that the existing review system should cover both the mandatory life sentence cases together with all other long sentence cases. The Bills Committee also felt strongly for the formalization of the Board of Review of Long Term Prison Sentences as it was basically an administrative tool for the government without legislative backing. The Administration agreed on the need for change and undertook to introduce a separate Bill in the 1993-94 Legislative Session.⁹⁹

When the Second Reading of the Crimes (Amendment) (No. 3) Bill was resumed on 21 April 1993, the Chairman of the Bills Committee presented the motion and again there were Legislators voicing objections to the abolition of capital punishment in Hong Kong. Nevertheless the Bills Committee's motion was supported by 40 votes against 9 votes opposing the motion.¹⁰⁰ With the blessing of the Legislative Council, the death penalty in Hong Kong was formally removed from the laws of Hong Kong under the Crimes (Amendment) Ordinance 1993 which came into force on 23 April 1993.

⁹⁸ Ibid, 21 April 1993: 2935.

⁹⁹ Ibid, pp. 2935-6.

¹⁰⁰ Ibid, p. 2942.

Vagg (1997) commented that this was an “*unanticipated outcome of opportunistic and short-term politicking*” of a single legislator putting forth a motion for carrying out execution in the midst of violent crimes and armed robberies.¹⁰¹ As death sentences were being routinely commuted by the Governor after 1966, it was most unlikely that the debate would have any effect in changing this situation but forcing the first group of elected legislators to show their stances on this law and order issue.¹⁰² The amendment to the motion put forth by Legislator Lee was successful not only because of the fear of the SAR Government reverting to the practice of carrying out death sentences after the handing over in 1997, but the voting of the government officials at the Council who had no alternative but to veto the original motion as it runs against the official position of the government.¹⁰³

The practice of sentencing young murderers to be detained pending Her Majesty’s Pleasure (HMP) was ceased in 1993 following the repeal of the death penalty in Hong Kong. Stanley Prison’s ‘H’ Block was demolished in 1996 and a new prison hospital complex was built on its site as part of the Stanley Prison re-development programme.

5.8 Conclusion

According to Amnesty International’s Death Penalty 2010 Report¹⁰⁴, death sentences are still being practiced in China, Taiwan and the neighbouring South East Asian

¹⁰¹ Vagg, J. (1997) Robbery, Death, and Irony: How an Armed Robbery Wave in Hong Kong Led to the Abolition of the Death Penalty, *The Howard Journal*, Volume 36 (4), p. 403.

¹⁰² Hong Kong had its first democratic election in 1991 of which one third of the legislators was publicly elected with the remaining members composed of appointed legislators and government officials.

¹⁰³ Vagg, J. (1997) op cit., pp. 402-3.

¹⁰⁴ Amnesty International (2011) Death Penalty 2010 Statistics-Graphics at <http://www.amnesty.org/en/news-and-updates/death-penalty-2010-statistics-graphics-2011-03-25>. Date of access: 2011-4-19.

countries like Thailand, Singapore and Malaysia, etc where the Chinese population is in dominance. China tops the table with over 1000 executions – more people than the rest of the world put together and Singapore having the highest execution rate in the world with over 400 prisoners hanged between 1991 and 2004.¹⁰⁵ Hong Kong and the former Portugal enclave Macau, both currently being Special Administrative Regions of China are the only exceptions where death sentences have been abolished for all crimes whilst under the colonial administration. It is of particular interest to understand why and how Hong Kong had abolished its death sentences against penal populism of the majorities in a Chinese society where capital punishment is deemed to be the proper approach in dealing with murderers. Furthermore, it is necessary to find out why Hong Kong, whilst a British colony, moved ahead of London in achieving a total abolition of death sentence.

British colonies were normally given a degree of latitude in designing its law and order approaches as long as stability of the colonies was maintained. Directives from the Colonial Office were most of the time coming as advices and might not be followed completely especially if these were not falling with the popular expectation of the colony. The issue on death penalty was however different.

Hong Kong since its early days under the British administration had followed closely the home practices in exercising this ultimate sanction openly onto the native population. Public execution by hanging was ceased in Hong Kong and executions were carried out inside Victoria Gaol following changes made in Britain where executions were conducted behind prison walls. Teenagers and pregnant women were

¹⁰⁵ Amnesty International, (2004) *Singapore – The death penalty: A hidden toll of executions*. AI Index: ASA 35/001/2004, p.1.

spared the rope according to the Western humanitarian standards which were accepted in this colony without much controversy. The design of Stanley Prison's Condemned Block and the execution chamber together with method of execution were exact replica from home including the adoption of the drop table for measuring the length of the hanging rope ensuring the process would be conducted in a scientific and humanitarian manner.¹⁰⁶

On the issue of death sentence for adult male murderers, the administrators in Hong Kong were caught between the decisions made by the House of Commons in London and the public sentiments in Hong Kong. With the legal framework established in this colony where all condemned cases were to be dealt with in London, there were no chances for Hong Kong to go against the practice at home in executing its prisoners no matter how strong the locals felt on this issue.

The success of the abolitionist in the Legislative Council debate in 1991 could be regarded as incidental to the Legislators' fear and uncertainty towards the future of Hong Kong after the 1989 Beijing Incident resulted in casting their votes against the wishes of the population in large.¹⁰⁷ As a colony, this course of action in abolishing the death sentences ahead of London, without the Beijing Incident, could not be imagined and there were speculations at the time that even though the death penalty was abolished in 1993, it would highly likely to be brought back after 1997 when Hong Kong was under the Chinese administration.¹⁰⁸

¹⁰⁶ Miners, N. (1987), 'The Governor, The Secretary of State and The Prerogative of Mercy' in *Hong Kong Law Journal*, 80, pp. 77-89.

¹⁰⁷ See Abrahamson, D. (1992) 'Capital Punishment in Post-Colonial Hong Kong: Issues, Answers, and Options' in *New York University Journal of International Law and Politics*. 24 (3), pp. 1219-1252.

¹⁰⁸ *Ibid*, p. 1244.

As stated by Sir Leon Radzinowicz, “*Capital punishment was both a penal and humanitarian issue, but it was also a social-political issue with a deep and clear-cut split along the traditional lines of party allegiance.*”¹⁰⁹ Formulation and development of the penal policy regarding death sentence in Hong Kong, as seen in this case, was an extra-ordinary event and could only occur in a colony caught between the cultural and social norms of the East and West and fumed by the uncertainty of the handing over of the colony back to China where death sentences are deemed as necessity in maintaining State security and prosperity. The same analogy however could not be applied to the penal policy on corporal punishment in Hong Kong, which will be the subject of discussion for the next Chapter.

¹⁰⁹ Radzinowicz, L. (1999) op cit., p. 247.

Chapter Six

Corporal Punishment in Hong Kong

6.1 Introduction

In this Chapter, corporal punishment refers to corporal punishment passed down by court as sentences to either adult or young offenders. The Chapter also includes corporal punishment administered on prisoners as awards for breach of prison discipline.

Corporal punishment, like capital punishment, had been a controversial form of punishment in Hong Kong. Not only it was one of the punishments which involved the infliction of violent physical pain and suffering onto the offenders, it also demonstrated differences in penal philosophy regarding punishment between the locals in Hong Kong and Britain on the use of the cane. Corporal punishment would still be regarded by some of the Hong Kong residents as the most effective means of punishment for the deterrence of crime whilst those opposing corporal punishment would consider this an uncivilized and barbaric form of regressive punishment without any element of rehabilitation for the offender.

Unlike the case of capital punishment where it is still being practiced in China and Taiwan, judicial corporal punishment had never been incorporated in the criminal law of the People's Republic of China or Taiwan as one of the sentencing options. In fact judicial corporal punishment was eliminated from the list of criminal penalties as

early as in 1909 during the Qing Dynasty when China was at the time launching the campaign to pick up the Western ideas in punishment and to modernise its criminal codes.¹ Interestingly corporal punishment is still being practiced in Malaysia and Singapore in this part of the world; both were former British colonies which gained their independent state status in the 1960s.

This Chapter covers the history and development of policies governing corporal punishment in Hong Kong with details on how corporal punishment was administered inside the penal institutions. Possible arguments are presented to explain why Hong Kong, as a British colony, did not follow suited Britain's move in the abolition of corporal punishment under the Criminal Justice Act 1948 but preferred the use of the cane on criminals as punishment. Further arguments are made to explain why Hong Kong adopted the differential approach towards physical punishment allowing corporal punishment to be in practice in Hong Kong up to 1989 until its repeal from the statute on 1 November 1990, whilst capital punishment had ceased in operation more than twenty years earlier in 1966.

6.2 Corporal Punishment in Hong Kong prior to 1941

Corporal punishment was one of the earliest forms of punishment adopted by the British colonial administrators in Hong Kong. Munn (1995) suggested that at the very beginning when the British took possession of Hong Kong in 1841, Captain Caine,

¹ Xing, B., 'Citizen Cane', *Shanghai Star*, 9 October 2003. See also 罗翔, (2006), 中华刑罚发达史-野蛮到文明的嬗变, 北京: 中国法制出版社, p. 77 and Dikötter, F. (2001) *Crime, Punishment and the Prison in Modern China, 1895-1949*. New York: Columbia University Press, pp 46-50.

the Chief Magistrate of Hong Kong, adopted a tough stance on law and order in the colony to prevent the collapse of British rule by employing a range of repressive and discriminatory measures.² The Magistrates' Warrants of 1841 and 1842 permitted him *“to inflict on Chinese offenders sentences of imprisonment with or without hard labour of up to three months (increased to six months in May 1842), fines of up to \$400, and corporal punishment of up to one hundred lashes.”*³

In January 1844, nine pirates were sentenced to five years imprisonment with hard labour and were in addition directed to *“receive 100 strokes during each year of their confinement within the 1st and 6th Months on such day as the Chief Magistrate may appoint; that they shall stand in the Pillory (Cangue) for an hour on each occasion before they are flogged with labels on their breasts descriptive of their crime and sentence; that at the expiration of the full period of imprisonment they shall be turned off the island and warned if they are ever again found in the Colony they will be confined for life.”*⁴

These exemplary punishments were accepted by the Colonial Office at the time as they believed that *“W[w]e have there to do with people for whom our Penal Law has no adequate terror and to whom it is barely applicable and yet there is no possibility of enforcing their Law by British Courts and Officers without a compromise of principles which we are bound to maintain inviolate.”*⁵

² Munn, C. (1995) 'Scratching with a Rattan: William Caine and the Hong Kong Magistracy, 1841-1844', Hong Kong Law Journal, 25, p.213.

³ Ibid., p. 224.

⁴ Hong Kong Register, 6 February 1844, p. 24. Quoted from Munn, C. (1995) op cit., p. 225.

⁵ CO129/11, p. 159. Quoted from Munn, C. (1995) op cit., p. 225.

The Supreme Court of Hong Kong was set up in 1844 with the first criminal session held in October of the same year.⁶ However the establishment of the Supreme Court did not seem to slow down the passing down of the sentence of flogging by the lower courts and flogging was commonly used to control the vagrants that were attracted to Hong Kong when the colony began to prosper. Section 5 of the Police Court Ordinance No. 6 of 1847 authorized “*corporal punishment to the extent of 60 stripes, to be inflicted with a cane or rattan with the addition that persons unable to give a satisfactory account of themselves were liable, if unregistered, to be sent out of the island.*”⁷

The early law enforcement actions were mainly targeting the Chinese population; not only because they dominated the population of the colony, but they were in general being “*criminalised as a community in the eyes of the Europeans*”.⁸ A number of Ordinances were enacted aiming specifically on the Chinese such as the Suppression of the Triad Society Ordinance (12 of 1845); Ordinance to regulate the Chinese certain nuisances within the colony of Hongkong (12 of 1856); Ordinance for regulation of the Chinese people, and for other purposes of Police (8 of 1858); Ordinance to make provision for the more effectual suppression of piracy (1 of 1868); Ordinance to empower the Supreme Court to direct offenders to be whipped and to be kept in solitary confinement in certain specified cases (3 of 1868); Ordinance to make provision for the branding and punishment of criminals in certain cases (4 of 1872); Ordinance to amend and consolidate the laws concerning the jurisdiction of

⁶ Munn, C. (1995) op cit., p. 232.

⁷ Norton-Kyshe, W. (1898) *History of the Laws, Etc., of Hong Kong*. London: T. Fisher Unwin, pp. 149-50.

⁸ As quoted from Munn, C. (1995) op cit., p. 232, “Bridges estimated in 1858 that only 25,000 of the 65,000 Chinese in Hong Kong were members of the ‘dangerous class, not absolutely criminals but all prepared to be so at a very slight temptation.’” (C.O. 129/67, p. 19) “William Mercer, the acting governor in 1865, believed that the majority of the Chinese in Hong Kong were ‘at all times ready to venture on crimes of plunder or violence.’”(C.O. 129/105, p. 461)

magistrates over indictable offences and for other purposes (16 of 1875); and Ordinance to consolidate and amend the Ordinances relating to deportation, conditional pardons, the branding and punishment of certain criminals (8 of 1876).⁹

The situation was only rectified in 1881 when Governor Hennessy took the initiative to correct the situation and proposed the *“Branding Ordinances, and all Ordinances imposing flogging on the Chinese race exclusively, be repealed; that public flogging and flogging Chinese on the back be abolished, and that no flogging be allowed in Hongkong except for such offences as would entail flogging in England.”*¹⁰

Corporal punishment was declining rapidly in England as court sentence for punishment since 1900 when whipping constituted only 7% of the total punishment in the year. The figure further dropped to 3% in 1910, 1 % in 1924 and 0.2% in 1936.¹¹ Examining the crime of robbery with violence and the number of offenders flogged for this offence during the period from 1863-1936, a British research found *“there is no evidence that the infliction of corporal punishment has in any way acted as a deterrent to prevent others from committing such crimes.”*¹² The situation was however very different outside Britain and the frequent use of corporal punishment on its colonial subjects had raised concern in London.

Corporal punishment was also widely used inside the Victoria Gaol in Hong Kong for maintaining gaol discipline. In 1896 a prisoner was alleged to have died inside the gaol as a result of repeated flogging received inside the gaol for refusing to work. This

⁹ See *Hong Kong Hansard*, 19 November 1881, p. 1007.

¹⁰ *Hong Kong Hansard*, 11 June 1881, p. 430.

¹¹ Radzinowicz, L. (1999) *Adventures in Criminology*. London: Routledge, p. 87.

¹² Lewis-Faning, E. (1939) ‘Statistics Relating to the Deterrent Elements in Flogging’ in *Journal of the Royal Statistical Society*, Vol. 102, No. 4, Blackwell Publishing, p. 578.

incident together with other allegations on the use of corporal punishment inside the gaol had resulted in the appointment of a Committee by the Governor to enquire into the question of flogging inside Victoria Gaol.¹³

The Colonial Office in 1939 called for returns from all colonies on their respective administration of corporal punishment and their views held on it. Replies from the colonies were studied by the Advisory Committee on Penal Administration in London and found that in many cases the colonial law permits corporal punishment for adults for a wide selection of offences. However relatively few adults actually received corporal punishment and the general consensus was that it should be used only for serious offences. On the other hand, corporal punishment was used more frequent on young offenders by courts in lieu of imprisonment when there were no alternative punishments available. As for prisoners in breach of prison discipline, corporal punishment could be awarded for a wide variety of prison offences in some Dependencies. There was however no evidence to indicate corporal punishment was frequently used for trivial offences and the consensus for the colonies was to retain corporal punishment for prisoners only on serious offences against prison discipline.¹⁴

Although the Committee considered that “*the gradual abolition of corporal punishment as a sentence of the Court should be aimed at*”¹⁵ but “*the time is not ripe for this in the Colonial Empire*” in view of its value as a deterrent. Instead the Committee issued general guidance and standards for the colonies which included limiting the use of corporal punishment only for serious offences against persons

¹³ See *The Hong Kong Government Gazette*, 11 July 1896, pp. 625-633.

¹⁴ Lord Lloyd’s Circular Despatch of 2 July 1940 from Downing Street. Appendix A in HKRS 41-1-1425-1.

¹⁵ *Ibid.*

involving the use of violence; and sentences of corporal punishment imposed by inferior courts to be confirmed by the High Court or reported to the Chief Justice after infliction.¹⁶

The Committee also recommended that only approved instruments, the 'cat' or the cane should be used for corporal punishment. The 'cat' should be administered on the back of the offender and the cane on their buttocks and the concerned offenders must be examined by the medical officer prior to the punishment. The maximum punishment should be 24 strokes and the cat should not be used on offenders under the age of 18.

For boys under the age of 16, the Committee recommended that corporal punishment should continue as a court sentence in the absence of alternative forms of punishment other than imprisonment. A light cane of an approved pattern should be used and administered on the buttock with a maximum of 12 strokes. The Committee however felt that *"the gradual replacement of corporal punishment by supervision, either in suitable reformatory schools or by probationary officers, or by other means, should be aimed at."*¹⁷

The Committee also considered the use of corporal punishment for prisoners in breach of prison discipline and recommended corporal punishment to be limited as awards for only three types of prison offences as specified by the United Kingdom Departmental Committee, which were mutiny, attempted mutiny and violence towards officers of the prison service. The maximum awards for adult prisoners

¹⁶ Ibid.

¹⁷ Ibid.

should be 24 strokes by the 'cat' or the cane, and 12 strokes of the cane for prisoners under the age of 18.¹⁸

Finally, the Committee recommended that corporal punishment by light cane could be awarded by the officer in charge on juveniles detained in the reformatory institutions or approved schools. A maximum of 12 strokes should be administered and all corporal punishment administered should be reported to the Governor at suitable intervals.¹⁹

Lord Lloyd in the despatch conveyed these recommendations to the colonies and was pleased to note that there was a decreasing trend in the use of corporal punishment in the colonies without the corresponding increase of crimes, and hoped the respective colonial governments would “*see its ways to adopt these proposals and to make any legislative changes as opportunity offers.*” He further suggested that there remained the need “*to scrutinize very carefully any deviations from the lines which public criticism and expert advice have combined to lay down in England as being reasonable, and such as most right-minded men would approve.*”²⁰

Hong Kong in 1939 recorded 352 corporal punishments ordered by the courts and administered by the prison authority at Stanley Prison. Furthermore, there were five prisoners caned for breach of prison discipline during the year.²¹ This was during the time of the Sino-Japanese war when tens of thousands of refugees fled to Hong Kong causing major social as well as law and order problems for the colony. The prisons in

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ *Prisons Department Hong Kong Annual Report for the Year 1939*, pp. L6 and L9. This is the last Prisons Department Annual Report before the outbreak of the Second World War.

Hong Kong were severely overcrowded with daily average prisoner number exceeded 3,000 and the Administration had to arrange premature release of prisoners to bring down the prisoner population.²²

Despite such difficult conditions inside the prisons, the Prison Rules were amended in 1940 to limit the punishment of corporal punishment to the following four types of prison offences should other forms of punishment considered ineffective by the Commissioner of Prisons:²³

- (a) repeated serious offences against prison discipline;
- (b) personal violence to any person;
- (c) grossly abusive or offensive language; or
- (d) any act of grave misconduct or insubordination.

For male adult prisoners, the maximum number of strokes was 24, either with a light cane or rattan, or ‘cat-o’-nine’ tails. For juveniles, the maximum award was twelve strokes by light cane or rattan.

6.3 Corporal Punishment in Hong Kong after 1945

From the Commissioner of Prisons report to the Colonial Secretary on 22 August 1951, details of corporal punishment practiced in Hong Kong after the Second World War was reported.²⁴

²² Ibid, p. L2.

²³ Gazette Amendment No. 119 of 2 February 1940.

²⁴ Minutes dated 22 August 1951 from Commissioner of Prisons JT Burdett to Hon. Colonial Secretary, HKRS 41-1-1425-1.

It was recorded that between 1946 and 22 August 1951, 1,167 male adults and juveniles received corporal punishment administered in the prisons.²⁵ The cane was used on all occasions except two cases of corporal punishment by the ‘Cat o’ nine tails’ (See Picture A) in 1948, which were also the only reported occasions on the use of the ‘Cat o’ nine tails’ after the War.²⁶ In 1957 the ‘cat’ was officially abolished for use in flogging in Hong Kong.²⁷

The sealed pattern of the cane, submitted by the Commissioner of Prisons, was approved by the Governor on 16 February 1950. The specifications of the cane were 4 feet in length and must pass through a metal gauge $5/8^{\text{th}}$ of an inch in diameter.²⁸

²⁵ Under S. 7 of the Flogging Ordinance 1903, sentence of flogging were not allowed to be passed upon a female, either by the courts or in any prison. Earlier Ordinances such as 1887 Whipping Ordinance only covered the male offenders and no specific mentioning on female offenders.

²⁶ 131 adults / juveniles in 1946, 285 adults and 35 juveniles in 1947, 215 adults and 18 juveniles in 1948, 92 adults and 10 juveniles in 1949, 248 adults and 7 juveniles in 1950 and 122 adults and 4 juveniles up to 22 August 1951. Ibid.

²⁷ Annual Departmental Report by the Commissioner of Prisons for the Financial Year 1957-58, Note for para 83.

²⁸ Ibid.

Picture A

Cat O'Nine Tails used for corporal punishment in Hong Kong.



(Item currently kept at the Hong Kong Correctional Services Museum, photo-personal collection.)

Prison officers who volunteered to administer corporal punishment were given trainings and practiced on the padded bag under the instruction of a senior officer. The officer eventually selected for this duty needed not be ‘big and strong’ but must be able to perform the task efficiently. It was also commented that if the officer tasked with the administration of corporal punishment “*was gaining some form of satisfaction from this duty, he would be taken off it at once. This course has never been necessary. It is in fact difficult to find flogging officers, and those who perform the duty do so unwillingly.*”²⁹

²⁹ Ibid.

The report also described how corporal punishment was administered in the prison by first having the prisoner certified fit to receive the punishment by the prison Medical Officer. The Superintendent of the prison, the Chief Officer, the Medical Officer and the hospital supervisor were all required to attend corporal punishment. As a general rule there were two flogging officers in attendance as the work would be exhausting and there were always a number of prisoners to be flogged at any one time.

After checking the warrant of punishment, the prisoner would be fastened to the “flogging horse” (See Picture B & C) with ankles strapped to prevent kicking. He would be bent over an adjustable padded bar, arms extended with wrists strapped to a cord to prevent movement. With the buttocks uncovered, a thick canvas belt would secure over the small of the back to prevent injury in the event of a misdirected stroke.

When the prisoner was in position, caning would be inflicted stroke by stroke as the number was called out by the Chief Officer. The prisoner would be released from the “flogging horse” immediately after the last stroke to receive medical treatment. Those sentenced solely to corporal punishment would be released from the prison immediately after receiving medical attention. Prisoners sentenced to both corporal punishment and imprisonment would remain in the cell for 24 hours after punishment and thereafter to receive treatment twice daily from the prison hospital as per instruction of the prison Medical Officer. Records shown that no prisoner required hospitalization after the corporal punishment and there was only one case when the Medical Officer had to stop the corporal punishment on medical grounds during the period from 1946 to 1951.³⁰

³⁰ Ibid.

The Medical Officer of Stanley Prison gave a vivid account in his report the effect of corporal punishment on prisoners after witnessing 768 floggings from 1948 to 1952 and stressed that there was no evidence to suggest there were long term physical or mental damage to the offenders being flogged. The actual floggings were nevertheless bloody and painful as described in the Medical Officer's account:

“One stroke would produce an immediate wheal ½” wide with excoriation of the skin, and bruising of the skin sets in within a matter of seconds, with some capillary bleeding. Six strokes of the cane, causes ½ the surface area of the buttocks to be thus affected, and 18 to 24 strokes would cause almost the whole surface area of the buttocks to be bruised, excoriated, and bleeding.”³¹

With the immediate application of sterile antiseptic power on the wounds of the prisoner after flogging, it was reported that there were very few complications developed on the wounds which would normally took one to three weeks to heal depending on the number of strokes inflicted.

The Medical Officer further opined that the maximum sentence of 24 strokes were excessive and did not serve the purpose of corporal punishment. *“After receiving 18 strokes, the whole buttocks is numbed, as the nerve cells, and the nerve fibres relaying the sensations of pain are “paralyses”, and further flogging inflicted little or no pain at all, apart from the unnecessary further bruising which has only a delaying effect on healing of the wounds.”³²*

³¹ Chairman, Committee on Corporal Punishment's letter to Colonial Secretary dated 19 January 1953, Appendix E, HKRS 41-1-1425-1.

³² Ibid.

Corporal punishment was repealed in Hong Kong on 1 November 1990, shortly before the Hong Kong Bill of Rights became law on 8 June 1991. Appendix J shows the number of offenders sentenced to corporal punishment in Hong Kong from 1945 to 1990. Statistics on corporal punishment in Hong Kong were scattered between different Government departments and despatches and could varied greatly. To allow better understanding on the extended on the use of corporal punishment in post War Hong Kong, the major sources where these statistics derived were listed side by side for reference. One possible explanation for these varied statistics on corporal punishment was the lack of centralized criminal statistics at the time. The Prisons Department was only interested in statistics on corporal punishment inflicted inside the prison whereas court statistics would include those sentenced solely to corporal punishment with the sentences executed inside the court house.

Picture B

Flogging Horse used for Young Offenders in Hong Kong



(Item currently kept at the Correctional Services Museum, photo-personal collection.)

Picture C

Flogging Frame and Cane used for Adult Offenders in Hong Kong



(Item currently kept at the Correctional Services Museum.)

Photo: Sinclair, K. (1999), *Society's Guardian*, Kevin Sinclair Associates: Hong Kong, p. 23.

6.4 Corporal Punishment Policy in Post War Hong Kong

There were strong Colonial Office influences on the colonial penal policies immediately after the War. One of the Colonial Office's main concerns was the increasing use of corporal punishment in the colonies and this had become "*the subject of considerable criticism, both in Parliament and other quarters at the present time.*"³³

To enable the Colonial Office to monitor the extend of corporal punishment being applied in the Colonies, Circular dated 9 May 1946 was sent from Downing Street to the Governors calling for the colonies to submit returns on corporal punishment.³⁴ The calling of returns on corporal punishment was a practice started in 1937 but ceased in 1940.³⁵

In October of the same year, the Colonial Office issued another despatch to the colonies to reaffirm Britain's wish to reduce and restrict the use of corporal punishment in the colonies. Basing on the recommendations of the Treatment of Offenders Sub-Committee and the Social Welfare Advisory Committee, Downing Street urged colonial governments that "*the power of inflicting corporal punishment should be diminished as regards both juvenile and adult male offenders*".³⁶

In specific terms, the Committee recommended that corporal punishment should be abolished for juveniles under 16 and this punishment should be replaced by probation

³³ See HKRS 41-1-2914.

³⁴ Similar letter was sent by the Colonial Office to the Governor of HK on 27 November 1947. See Ibid. Encl 1.

³⁵ See HKRS 41-1-2914.

³⁶ Circular Despatch dated 15 October 1946 from Mr Creech Jones, HKRS 41-1-1425-1, Appendix B.

or reformatory training. For adult offenders, only the Supreme Court should have the power to hand down corporal punishment as sentence in the colonies. Prisoners should only be awarded corporal punishment on the three types of serious breach of prison disciplines as covered in Lord Lloyd's earlier despatch. Furthermore, no corporal punishment should be awarded to males over the age of 45.³⁷

As Hong Kong had just been through the war followed by Japanese occupation for a period of three years and eight months, it was quite natural that the rectification of the corporal punishment would not hold a high priority in the agenda of the Hong Kong Government in 1946. Other British colonies affected by the Second World War were also facing similar difficulties whilst trying to rebuild their cities. The Colonial Office was however facing much stronger pressure at this time to persuade the colonies to drop the sentence of judicial corporal punishment from the court as the British Government had already removed corporal punishment as a court sentence under the Criminal Justice Act 1948.³⁸

Hong Kong had in fact looked into the issue of corporal punishment as pressed by the Colonial Office. Mr. T.M. Hazlerigg, Chairman of the Child and Juvenile Welfare Committee in Hong Kong, reported to the Colonial Secretary on 6 December 1946 regarding the Committee's views on corporal punishment to juveniles in Hong Kong. It was reported that *"the Committee is in complete agreement with the view that corporal punishment is not in the majority of cases a desirable or effective deterrent*

³⁷ Ibid.

³⁸ Except in breach of the two prison offences on mutiny or incitement to mutiny and gross personal violence to an (prison) officer and can only be awarded by the Visiting Committee and confirmed personally by the Secretary of State. The maximum award is 18 strokes by cat o- nine tails (on back) or birch rod (on the buttocks).

to juvenile offenders.” However opinion was divided on the question whether corporal punishment to juveniles should be abolished immediately.³⁹

It is of interest to note that four members of the Committee, the Rt. Rev. Bishop of Victoria, the Hon. Director of Medical Services, the Acting Superintendent of Prisons and Dr. Thomas were those strongly in favour of the immediate abolition of corporal punishment on reason that corporal punishment to juveniles *“has no good effect and frequently does harm”*.⁴⁰ The remaining five members, the Hon. Secretary for Chinese Affairs, the Commissioner of Police, the Director of Education, the Rev. Father Ryan and the Chairman were the ones against immediate abolition believing that *“the time is not yet ripe for the abolition of corporal punishment in this Colony because of conditions which are peculiar to Hong Kong and because of present lack of other sanctions for the maintenance of law and order.”*⁴¹ The Administration did not accept the Committee’s recommendation and corporal punishment continued to be handed down by the courts in Hong Kong.

The continued use of corporal punishment in the British colonies and Territories had turned the British Commonwealth in 1950 *“one of the few remaining groups which made extensive use of corporal punishment that had been discarded by the majority”* and that the United Nations had passed a resolution recommending the immediate abolition of corporal punishment in all Trusted Territories.⁴² Although this UN resolution was resisted by the United Kingdom delegation, the issue of corporal punishment in the British colonies had become a matter of concern and

³⁹ See HKRS 41-2-32: Encl 3.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Circular Despatch dated 1 August 1950 from Mr James Griffith, HKRS 41-1-1425-1, Appendix C.

embarrassment for the British Government as well as drawing unnecessary attention to the post-War international community keen on the decolonization agenda.

The new Secretary of State James Griffith on 1 August 1950 issued another despatch to the colonies⁴³ drawing their attention to this new situation regarding corporal punishment. Apart from reaffirming the British Government's interest in seeing the scaling down and eventual abolition of the corporal punishment from the colonies, he suggested the colonies to consider setting up local committees with majority membership from the locals along the earlier Cadogan Committee⁴⁴ to look into the issues on corporal punishment.

Killingray (1994) commented that the response from the colonies on Colonial Office's call for the abolition of corporal punishment "was *often strongly resisted and slow to be implemented*".⁴⁵ This remark was also true for Hong Kong at the time as corporal punishment was being frequently used during the immediate years after the War as shown in Appendix J. In London, the House of Lords raised the issue of corporal punishment in Hong Kong in 1951 as figures showed that Hong Kong had the second highest figures of corporal punishment in the colonies, only after Nigeria. It was reported that 405 juvenile offenders received corporal punishment in 1950, already a significant decrease from 4,367 in 1949, of which most of them were flogged for non-criminal types of offences such as obstruction by hawking.⁴⁶

⁴³ Ibid.

⁴⁴ Home Office, (1938), *Report of the Departmental Committee on Corporal Punishment*. Cmd. 5684. London: HMSO.

⁴⁵ Killingray, D. (1994) "The 'Rod of Empire': The Debate over Corporal Punishment in the British African Colonial Forces, 1888-1946," *The Journal of African History*, 35 (2), p. 204.

⁴⁶ See House of Lords' Debate on Corporal Punishment in Hong Kong, Hansard 1 August 1951, vol. 173 cc166-70.

Governor Grantham on 25 September 1951 requested the Chief Justice to comment on Secretary Griffith's despatch. After a lapse of over a year and in his reply to the Colonial Office on 20 November 1951, he stated Hong Kong's position on corporal punishment as:

*"In brief, I hope that in the course of time it may be possible to abolish the use of corporal punishment. I consider that corporal punishment must be retained at present for offences involving brutality, violence or threat of violence or which may endanger public tranquility. I intended to appoint a Committee to consider for which offences corporal punishment of adults may safely be abolished. It will be necessary to retain corporal punishment for juveniles as at present, but I trust that infliction may decrease as various institutions for dealing with juvenile delinquency get into their stride. I am of the opinion that corporal punishment for prison offences must be retained."*⁴⁷

The Committee on Corporal Punishment was eventually formed in March 1952 with members appointed by the Governor. The Committee was chaired by the Secretary for Chinese Affairs with other members including a judge, the Commissioner of Prisons, the Deputy Commissioner of Police, a Magistrate and a local Chinese businessman.⁴⁸

The Terms of Reference for the Committee were however confined to corporal punishment on adult offenders and did not touch the issue of corporal punishment for the juveniles. Membership of the Committee was also deviated from the Colonial Office guideline for having locals as majorities in the Committee. The Administration's explanation was that "*since the Committee contained representatives of the Police, Prisons, Magistracies and the Supreme Court as well as persons who by*

⁴⁷ Confidential memo from Colonial Secretary to Heads of related Departments dated 11 June 1965, HKRS 41-1-1425-2.

⁴⁸ Ibid.

*race and long residence in the Colony were competent to put forward the view of the Chinese population, there would be little point in inviting evidence from members of the public which, in existing circumstances in this Colony, was unlikely to be more than an expression of personal opinion without practical experience of the problems under review.”*⁴⁹

This line of thinking was further elaborated by Goodstadt (2005) saying:

*“Thus, until late in the colonial era, Hong Kong was under the almost personal rule of a handful of foreigners whose individual characters and preconceptions mattered because they determined the content as well as the style of government.”*⁵⁰

The Committee submitted its report on 19 January 1953 after extensive review on the type of offences punishable by the sentence of corporal punishment taking particular note of the crime situation in Hong Kong. (Schedule of offences for which adult flogging was an authorized sentence are listed in Appendix K for reference) Taking the offence of ‘larceny’ as an example, the Committee felt that because it was customary for the Chinese women to wear jewellery and other ornaments on their persons and created great opportunities and temptation to ‘snatch, *“society in Hong Kong requires for its protection something more than a prison sentence to deter would-be offenders. The Committee feels that, if there is to be a programme of gradually reducing the number of “floggable” offences, then the offence of Larceny from the Person should be amongst the last to be considered.”*⁵¹

⁴⁹ Chairman, Committee on Corporal Punishment’s letter to Colonial Secretary dated 19 January 1953, HKRS 41-1-1425-1.

⁵⁰ Goodstadt, L.F. (2005) *Uneasy Partners: The Conflict Between Public Interest and Private Profit in Hong Kong*. Hong Kong: Hong Kong University Press, p. 20.

⁵¹ *Report of Committee on Corporal Punishment in Hong Kong Appointed by His Excellency the Governor of Hong Kong*, Notification No. 329, Hong Kong Government Gazette, 21 March, 1952.

The Committee however agreed that “*the ultimate aim of the legislature should be the total abolition of corporal punishment*” but this should not be considered “*until social conditions were far more stable than they are at present in Hong Kong and had been remained so for a number of years.*”⁵² The Committee, apart from recommending the ‘cat’ be abolished as an instrument of flogging, also agreed on the following points:

- (a) *that it would be safe to recommend abolition now in the case of certain offences;*
- (b) *that a general guiding principle should be to retain corporal punishment for the present in the case of crimes of violence or the threat of violence;*
- (c) *that in the case of other offences (e.g. certain offences under the Protection of Women and Juveniles Ordinance) the Committee feel they can make no recommendation now, but that the question should be reviewed in 5 years time, by which time more statistics will be available on which to base a recommendation.*⁵³

These recommendations received mixed response from the Chief Justice, the Commissioner of Police and the Attorney General in Hong Kong. The latter in particular believed that total abolition of corporal punishment was not the appropriate approach as this punishment was “*definitely feared by the criminal classes.*” Whereas the Commissioner of Police believed that abolition could only be contemplated when alternative sentencing options with deterrents like Detention Centre, Borstal and Corrective Training and Preventive Detention similar to that of the United Kingdom were available in Hong Kong. The reduction of the maximum number of strokes from 24 to 18 was however accepted.⁵⁴

⁵² Ibid.

⁵³ Ibid.

⁵⁴ See Summary of Comments on the Recommendations of the Committee on Corporal Punishment. HKRS 41-1-1425-1.

The agreed recommendations eventually led to the enactment of the Corporal Punishment Ordinance 1954 and the Magistrates (Amendments) (No. 2) Ordinance 1954 for abolishing corporal punishment for adults in certain non-violent offences and restricting the use of corporal punishment. There were further amendments on the law governing corporal punishment in 1955 at the requests of the Secretary of State. Ordinance 45 of 1955 reduced the number of strokes permissible on juveniles under fourteen years of age from 12 to 6; a maximum of 12 strokes for offenders aged 14 to 16 years and to raise from 16 to 17 years the age of persons to whom the maximum number of strokes of 18 could be awarded; and to stipulate six weeks as the time limit after the determination of the proceedings for the carrying out of the sentence.⁵⁵

In 1959, another amendment was made under Ordinance 35 of 1959 to replace the term ‘whipping’ to that of ‘caning’. This amendment was the result of the Secretary of State’s directive to the colonies on 27 May 1959 requesting the colonies to consider replacing the words “flogging” and “whipping” by “caning”. The opening paragraph of the circular memorandum states:

“From time to time corporal punishment in overseas territories is the subject of Parliamentary Questions and sensational reporting in the Press. Misleading impressions are created by such words as “flogging”, “beating” or “whipping”, when a less colourful word such as “caning” would more accurately describe the kind of corporal punishment which is actually administered to adult or juvenile offenders.”⁵⁶

⁵⁵ Report of the Committee on Corporal Punishment, Memorandum for Executive Council dated 24 June 1968. HKRS 41-2-32.

⁵⁶ Circular 609/59 dated 27 May 1959 from the Secretary of State for the Colonies to the Officer Administering the Government of Hong Kong. HKRS 41-1-1425-2.

As recorded in Appendix J, the number of corporal punishment for adults had gone down in Hong Kong since 1960 but the use of the cane on juveniles was still very high even during the 60s. This situation was monitored and considered to be most unsatisfactory by the Colonial Office. The Secretary of State in 1965 requested “*a review be carried out of the practice of awarding corporal punishment in Hong Kong, in order to assess the extent to which its use could be reduced from the present level or abolished altogether.*”⁵⁷

With mounting pressures from London, the Governor appointed a new Committee in July 1965 to re-examine the law and practice relating to corporal punishment in Hong Kong. The Committee was chaired by a judge with nine members; all but two were government officials (a doctor and a lawyer in private practice) and half of the members were Chinese.⁵⁸

The Committee submitted and published its report in 1966 recommended that there should be a total abolition of corporal punishment for children under 14, but for persons over 14 the abolition should be for a trial period of three years to ease public concern. The Commissioner of Prisons also agreed that should corporal punishment be abolished in Hong Kong, his powers to award corporal punishment on prisoners in breach of discipline should also be revoked as this power had not been exercised since 1952 though the courts had awarded corporal punishment to prisoners for these offences.⁵⁹

⁵⁷ Confidential memo from Colonial Secretary to Heads of related Departments dated 11 June 1965, HKRS 41-1-1425-2.

⁵⁸ *Report of the Committee to Examine the Law and Practice Relating to Corporal Punishment in Hong Kong.* (1966), Hong Kong: Government Press, p. 1.

⁵⁹ *Ibid.*, p. 11.

Four out of the ten members of the Committee entered reservations to the Report, not against the long term desirability of abolishing corporal punishment, but expressing doubts on the timing of abolition and the adequacy of alternative penalties or deterrents.⁶⁰

The Administration on the other hand conducted large scale opinion surveys in the colony consulting organisations and individuals on the recommendations of the Committee and came to the conclusion that “*there do not seem to be any overriding reasons for the abolition of corporal punishment at the present time and it would be wiser to retain provision for it.*”⁶¹ The conclusion was also based on the fact that there “*has been no pressure recently from the Secretary of State for any further steps towards the abolition of corporal punishment, nor has there been any suggestion that Her Majesty’s Government is being currently embarrassed in any way.*”⁶²

Hong Kong at this time had encountered a major political as well as law and order situation as the result of the 1967 riot. Local communist supporters were influenced by the Cultural Revolution in the Mainland and challenged the authority of the Hong Kong Government through rallies, riots and later acts of terror by planting improvised explosive devices across the colony. Against all these backgrounds, the draft Corporal Punishment (Amendment) Bill 1968 aiming to consolidate the current laws relating to corporal punishment was put on hold by order of the Governor upon advice of the Executive Council.⁶³

⁶⁰ Ibid., pp. 13-16.

⁶¹ Report of the Committee on Corporal Punishment, Memorandum for Executive Council dated 24 June 1968. HKRS 41-2-32.

⁶² Ibid.

⁶³ Corporal Punishment (Amendment) Bill 1969, Memorandum for Executive Council dated 14 November 1969. HKRS 41-2-32.

At the same time, the Administration was introducing an amendment to the Criminal Procedure Ordinance to ensure no offenders between the age of 16 and 21 would be sentenced to imprisonment unless the court has satisfied that no other appropriate method of dealing with him was available. A background report on the young offender had to be called before the sentence of imprisonment could be passed.

This amendment was mirrored on a similar provision made in S.17 of the Criminal Justice Act 1948 in England. When proposing this amendment, the Director of Social Welfare stated that:

“We are not, however, proposing this amendment simply because there is a precedent for it in the legislation of the United Kingdom; but because we believe-and our belief is backed by experience-that it is true for Hong Kong that young offenders, involved even in serious crime, may be more effectively rescued from embarking upon a lifetime of crime if contacted with hardened criminals through imprisonment is avoided.”⁶⁴

With the Administration’s success in quelling the riot and gaining full control of the colony and the support of the community, the once shelved draft Corporal Punishment (Amendment) Bill 1968 was being re-examined at the Legislative Council on 17 December 1969 with the aim to address a legal loophole where magistrates were not having the appropriate authority to remand the young offenders pending for appeal against the corporal punishment.⁶⁵ The Bill, consolidating all existing provisions relating to the award of corporal punishment in Hong Kong, became law in 1970.

In 1971 when the Commissioner of Police presented the crime statistics to the Legislative Council, the legislators noted that the crime rate for 1970 had gone up

⁶⁴ *Hong Kong Hansard*, 1 November 1961, p. 448.

⁶⁵ Corporal Punishment (Amendment) Bill 1969, Memorandum for Executive Council dated 14 November 1969. HKRS 41-2-32.

significantly in Hong Kong. The rate of murder and manslaughter in 1970 had more than doubled and robbery cases jumped from 220 cases per year in 1961-66 to 3,000 cases in 1970. Young persons prosecuted in 1970 for robbery was a 12 fold increase when compared with the early 1960 figures. The reduced use of corporal punishment by the courts and the restriction of sentencing young offenders to imprisonment in the 1967 legislation were being blamed as causes for leading to this increase in crimes committed in particular by young people in Hong Kong.⁶⁶

The Chief Justice in his address at the Opening of the Assizes in 1971 expressed concern on the increase of crimes in particularly those committed by young offenders involving the use of offensive weapons and knives. He urged for the amendment of the Corporal Punishment Ordinance to enable the courts to sentence offenders over the age of 16 to be caned should they be convicted on offences on possession of offensive weapon in a public place.⁶⁷

The Government was also at this time actively considering introducing the detention centre programme to Hong Kong modeled after the English practice. The Attorney General when introducing the Detention Centres Bill to the Legislative Council in 1972 stated that *“I can assure honourable Members that it is the intention of the Commissioner of Prisons to submit to the Governor in Council recommendations for a Spartan regime, under which the detainee will be subjected to rigorous discipline and required to perform hard physical work, consistent with his age and state of health, and will be sharply dealt with for any breaches of discipline.”*⁶⁸

⁶⁶ *Hong Kong Hansard*, 6 January 1971, pp. 329-335.

⁶⁷ See *Hong Kong Hansard*, 24 March 1971, p. 508.

⁶⁸ *Hong Kong Hansard*, 9 February 1972, p. 391.

The Attorney General did not elaborate the meaning of “*sharply dealt with*” when detainees were found in breach of Detention Centres Rules at the Legislative Council and the Detention Centres Bill was passed on 15 March 1972. Records from the Hansard found no mentioning regarding the provision of corporal punishment as one of the awards for detainees found in breach of the Detention Centres Rules when this Bill was debated. However under the provision of the Detention Centres Regulations S. 16 (1) (a) as quoted below, corporal punishment was to be given as award for detainees found breach of discipline:

“except in the case of a detainee who was stated in the detention order made against him to be apparently of or over 21 years of age, caning which shall not exceed 12 strokes with a light cane of such pattern as may be approved by the Governor;”

Further amendment on Section 5 of the Corporal Punishment Ordinance was discussed at the Legislative Council on 1 March 1972. The original legislation provided for corporal punishment imposed by the court on an offender under the age of 16 to be administered in the court premises. To avoid negative publicity after the court caning where “*photographs were published in several newspapers...showing a flogging horse being taken into the Supreme Court building before the caning and also showing the young offender leaving the court after it*”,⁶⁹ it was proposed that the court, after consultation with the Commissioner of Prisons, could order the sentence be carried out either at the court or in prison. Most corporal punishments thereafter were carried out within either the Stanley Prison or at the Lai Chi Kok Reception Centre.

⁶⁹ *Hong Kong Hansard*, 1 March 1972, p. 448-9.

During the Legislative Council discussion in November of the same year, the Attorney General stated that “*the Government is well aware that there is not only a widespread demand for its use in more cases, but also a clamour for compulsory sentences of corporal punishment to be imposed on persons convicted of crimes of violence.*”⁷⁰ He further promised that the Government would give serious consideration for imposing compulsory corporal punishment for specific offences should the present trend of violence continues.

On 15 December 1972, the Public Order (Amendment) (No. 2) Ordinance 1972 was enacted to require the courts to impose mandatory sentences of not less than 6 months’ imprisonment or on a detention centre order for people convicted for the possession of offensive weapon in a public place. This Ordinance was further amended after six months of its operation by adding the option of corporal punishment as part of the mandatory sentence, and to spell out clearly that the magistrates could not discharge the offender or placing him on probation for such an offence.⁷¹ A Chinese legislator stated during the second reading of the Bill that:

*“Whilst it is distasteful in this day and age to retain on the statute book provisions for corporal punishment, we are again of the view that this is necessary in the circumstances of Hong Kong today.”*⁷²

Although corporal punishment had not been awarded to adult prisoners for breach of prison disciplines in Hong Kong since 1951, the Prisons Department in the 1970s had adopted a very different approach onto the use of corporal punishment for young male offenders found in breach of custodial disciplines. Apart from adopting corporal

⁷⁰ *Hong Kong Hansard*, 15 November 1972, p. 159-60.

⁷¹ See *Hong Kong Hansard*, 23 May 1973, pp. 818-20.

⁷² *Hong Kong Hansard*, 20 June 1973, p 900.

punishment as one type of the awards for breach of the Detention Centres Rules when setting up the Detention Centres in Hong Kong in 1972, corporal punishment was further introduced to the Training Centre programme, a programme which had been in existence in Hong Kong and operated successfully since 1956 without the need for physical punishment.

The 1974 Amendments to the Training Centre Regulations⁷³ had included under Regulations 20 (g) the power for the officer-in-charge of the Training Centres to award not exceeding 12 strokes of the cane on young males found in breach of Prison Rules. Regulations 20A further stipulates the requirements for the presence of the officer-in-charge and the medical officer during the infliction of the corporal punishment. During the fiscal year of 1974-75, 28 training Centre boys were caned mostly for breaching training centre offences involving violence.⁷⁴ It was further reported that 89 Training Centre inmates were awarded corporal punishment in 1975.

Though caning had been awarded to detainees for breach of discipline under the Detention Centre Ordinance since 1972, the Annual Reports of the Prisons Department were silent on passing corporal punishment at the Detention Centre in 1972 and 1973. Information on caning inside the Detention Centre was first revealed in the 1974 Annual Report which states:

“A good standard of discipline has been maintained with 133 breaches of discipline recorded as against 207 for the previous year. The most common punishment awarded is caning, the average number of strokes being 2.6.”⁷⁵

⁷³ See Hong Kong Government Gazette, Legal Notice 25/74.

⁷⁴ Commissioner of Prisons, *1974-75 Annual Departmental Report*, p. 12.

⁷⁵ *Ibid.*, p. 15.

In the 1975 Annual Departmental Report, it was further reported that there were “251 breaches of discipline recorded as against 133 for the previous year. Caning is the main form of punishment awarded, the average number of strokes being 2.”⁷⁶

The last piece of information concerning corporal punishment inside the Detention Centre available to the public contains in the 1976 Annual Departmental Report which states:

*“No problems in control have been encountered and detainees who breach discipline are suitably punished. There were 225 breaches of discipline as compared with 251 for 1975. Five detainees were reduced in grade as punishment and the rest were awarded caning with a light cane; this is done on the buttocks with the detainee remaining fully clothed.”*⁷⁷

The Prisons Department only released figures in 1974, 1975 and 1976 in their Annual Departmental Reports regarding the use of corporal punishment on young offenders for breach of either the Training Centres Regulations or the Detention Centres Rules. No further information on caning for maintaining disciplines in the Training or Detention Centres were thereafter released to the public and no reasons for such omissions were given.

Further amendments to the list of schedule offences under the Corporal Punishment Ordinance were made on 2 April 1975 by including the escape from prison and possession of offensive weapon under the Summary Offences Ordinance. The Attorney General when raising this motion on prison escapes stated that:

“During 1974 there were ten incidents of escape from prison institutions and five attempts, involving a total of 59 prisoners. In three of the incidents violence was used against prison staff. Under the existing law

⁷⁶ Commissioner of Prisons, *1975 Annual Departmental Report*, pp. 15, 18.

⁷⁷ Commissioner of Prisons, *1976 Annual Departmental Report*, p. 18.

the only penalty which can be imposed on a person convicted of escape from a prison is a further sentence of imprisonment of up to two years. In practice the sentence imposed is normally between three and fifteen months. This does not appear to provide an effective deterrent to escape attempts, particularly when those convicted are already serving long determinate sentences, or indeterminate sentences such as imprisonment for life, or detention during Her Majesty's pleasure. It is hoped that the possibility of corporal punishment may prove to be a great deterrent."⁷⁸

A local English newspaper in 1975 conducted a survey amongst the local Chinese civic leaders. Most of them welcomed the increased use of corporal punishment by the court lately, commenting corporal punishment was more economical and effective in dealing with offenders in Hong Kong especially during the time of financial stringency.⁷⁹

In 1975, a total of 113 offenders were ordered to be caned by the court with a total of 876 strokes inflicted. This figure gone down steadily year after year to 20 offenders being caned for a total of 96 strokes in 1979, mainly on 'possession of offensive weapon' or 'robbery' charges.⁸⁰

The magistrates themselves were frustrated by the lack of sentencing options for offences such as 'possession of offensive weapons' under the Public Order Ordinance. The offenders could either be sentenced to imprisonment for 6 months to three years, or for young offenders, sentenced to the detention or training centres, or to be caned. On many occasions, young offenders were reluctantly given corporal punishment by the magistrates just to avoid placing them to custodial sentence. Some magistrates

⁷⁸ *Hong Kong Hansard*, 2 April 1975, p 632.

⁷⁹ *South China Morning Post*, 20 August 1975.

⁸⁰ 1975 Annual Departmental Report by the Commissioner of Prisons, p. 25.

even commented the corporal punishment as “*barbaric and outdated*” and ineffective in correcting people.⁸¹

It was commented by a newspaper editorial that the negative attitudes displayed by the magistrates on corporal punishment would likely generate opposing feelings from those in favour of capital and corporal punishment who “*often invoke Chinese customs and tradition, emphasizing that Hongkong is essentially a Chinese community.*” The editorial further states that “*the public debate over caning as part of Hongkong’s penal provisions is expected to revolve around whether or not the laws here should reflect Chinese or western – that is, British –values.*”⁸² In another newspaper’s editorial, it commented that caning “*is not a deterrent, but dastardly retribution – and the fact our Government allows it to continue in the name of public opinion is not good government but moral cowardice, ... Hongkong is not an Islamic State ... Flogging young people is solving nothing, it is making the risk of violent crime worse.*”⁸³

The Correctional Services Department in 1983 conducted a small scale study comparing the reconviction rates of offenders previously being sentenced to corporal punishment for the offence of possession of offensive weapon to those sentenced to imprisonment or to a detention centre. The finding indicates that “*of those young offenders who were caned, a significantly higher proportion were subsequently reconvicted. For young offenders, in particular, the findings of this study were clearly in accord with the conclusions reached by the U.K. committees.*”⁸⁴ The Secretary for

⁸¹ See *Hong Kong Standard*, 10 & 11 April 1979.

⁸² *Ibid.*, 11 April 1979.

⁸³ *The Star*, 11 April 1979.

⁸⁴ *Hong Kong Hansard*, 25 July 1984, p 1292.

Security however brushed aside the findings and stated that “*the effectiveness of any punishment as a deterrent requires an assessment of its psychological effect on the mind of a potential criminal. It is extremely difficult any accurate statistical evidence to assess this effect and any assessment must ultimately contain a large element of subjectivity on the part of the assessor.*”⁸⁵

When questioned by the Legislative Councillor in 1984 whether Britain had exerted political pressure for Hong Kong to reduce the use of corporal punishment in sentencing, the reply from the Secretary for Security was a straight denial saying “*there is and can be no directive to the judiciary in H.K. from outside its own structure. No representations from the U.K. have been directed at the courts of H.K. or passed onto the courts through the Government.*”⁸⁶ However he did agree that following a case law within the European Court of Human Rights, the British Government had asked the Hong Kong Government to review its policy on the retention of corporal punishment in the local penal system, but the Hong Kong Government had decided that on balance it would be inappropriate to abolish this form of punishment in Hong Kong.

However it had been reported in the press as early as 1979 that “*Britain was closely watching Hong Kong’s progress on the issue and Whitehall would very much like to see the territory’s decision-makers rule against the cane.*”⁸⁷

In 1987, it was reported that an agreement was reached in November 1986 between the Attorney-General’s office, the Judiciary, and the Secretary for Security that the

⁸⁵ Ibid.

⁸⁶ Ibid., p. 1293.

⁸⁷ *Hong Kong Standard*, 27 March 1979.

mandatory sentence of corporal punishment under the Public Order Ordinance be removed. It was also reported that there were strong reservations among Hong Kong magistrates over this mandatory sentence. One magistrate stated that “*most of us magistrates are Westerners and virtually everyone who comes up in front of us under this section is Chinese. For a Westerner to sentence a Chinese to be caned in 1987 is politically very sensitive indeed.*”⁸⁸

In November 1988, the issue on corporal punishment in Hong Kong was being brought up in the United Nations Human Rights Committee hearing when the British Government presented a report on conditions in Hong Kong and nine other dependent territories. The British Government’s report shows Hong Kong was amongst five other dependent territories: Bermuda, British Virgin Islands, Montserrat, Turks and Caicos Islands which were still having corporal punishment as part of the court sentences. It was recorded in the Committee’s report that “*The hope was expressed by a member of the committee that the government of the United Kingdom would use its best offices in the consultation with relevant Dependent Territories so that corporal punishment would be outlawed which was against both the letter and the spirit of the covenant.*”⁸⁹

Following the British Government’s agreement to ratify the convention in 1988, there were mounting pressures for the Hong Kong Government to take appropriate actions to address the issue of corporal punishment for the convention’s eventual application in Hong Kong.⁹⁰

⁸⁸ *South China Morning Post*, 17 November 1987.

⁸⁹ *Ibid*, 11 November 1987; *Hong Kong Standard*, 12 November 1988.

⁹⁰ *South China Morning Post*, 24 June 1990.

It July 1989, the Security Branch and the Legal Department had completed a six-month review on corporal punishment in Hong Kong and recommended to the Executive Council that caning be abolished as a judicial penalty. It was further reported that public opinions were mixed as they would like to see corporal punishment as a sentence be left on the statutes, but they also agreed that it had little deterrent value and should not operate as it does. Those in support of the abolition were, apart from the human rights activists and the social workers, were members of the Judiciary. Apart from the strong international pressure to support total abolition of the corporal punishment, there was the local consideration that caning was a British colonial relic and this should be removed as Hong Kong would soon to be handed back to the Chinese administration.⁹¹

The Executive Council, in August 1989, reached its decision to revoke corporal punishment in Hong Kong and to start the procedure in amending the law.⁹² The Administration admitted that “*the retention of judicial corporal punishment would have made Hongkong vulnerable to criticism because it would contravene the International Covenant on Civil and Political Rights*” and intended to have the relevant Ordinances repealed before next July.⁹³

The Corporal Punishment (Repeal) Bill 1990 was tabled on the Legislative Council on 11 July 1990 for its First and Second Reading. The Secretary of Security presented the Bill by saying that “*the courts consider that corporal punishment is unnecessary and outdated, and that there are other sentencing options available which better*

⁹¹ *Hong Kong Standard*, 14 July 1989.

⁹² *Hong Kong Standard*, 24 August 1989.

⁹³ *South China Morning Post*, 24 August 1989. Article 7 of the International Covenant on Civil and Political Rights states that “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.”

achieve the penal objectives of punishment, deterrence and rehabilitation.”⁹⁴ He further stated that the latter point raised by the judges was supported by the Administration, and even though there were strong public support for the retention of the corporal punishment, members of the public also considered this form of punishment less effective when compared with imprisonment or other forms of punishment.⁹⁵

The Bill went through the third reading on 31 October 1990 without amendment or debates from the legislators, and corporal punishment was finally repealed in Hong Kong on 1 November 1990, shortly before the Hong Kong Bill of Rights became law on 8 June 1991 and the abolition of the capital punishment on 23 April 1993.

6.5 Conclusion

As revealed in this Chapter, corporal punishment had been used as a tool for punishment all through the history of Hong Kong from 1841 till its abolition in 1990. This was no doubt a method of punishment brought in by the British as the Imperial China had already given up this punishment before Hong Kong was ceded to the British.

Flogging, whipping or caning as corporal punishment was called at different period of time, were being regarded as the most economical and effective way in dealing with offenders in Hong Kong as prisoners would get a painful and hopefully a long lasting

⁹⁴ *Hong Kong Hansard*, 11 July 1990, pp. 86-8.

⁹⁵ *Ibid.*

experience which would deter them from committing crimes again. Furthermore it was economical to punish offenders in this way as the Administration did not have to waste scarce prison places for these minor offenders and the cost for sentencing offenders to corporal punishment was minimal. Assistant Officers of the Correctional Services Department selected to inflict corporal punishment in 1988 were only receiving a small sum of money in the name of Hardship Allowance (Management Consideration).⁹⁶

It is understandable why Hong Kong did not immediately follow British's abolition of corporal punishment under the Criminal Justice Act 1948 as Hong Kong was at that time just been through its darkest moment in history. Facing a full scale war, lost in battle and under enemy occupation; the colony was struggling to be back on its feet after the war and the cat and the cane were extensively used for maintaining law and order in the streets.

However when the colony had settled down in the 1950s, there was no indication for the Administration to give up the cane despite pressure from the Colonial Office in London. The excuse was that the time was not yet ready for the abolition of the corporal punishment. Unlike the sentence of capital punishment where London could legally influence the sentence, corporal punishment, though against the British practice, could not be officially condemned without the fear of being criticized of jeopardizing Hong Kong's judicial independency.

⁹⁶ This allowance was recommended to be removed under the *Rennie Report* in 1988 when the disciplined services pay and conditions of service were reviewed.

Nevertheless the Colonial Office was still able to flex its influence over the Administrators in Hong Kong in the beginning by pressing the colonies to rectify the nomenclature of the corporal punishment and tried to convince the colonies to set up local committees to examine the issue on corporal punishment with the hope that the majorities of the locals sitting in the committee would veto the use of corporal punishment, thus easing the embarrassment and pressure the British government had endured at the United Nations meetings.

The 1952 Committee Report set the long term objective of abolishing corporal punishment in Hong Kong and the Commissioner of Prisons was one of the strong advocates against corporal punishment in the Committee. Not one case of corporal punishment was being awarded to prisoners for breach of prison discipline from 1952 onwards. The 1966 Committee Report again re-affirmed the objective of abolishing corporal punishment in Hong Kong but the recommendations were not being taken into consideration as the British Government was losing its influence over the colonies and on the other hand Hong Kong was facing a much bigger political, social and law and order crisis with the outbreak of the 1967 riot.

The problem of young offenders and youth delinquents were noted during and after the riots and in the 1970s saw the colony's U turn in the dealing with youth crimes. To try to stem out young offenders committing crimes involving violence, the Administration brought in not only the Detention Centre regime but also the corporal punishment. Prison disciplines were also tightened after the 1973 Stanley Prison riot when again the young prisoners were identified and blamed for instigating the riot. Though the cane was spared for the adult prisoners, it was however widely used on the young prisoners, training centre and detention centre inmates for the sake of

maintaining custodial discipline. To avoid criticism from the abolitionists on this controversial practice, information on corporal punishments for young offenders were only briefly covered and later omitted all together from reports accessible to the public.

The eventual abolition of corporal punishment in Hong Kong in 1990 was contributed to a combination of factors: the reluctant of the magistrates in passing this out-dated and barbaric sentence, the international pressure from London and from the United Nations through international human rights convention. The mystified Asian value, as argued by those in favour of retaining the cane, had to give way as Hong Kong needed to show case herself as a modern and international city.

Part II

Penal Policy in Post War Hong Kong

Chapter Seven

The Colonial Office, the Parliament and Colonial Penalty

7.1 Introduction

This Chapter is to examine in detail the extent of influence from the British Cabinet Minister, in particular the Secretary of State for the Colonies and the Parliament on Hong Kong's post-War penal development. The study begins with providing the background information on how British colonies and territories were connected to London, how colonial policies in general were transmitted to the colonies and territories and the degree of flexibilities allowed in adopting the British policies.

The main body of this Chapter will examine how penal policies for the colonies were formulated and regulated in London through the Colonial Office and its Advisory Committees. The history, composition, function and the work of the Colonial Office Advisory Committees are discussed to explore how these small but influential groups had formulated the desired penal policies for the colonies. The study also looks into the way penal policy initiatives were communicated to the British colonies, including Hong Kong and how penal policy and practices in the colonies were monitored by London.

Another section is used in this Chapter to illustrate how the British Parliament was involved in Hong Kong's penal policy and practices. Hong Kong is used in this Chapter as a case study to illustrate how colonial penalty in this Far Eastern crown colony was formulated and influence by London.

7.2 The Colonial Office and the Colonies

To understanding how Britain's penal policies for her colonies were formulated, communicated to and adopted by the colonial administrators, it is necessary to elaborate firstly how the colonies were connected to Britain and how much influences Britain had in the colonies' policy making process.

With Britain holding on to the control of external relations and the ultimate power to determine internal policy, the colonies were given some degree of flexibility and it was considered that *“the most prosperous colonies are those in which the latitude given to the administration is wide, and in which experiments can be and are tried out.”*¹

One example of such flexibility could be found in the legislation of income tax amongst the colonies. The *“colonial income tax legislation is based upon a model ordinance [from UK], but such legislation is not uniform throughout the Colonies, since many Colonial Government have found it necessary to modify and add to the provisions of the model in order to meet their particular needs and circumstances.”*²

To ensure the colonies would only enact legislations preferred by and agreeable to London, the British Government had control over her colonies' legislation process.

“Yet the British Parliament seldom exercises its right to make laws for the colonies except in the granting of new constitutions, since the authority of the British Government can usually be secured through the crown's control, through official or nominated members, over colonial legislatures.”

¹ See Royal Institute of International Affairs (1937) *The Colonial Problem*. London: Oxford University Press, p. 63

² See Secretary of State (1947) *The Colonial Empire (1939-1947)*. London: HMSO, p. 102.

The method of securing the authority of the Governor over the Legislative Council varies in different colonies, but in general the official members have to vote for the policy of the Executive, while the non-official members can rely only on the strength of the arguments, as they are usually in a minority.”³

The above position also applied to Hong Kong as the unofficial members of the Executive and the Legislative Council were all appointed by the Secretary of State on the nomination of the Governor prior to 1985. They were remarked as “*merely exercising very limited monitoring functions in the overall political processes.*”⁴ As for the official members, they must vote as directed by the Governor who presided at both Councils. On the other hand, the Hong Kong Government would be careful in putting up legislation which might arouse strong public opposition and would probably avoid such “*unless a matter of fundamental importance is involved.*”⁵

In the context of the policing of Hong Kong, Anderson and Killingray (1991) also noticed the way the colonial police were operating and the laws they enforced in the colonies were significantly differed from that of England. These laws and practices were “*formed of parts from other colonies as well as from England, these being moulded by the local political and social environments into which they were placed.*”⁶

As regards to the colonial legal system, “*...there is considerable variety in the legal systems in the British Empire. The position generally is that Imperial Statutes apply to*

³ See Royal Institute of International Affairs (1937) op cit., p. 238.

⁴ Lee, J. (1993) ‘The Dilemmas of Governing’ in Wesley-Smith, P. (Ed.) *Hong Kong’s Transition Problems and Prospects*. Hong Kong: Faculty of Law, the University of Hong Kong, p. 93.

⁵ Grantham, A. (1965) *Via Ports – From Hong Kong to Hong Kong*. Hong Kong: Hong Kong University Press, p. 108.

⁶ See Anderson, D.M. & Killingray, D. (1991) “Consent, Coercion and Colonial Control: Policing the Empire, 1830-1940.” In Anderson, D.M. & Killingray, D. (Eds.) *Policing the Empire- Government, Authority and Control, 1830-1940*. Manchester: Manchester University Press, p. 5.

the colonies if so extended 'by express words or necessary intendment'; and the English Common Law, in so far as it does not conflict with enactments of the Colonial Legislature, is usually part of the law of a colony."⁷

Hong Kong, as a British crown colony, adopted the common law and continues to receive it after 1997 when Hong Kong is under the Chinese sovereignty. Wesley-Smith (1994) has charted the reception of the English law in Hong Kong, and cited Section 5 of the Supreme Court Ordinance 1873 to illustrate the position as follows:

*"[S]uch of the laws of England as existed when the Colony obtained a local legislature, that is to say, on the 5th day of April, 1843, shall be in force in the Colony, except so far as the said laws are inapplicable to the local circumstances of the Colony or of its inhabitants, and except so far as they have been modified by laws passed by the said legislature."*⁸

This Section was only being amended in 1966 by the Application of English Law Ordinance 1966. Section 3 of this ordinance stated that *"the common law and the rules of equity shall be in force in Hong Kong, so far as they may be applicable to the circumstances of Hong Kong or its inhabitants and subject to such modifications thereto as such circumstances may require."*⁹

It is therefore safe to summarise that as a British crown colony, Hong Kong did operate in essence a British legal system where penal policies were based. However there were certain degrees of flexibilities allowed for local adaptation.

⁷ See Royal Institute of International Affairs (1937) op cit., p. 398.

⁸ See Wesley-Smith, P. (1994) *The Source of Hong Kong Law*. Hong Kong: Hong Kong University Press, p. 90.

⁹ Ibid, p. 91.

7.3 The Advisory Committees on Colonial Penal Matters

Radzinowicz, L. and Turner, J.W.C. (1944) in the editorial note of Barker's book¹⁰ mentioned that prior to the outbreak of the Second World War; the Colonial Office in London had set up a special body called the 'Colonial Penal Administration Committee' which had been very active in promoting the improvement of criminal administration in the colonies.

The Colonial Service had in 1937 formed the Colonial Police Service to deal with the policing issues of the colonies. The idea of forming a separate Colonial Prison Service had been considered at the time but had never materialized.¹¹ Instead the Colonial Penal Administration Committee was formed within the Colonial Office in January 1937. Roles and functions of the Committee, according to the Colonial Office file were:

*"The Committee has no precise terms of reference; its work consists largely in the examination of the annual reports on Penal Administration in the various colonies. It is consulted and gives advice on matters of policy generally and members are able to put forward proposal for discussion. Also opportunities arise now and then for discussion with Colonial Prison officers when they are on leave."*¹²

In 1939, the Colonial Penal Administration Committee was chaired by Lord Dufferin, the Parliamentary Under-Secretary of State for the Colonies with members including Mr. Alexander Peterson, the Prison Commissioner; Mr. Pritt representing the Howard

¹⁰ See Barker, F.A.L.C. (1944) *The Modern Prison System of India – A Report to the Department*. London: Macmillan.

¹¹ See Jeffries, C. (1938) *The Colonial Empire and its Civil Service*. Cambridge: Cambridge University Press, p. 180.

¹² See Minutes by Mr J.L. Keith of the Colonial Office dated 14 June 1939 in C.O. 859/15/11.

League for Penal Reform and two retired Colonial officials, Sir Alison Russell and Mr. Arnett. Other Colonial Office officials in the Committee were Sir Grattan Bushe, the Legal Adviser to the Colonial Office and Mr. Clauson, the head of the Social Services Department of the Colonial Office with Mr. J.L. Keith as Secretary of the Committee. The Committee normally met once every two months even during the War times.¹³

It was agreed within the Colonial Office that the Howard League and the Prison Commissioner should be permanently represented at the Committee whereas the individual members would be appointed to serve on terms not exceeding three years. The Colonial Office also preferred to have a female member to sit in the Committee, preferably a retired prison official or an administrative officer from the Colonial Service.¹⁴ Eventually Miss Margery Fry was nominated to join the Committee by Mr. Peterson. She was at one time Principal of Somerville and was at the time Chairman of one of the juvenile courts in London.¹⁵ In the same year, the Colonial Office placed the Committee on a permanent basis and called it the ‘Standing Advisory Committee on Penal Administration’.¹⁶

As noted earlier, one of the key roles of the Committee was to monitor the work of the colonial penal services through studying the Annual Reports of the respective colonial prison services. These annual reports submitted by the colonies to the Colonial Office were of a standard format to cover items such as prison population, health of prisoners and the admission of repeated offenders etc. These reports were firstly considered by

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ In a draft letter dated 21 July 1939 from Mr. Clauson, the head of the Social Services Department of the Colonial Office to the Under Secretary of State, Home Office asking for Mr. Alexander Peterson to sit in the Standing Advisory Committee on Penal Administration, explaining that proposal had been made to place the Committee on a permanent basis. See CO 859/15/11.

the section responsible for prison administration at the Colonial Office and then passed on to the appropriate Committee or Sub-Committee for information and discussion. On top of these colonial prison annual reports, a number of general prison issues such as after-care service for prisoners, extra-mural work, capital punishment and corporal punishment, etc. were being looked into by the Committee during its meetings.¹⁷

Apart from the standard Annual Reports submitted by the respective Prisons Departments of the colonies, the Colonial Office could from time to time call for special returns or set questionnaires for the colonies to provide answers. An example of this was the Colonial Office requested information on corporal punishment (topic separately covered in Chapter Six) from the colonies and territories. Circular from the Secretary of State for the Colonies dated 9 May 1946 mentioned:

*“These returns were discontinued in 1940 but I think it is desirable that they should now be resumed especially as the use of corporal punishment in Colonial territories is the subject of considerable criticism, both in Parliament and other quarters at the present time.”*¹⁸

The organisation of the Standing Advisory Committee on Penal Administration evolved over time and became a sub-committee of the ‘Colonial Social Welfare and Advisory Committee’ from 1943 to 1953.¹⁹ This took place after the Colonial Office had appointed a ‘Juvenile Delinquency Sub-Committee’ to study the issue of juvenile delinquency in the colonies. When the Sub-Committee submitted its report in 1942 to

¹⁷ Darlow, M. (1947) ‘Prisons and Prisoners in the Colonies’ in *Howard Journal of Criminal Justice*, Vol. 7 (2), p. 113.

¹⁸ See HKRS 41-1-2914.

¹⁹ Thurston, A. (1995) *Records of the Colonial Office, Dominions Office, Commonwealth Relations Office and Commonwealth Office*. London: HMSO, p. 117.

the full Committee, Mr. Peterson commented that the issue of juvenile delinquency did not limit to penal matters but had “*a much wider field than was concerned with juvenile delinquency only*”. He further proposed “*to have an advisory committee which would cover the whole field of social welfare and take the place of the present committee which deals only with penal matters.*”²⁰

The Colonial Office supported this proposal and remarked that the Office also had this idea in mind for sometime. A new ‘Social Welfare Advisory Committee’ was to form and the existing members of the ‘Advisory Committee on Prison Administration’ were asked to resign and the Committee was disbanded.

The members of the new Committee included:

The Duke of Devonshire as Chairman,

Sir Charles Jeffries as Vice-Chairman,

Professor A.M. Carr Saunders from the London School of Economics,

Miss L. Haeford, Principal Woman Officer of the National Council of Social Services,

Mr. J. Longland, Director of Education, Dorset,

Mr. E.H. Lucette, former acting Registrar, Co-operative Societies, Ceylon and now Secretary, Dr. Barnardo’s Homes,

Miss M. Nixon, former Welfare Officer, Palestine – now Chief Superintendent of Welfare at the Admiralty, Bath,

Miss E. Younghusband, Principal Officer for Training & Employment, National Association of Girls Clubs.

²⁰ See draft letter to Miss Margery Fry, October 1942. C.O. 859/15/11.

Mr. Peterson and Miss Fry were also appointed to the new Committee to advise matters regarding penal reform in view of the extended membership of the Committee with a much wider scope of interest in the area of social welfare in the colonies.²¹

The Secretary of State in presenting the report on *The Colonial Empire (1937-1947)* to the Parliament mentioned that:

*“The Colonial Social Welfare Advisory Committee is also a war-time creation. It was set up in March, 1943, with the object of furnishing advice to the Secretary of State on a wide range of matters, absorbing an earlier advisory body established in peace-time and known as the Colonial Office Penal Administration Committee. It has already held 28 meetings, has advised on many aspects of welfare and has viewed the work being done by the Colonial Governments. Two of its sub-committees should be mentioned; one, the Colonial Penal Sub-Committee, renamed in 1946 the Treatment of Offenders Sub-Committee; and the other concerned with the recruitment and training of welfare officers. The former Sub-Committee has held 28 meetings since its inauguration. Several members of the Advisory Committee have paid visits to the Colonies to investigate or advise upon local questions of social welfare. Meetings of the Committee have been attended on a number of occasions by visitors both from the Colonies and from Great Britain. These visitors have included Colonial Governors and officials, representatives of academic and professional organisations in the United Kingdom, and officers designated for social welfare appointments in the Colonies.”*²²

During this time, prisons were definitely accepted as part of the welfare service of the colonies and it was estimated that the size of the colonial prison population was around 11.6 per thousand of the colonial population in a population of roughly 60 million.²³ The number of prisoners serving sentences in colonial prisons declined with

²¹ See Draft letter from Secretary of State to Mr Pritt, March 1943.

²² See Secretary of State (1947) op cit., p. 69.

²³ Darlow, M. (1947) op cit., p. 113.

the shrinking of the Empire after the Second World War. It was reported that the total penal population in the British colonies and territories was around 72,186 in 1953-55. Majority of the colonial prisoners were in Africa: 27,044 in Kenya; 19,227 in Tanganyika; 14,040 in the Federation of Nigeria; 3,910 in Uganda and 3,170 in Gold Coast. Hong Kong, with 2,766 prisoners, was the colony having the highest number of prisoners outside Africa.²⁴

From 1952-1961, the Committee was renamed the ‘Advisory Committee on the Treatment of Offenders in the Colonies’. It maintained the same role as an advisory body to advise the Secretary of State for the Colonies on matters relating to the treatment of offenders in the colonies.²⁵ It was marked in the Colonial Office file that:

“It has been decided that the Treatment of Offenders Subcommittee should in future be regarded as a separate Committee and act as a sub-committee of the Colonial Social Welfare Advisory Committee. It had accordingly been redesignated the Advisory Committee on the Treatment of Offenders in the Colonies. The Committee’s terms of reference will be to advise the Secretary of State on such matters relating to the Treatment of Offenders in the Colonial territories as he may decide to refer to it.”²⁶

Membership of the ‘Advisory Committee on the Treatment of Offenders in the Colonies’ in 1952 consisted of:

Sir Kenneth Roberts-Wray, Legal Advisor to the Secretary of States, Chairman of the Committee,

Mr W.H. Chinn, Social Welfare Adviser to the Secretary of State, Vice-Chairman,

Mr F.C. Chambers, Principal Probation Officer, Member of the Council of the

²⁴ See Hansard on HC Debate 29 May 1956, Vol 553 cc5-7W.

²⁵ See Thurston, A. (1995) op cit., p. 112.

²⁶ See Secretary’s Note dated 14 January 1952.

Central After-Care Association,
Mrs. V.C. Jones, Member of Home Office Advisory Council on Treatment of Offenders; Member of Home Office Probation Advisory and Training Board; Executive Member, Howard League for Penal Reform; Chairman, Epsom Juvenile Court,
Lord Farringdon, Member of Executive Committee of the Fabian Society; Chairman, Fabian Colonial Bureau,
Sir William Fitzgerald, Colonial Service from 1919-49 and had been Attorney-General of Northern Rhodesia and Palestine, Chief Justice of Palestine, President of Lands Tribunal of England,
Mr L.W. Fox, Chairman of Prison Commission; President of the United Nations European Consultative Group on Penal and Penitentiary Affairs,
Miss Margery Fry, She had also been appointed as Member of Home Office Advisory Council on Treatment of Offenders,
Mr G.H. Heaton, Three years in HM Prison Services followed by Colonial Prison Services in Uganda and later Commissioner of Prisons at Tanganyika and Kenya,
and
Mr N.R. Hilton, retired Director of Prison Administration, Prison Commission.²⁷

The backgrounds of the appointed members in this Advisory Committee were indeed impressive in view of their experience in the work with prisons and offenders, both at home and in the colonies. Mr Fox, being the Chairman of Prison Commission, headed the prison services for England and Wales. Both Mrs Jones and Miss Fry were also members of the Home Office Advisory Council on Treatment of Offenders. As described by Radzinowicz (1999), “*An influence and dedicated group*” formed “to

²⁷ List prepared by the Social Services Department “A”, 22 March 1952.

*assist the Home Secretary with advices and suggestions on questions relating to the treatment of offenders [in England and Wales].*²⁸ With this new Committee in place, the annual reports from the colonies were scrutinized in much greater detail.

From the various Advisory Committees' meeting minutes, it was evident that the Advisory Committees paid special attention to a number of penal issues including *“the pay of warders, prisoners aid and after-care, industrial training of prisoners, recruitment and training of warders.”*²⁹ A number of important issues were also raised by these Committees including: juvenile welfare; use of mechanical restraint; corporal punishment; trainings for the colonial prison service staff; extra mural work for the prisoners; prisoner classification; visitation of prisoners and the dealing of the lunatics in the colonies. Other issues included the extension of the probation system to the Colonial Empire, the treatment of women offender and juvenile delinquents and the question on the retention of lunatics in colonial prisons.³⁰

Some of these issues were in fact concerns raised by the Members of the Parliament at the House of Common debates of which the Secretary of State had to response. Some of the issues covered were conditions of prisoners in the colonies and the use of mechanical restrains (ankle irons) such as the type used and for how long prisoners were placed on irons, etc.³¹ A separate section in this Chapter would further elaborate the involvement of the British Parliament in Hong Kong's penal system and programmes.

²⁸ Radzinowicz, L. (1999) *Adventures in Criminology*. London: Routledge, p. 324 & p. 326.

²⁹ Darlow, M. (1947) op cit., p. 113.

³⁰ See C.O. 859/15/11.

³¹ Treatment of prisoners in the West Indies – Hansard 11 February 1942; Ankle iron for colonial prisoners – Hansard 8 December 1954.

An explanation must be made to clarify the difference between the Advisory Council for the Treatment of Offenders (ACTO) under the Home Office and the above mentioned advisory committees under the Colonial Office. The ACTO was actually formed in 1944, five years after the Colonial Office's Colonial Penal Administration Committee was established with terms of reference read:

*“To be a Council to assist the Home Secretary with advice and suggestions on questions relating to the treatment of offenders.”*³²

Similar to the Colonial Penal Administration Committee, members of the ACTO, twenty in number, were all appointed and came with varied experience.³³

ACTO was in existence for twenty years from 1944 to 1964 and eventually replaced by the Royal Commission on the Penal System in England and Wales. The Commission was dissolved in 1966 and its function was taken over by the new Advisory Council on the Penal System (ACPS). The terms of reference for this new Committee was:

*“To make recommendations about such matters relating to the prevention of crime and the treatment of offenders as the Home Secretary may from time to time refer to it, or as the Council itself, after consultation with the Home Secretary, may decide to consider.”*³⁴

It is of interest to note that this term of reference was slightly different from the former ones of the ACTO and covered a much wider area by the inclusion of crime prevention on top of the treatment of offenders. ACPS functioned for twelve years

³² Radzinowicz, L. (1999) op cit., p. 328.

³³ Ibid, p. 325.

³⁴ House of Commons Debates, 4 August 1966.

from 1966 to 1978. The topics of issues covered and reports prepared by the two Councils were:³⁵

1. Proposal that a Special Institution Outside the Prisons should be provided for Offenders with Abnormal Mental Characteristics (1949)
2. Report on Dartmoor Prison by Mr George Benson, M.P. (1952)
3. Suspended Sentences (1952)
4. Alternatives to Short Terms of Imprisonment (1957)
5. The After-Care and Supervision of Discharged Prisoners (1958)
6. The Treatment of Young Offenders (1958)
7. Corporal Punishment. Cmnd. 1213 (1960)
8. Non-Residential Treatment of Offenders under 21 (1962)
9. Preventive Detention (1963)
10. The Organisation of After-Care (1963)
11. Interim Report on Detention of Girls in a Detention Centre (1968)
12. The Regime for Long-Term Prisoners in Conditions of Maximum Security (1968)
13. Detention Centres (1970)
14. Non-Custodial and Semi-Custodial Penalties (1970)
15. Reparation by the Offender (1974)
16. Young Adult Offenders (1974)
17. Powers of the Courts Dependent on Imprisonment (1977)
18. The Length of Prison Sentences (1977)
19. Sentences of Imprisonment (1978)

³⁵ Radzinowicz, L. (1999) op cit., p. 327-8.

As can be seen, the topics covered by ACTO and ACPS were focused on the British penal system and were not identical with issues that concerned the Colonial Office. Nevertheless with the cross membership of some of its members like Miss Margery Fry and Mrs V.C. Jones who sit on both Advisory Committees, it is suggested that the mainstream thinking on the treatment of prisons at home would be shared and applied in the colonies whenever applicable.

The Colonial Office, apart from monitoring the colonial prison service through its Advisory Committees, was also involved in gaining first-hand information on the work of the respective penal systems through arranging Colonial Office officials visiting the colonies. Examples of their visits to Hong Kong would be discussed in the latter part of this section.

Furthermore, the Colonial Office was also responsible for organizing regional conferences for Heads of Prisons Departments of the respective colonies or territories to discuss matter of mutual interest. One of the examples illustrating how these regional penal conferences could formulate colonial penal policies was on the establishment of the Colonial Prison Service Medal. During the Conference of Heads of Prisons Department in West Africa in 1946, the proposal for setting up the Colonial Prison Service Medal was raised for recognition of the long service warders for their exemplary services.³⁶

The Advisory Committee on the Treatment of Offenders in the Colonies referred this matter to the African Governors Conference for discussion in 1947. The proposal found no support among the Governors and subsequently the idea was shelved.

³⁶ See C.O. 912/15.

However, the matter was picked up and being pursued by the colonial prison services from Hong Kong, British Honduras, Gold Coast, Sierra Leone, Gambia, Trinidad, Cyprus and Kenya who all advocated the introduction of such a medal. The proposal gained further support at the 6th Conference of East and Central African Prison Commissioners and at the Conference of Prison Commissioners of South East Asian Territories held in Malaya in 1951. The main argument for establishing the medal was on the parity between the police and the fire services who both had their long service colonial medals. The prison service was considered to be more dangerous than these two services as prison officers had to face dangerous criminals all the time and deserved public recognition.³⁷

The Colonial Office also had arrangement with the Her Majesty's Prison Service in organizing study courses for overseas prison officers. Short attachments and visits by senior colonial prison officials to the HM Prisons in the United Kingdom were also arranged on needed bases. The Committee had also considered the need to set up regional training centres for the newly recruited prison officers as regular training courses in United Kingdom were difficult and expensive to arrange.³⁸ With the shrinking of the British Empire especially after the independence of the larger colonies in Africa, this idea was not being pursuit.

In Milner's (1972) work, he observed that the colonies responded differently on penal policy initiatives as suggested by England owing to their local conditions. There were examples of direct transportation of the penal system from Britain such as:

³⁷ Ibid. The Colonial Prison Service Medal was instituted by the Queen in October 1955. See C.O. 912/19.

³⁸ See Item on 'Sources of Recruitment of Senior Prison Officers' in Draft Minutes of the Advisory Committee on the Treatment of Offenders in the Colonies dated 3 December 1952.

*“The type of penal legislation found in Nigeria have until recently been virtually identical with those in England, for obvious reasons of historical connection.”*³⁹ and that the *“Nigerian borstal training is another example of the direct transplanting of an English treatment technique.”*⁴⁰

However even in the case of Nigeria when so many similarities with the British system were exhibited, local penal tradition was still not being fully replaced as examples such as *“Decapitation was approved by Maliki law...in execution of sentences passed by Moslem courts.”* whereas hanging was used for executions for criminal Code offences.⁴¹

Milner (1972) also suggested that in some other African colonies, penal developments were given much lower priority than other projects because of economical considerations.⁴² Pratt (2006), on the other hand suggested cultural value as the key contributing factor to explain why New Zealand had a high imprisonment rate.⁴³

Hong Kong as a British crown colony in the Far East had exhibited different responses on penal policy initiatives at different times. This was due to the fact that Hong Kong had been under the British Administration for a period of over one hundred and fifty years. For the first one hundred years, Hong Kong could be regarded as adopting in main the penal policies and practices of England and Wales but with a slower pace. Discriminative treatments such as reduced penal diets on Chinese prisoners were used as deterrents to control the prison population.⁴⁴

³⁹ See Milner, A. (1972) *The Nigerian Penal System*. London: Sweet & Maxwell, p. 48.

⁴⁰ Ibid. p. 365.

⁴¹ Ibid. p. 336.

⁴² See Milner, A. (Ed.) (1969) *African Penal Systems*. London: Routledge & Kegan Paul, p. 8.

⁴³ See Pratt, J. (2006) “The Dark Side of Paradise” in *British Journal of Criminology*, Issue 46, pp. 541-560.

⁴⁴ See Chan, S. (1944a) ‘Development of the Hong Kong Penal Policy and Programme under the

The following sections will discuss in greater details the post-War penal policy in Hong Kong under the influence of the Colonial Office.

7.4 The Colonial Office and Hong Kong's Penal Development (1939-1967)

Until the abolition of the office of the Secretary of State for the Colonies in 1966,⁴⁵ Hong Kong, like other British colonies, were under the close watch of the Colonial Office. As mentioned in the previous section, the Colonial Office would monitor the colonial penal service by scrutinizing prison annual reports submitted by the colonies. An example of this could be found during the Advisory Committee meeting on 10 July 1939 when Hong Kong Prisons Department's 1938 Annual Report was examined.

Remarks made at the meeting were that *"the Committee noted that the juvenile remand home in Hong Kong is administered by the Commissioner of Police. They would be glad to know the reasons for which this home is not under the Prisons Department, and to have further particulars in due course of the proposed institution to be run on the lines of the home at Borstal."*⁴⁶ Comments from the Advisory Committee would normally be referred back to the Governor of Hong Kong to respond. In this case, the Hong Kong Government followed the advice leading to the transfer of the responsibility of the Juvenile Remand Home to the Prisons Department.

British Administration (1841-1945)', MA Dissertation, University of Leicester.

⁴⁵ See HKRS 41-2-740, kept at Hong Kong's Public Record office. Circular 78/67 dated 8 March 1967 from the UK Government informing the Officer Adminstrating the Government of Hong Kong that there is no longer a Secretary of State for the Colonies with his former functions transferred to other Ministers under the Minister of the Crown (Transfer of Functions) Act, 1964.

⁴⁶ See Paragraph 10 of C.O. 859/15/11., draft minutes of the 6th Colonial Penal Administration Committee dated 10 July 1939.

Furthermore, it was a practice for the Colonial Office to pass on requests made by the Governor of Hong Kong on matters relating to the prisons for the Advisory Committee's comment. An example of this could be taken from a submission dated 17 February 1939 from Governor Northcote of Hong Kong to the Secretary of State forwarding Commissioner of Prisons Willcock's twenty pages proposal on the re-organization of the Prisons Department in Hong Kong. This submission was being included as an agenda item for discussion at the 5th Standing Advisory Committee on Penal Administration meeting held on 5 June 1939.⁴⁷

Apparently not all penal policy initiatives taken place in the United Kingdom were communicated to the colonies especially at the time after the War. Circular Despatches from the Colonial Office in the earlier years only related policies and issues which were perceived to be of importance to the colonies. In Hong Kong, the Commissioner of Prisons only learnt of the 'Marked System' being abolished in the United Kingdom in late 1946 / early 1947 through reading the publication "*Prisons and Borstals*" published by Her Majesty Stationary Office in 1945. As a result of this finding, the Commissioner made a proposal to the Governor on 14 January 1947 for the 'Mark System' to be abolished in Hong Kong.⁴⁸

On the other hand, the Colonial Office had from time to time obtained information from the Governor of Hong Kong on matters concerning the prison and prisoners in the colony mainly for preparing official reports in response to Parliamentary questions raised on Hong Kong of which the Colonial Office had no ready answers. Details of these questions and their implication to Hong Kong were included in the latter part of

⁴⁷ See Encl. 29 of C.O. 859/15/11. Commissioner Willcock's proposal was not supported by the Governor mainly on financial grounds.

⁴⁸ See HKRS 146-13-5.

this Chapter.

The Colonial Office was also responsible for the selection and appointment of senior prison officials for the colonial prison services. This was a standing Colonial Office practice for the colonies before the Second World War and also applied to Hong Kong. This practice continued even after the Second World War as Mr. John Burdett was brought in by the Colonial Office from Africa and was given the appointment as Superintendent on a five year contract during the time when Hong Kong was under Military Administration. His appointment by the Military Administration was subsequently endorsed by the Secretary of State for the colonies as a matter of course.⁴⁹

Mr. Shillingford, former Commissioner of Prisons of Jamaica, was appointed by the Colonial Office and became Commissioner of Prisons in Hong Kong on 22 May 1947 to replace Commissioner Willcocks who was wounded during the War.⁵⁰ Ironically, Commissioner Willcocks was appointed a member of the Treatment of Offenders Sub-Committee in 1946.⁵¹

Apart from the posting of senior prison officers to Hong Kong, the Colonial Office also assisted in the recruitment of Prison Officers from the United Kingdom upon the request of the Hong Kong Government. It was a laid down requirement by the Colonial Office after the War that European posts in the Colonial Prison Service should be filled by staff with prison experience in the United Kingdom unless no such

⁴⁹ The Secretary of State only selects or approves appointments made by the Governor. See Jeffries, C. (1938) *op cit.*, p. 94.

⁵⁰ See Norman, J. (undated) *op cit.*, pp. 44-7.

⁵¹ Commissioner Willcocks was appointed together with Miss Eileen Younghusband and Mrs. Creech Jones. See Darlow, M. (1947) *op cit.*, p. 113.

officers were available.⁵² Recruitment was carried out through circulars to the Her Majesty Prison Service for interested prison officers to apply. Exceptions to this practice happened in 1948 when twenty ex-Palestine policemen were posted to work in the Hong Kong prison service after the establishment of the State of Israel.⁵³

The overseas recruit would normally joined as Prison Officer and responsible to supervise a number of Warders under his charge and be responsible for the order and discipline of prisoners in a Hall or in a workshop. The performance of the European officers however varied greatly. The former staff from HM Prison Service were in general well received in Hong Kong but the same could not be said on those from Palestine. The latter group was remarked to have major disciplinary problems and many had left the Prisons Department before the completion of their first contract of three years.⁵⁴

On the subject of penal policy directives by the Colonial Office, there were occasions when the Colonial Office would issue direct instructions to the colonies for compliance. These were however rare and one of these examples was the abolishment of 'Opium Monopoly' in Hong Kong in September 1945, which occurred just one month after Hong Kong was liberated from the Japanese after the War and the colony was still under Military Administration.⁵⁵

The urgency of this legislation at the time when the War was just ended could only attributed to the fact that Britain, as a signatory of the newly formed United Nations

⁵² Ibid., p. 114.

⁵³ See Norman, J. (undated) op cit., p. 58.

⁵⁴ Ibid.

⁵⁵ See C.O. 129/595, p. 15.

and the close allies of America, had to support the strong anti-drug move by the United States Government. America had been active in promoting the international control on the illicit drugs before the Second World War and as of 1940, “*most of the offices of the international drug control system were gradually transferred to the United States (the Opium Advisory Committee to Princeton and the Central Permanent Board and the Drug Supervisory Body to Washington), though their official seat (and some staff) remained in Geneva.*”⁵⁶ Even before the War had concluded, the US administration had banned opium smoking in the areas liberated from Japan, including previous colonies from 1943 onwards.⁵⁷

The Colonial Office normally tried to influence the colonies in a less commanding manner as in the case of advocating the employment of prisoners on development schemes amongst the colonies. Attached with a nine pages “*Memorandum on the Employment of Prisoners on Development Schemes*”, the covering Circular Despatch from the Colonial Office states that:

“My Advisory Committee on the Treatment of Offenders in the Colonies has prepared the attached memorandum on the subject of the employment of prisoners on development schemes in overseas territories. It will be noted that the Committee has drawn upon information available in a report on Prison Labour which was produced by the Department of Economic and Social Affairs of the United Nations in 1955 and that the Appendix to the memorandum contains a number of extracts from the report, copies of which are also enclosed with this despatch for information. The Appendix also gives information derived from the annual reports of the Prisons Departments of Overseas Governments and from other sources.”

⁵⁶ See United Nations Office on Drugs and Crime (2009) *A Century of International Drug Control*. Austria: UNODC, p. 57.

⁵⁷ *Ibid.*, p. 59.

*I am, of course, aware that conditions in many territories may preclude the employment of prisoners in the manner discussed in the attached memorandum. Nevertheless, I am impressed by the arguments which have been advanced by my Advisors as to the desirability of employing prisoners on development schemes in favourable circumstances and I therefore commend the memorandum to you for consideration.*⁵⁸

In the attached “*Memorandum*”, both Hong Kong and Singapore were quoted as having comparatively built up centres with prisoners employed to a greater extent on indoor prison industries than in territories with large rural areas.⁵⁹ For the case of Hong Kong, the Prisons Department had complied fully the recommendations of this Circular Despatch with the opening of the Chi Ma Wan Prison in Lantau Island on 3 December 1956. (see Chapter Two) Prisoners sent to this open prison, first of this type in Hong Kong were Star Class prisoners serving short sentences and they were engaged immediately in the forestry work on the Island and that “*the Department is ready to co-operate in any scheme which will provide useful and constructive work.*”⁶⁰

Another way for the Colonial Office to monitor the different colonies’ penal systems was through visits. Colonial Office officials were arranged to visit the various colonies and to gain first hand information through visits to the local prisons. Discussions were normally held with the Superintendents in charge of prisons, the Commissioners and the Governor of the colonies after the visits to convey the views of the Committee on penal matters and to exert influence over the colonies in adopting the desired prison administration and management was to send.

⁵⁸ Colonial Office Circular Despatch 293/56, C.O. SSA 94/03 of 1956.

⁵⁹ Ibid.

⁶⁰ See Commissioner of Prisons, *Annual Departmental Reports 1956-57*. pp. 1, 14.

Mr. N.R. Hilton, retired Director of Prison Administration, Prison Commission of England and Wales, member of the Advisory Committee on the Treatment of Offenders in the Colonies, visited Hong Kong from 31 October to 6 November 1951 before heading towards other colonies in the South East Asia region. He reported that he was received by the Governor, the Colonial Secretary and other public officials both before and after his visits to the prisons. It was normally during his last meeting with the Governor that he would bring up issues noted during his visits with suggestions proposed. According to Mr. Hilton, *“these suggestions were sympathetically received, and without exception, a keen interest was shown on my comments and recommendations. In turn the Commissioners and Superintendents in charge of the prisons afforded me every facility and were ready and willing to discuss all or any part of their administration.”*⁶¹

All penal institutions in Hong Kong, the Stanley Prison, Victoria Prison and the Women’s Prison at Lai Chi Kok together with the Young Prisoner Training Centre and the Stanley Boys’ Reformatory were visited by Mr. Hilton with separate reports made. The visit reports were comprehensive and from these reports could identify the Colonial Office’s area of interest in the penal policies and prison administration and management in Hong Kong. The observed items contained in the reports included the institution’s prisoner population breakdown and how they were accommodated, the prison staff strength and their grades in manning the institution, work or employment for prisoners and state of the prison buildings, etc. The general impression gained on Hong Kong’s penal condition was satisfactory but it was remarked that the Prisons Service in Hong Kong was in need of more progressive administration especially on

⁶¹ See Mr. Hilton’s report in C.O. 1023/155.

the lack of After-Care for prisoners.⁶²

For Stanley Prison, it was noted that over 70% of the prisoners were first offenders and should not require maximum security prison accommodation. It was suggested that a Camp prison be set up to accommodate this type of prisoners and to relief the problem of overcrowding at Stanley Prison. Another concern was on the urgent need to remove the young prisoners, around 90 in number, away from Stanley Prison as they were being located in the same prison with adult prisoners. The practice of locating prisoners inside the punishment block for security or for protection purpose other than on punishment was also being criticized as punishment block should serve the sole purpose of keeping prisoners on punishment.⁶³

For both Victoria Prison and Lai Chi Kok Prison, the problem noted by Mr. Hilton was on the short sentenced prisoners received from courts in Hong Kong. It was reported that during the month of October, no less than 68 persons were sent to prison for sentence of imprisonment of three days or less. The other concern was on the state of the outdated buildings of Victoria Prison which was considered not ideal for running a modern penal service.

There were other specific criticisms on Hong Kong's penal administration such as the out-dated method of prisoner classification as described in Chapter Four earlier. The method of classifying prisoners merely by their length of sentence in Hong Kong was deemed crude and it was recommended to classify prisoners into first offender, habitual criminal offender and the young offenders groups and these three groups of

⁶² Ibid.

⁶³ Ibid. Four prisoners located therein for medical observation and one prisoners on own request to separate from the other European prisoners.

prisoners should be separately kept.

The other important issues covered in the reports were the lack of evening education and recreation for the prisoners, no provision for after-care, no prisoners aid society and no 'Earning Scheme' for prisoners in Hong Kong. The revised remission system in Hong Kong where prisoners were given one third of their sentence as remission on admission was examined with no adverse comments made. However, the 'Gratuity System' linked with the remission system, a practice similar to that in use in the United Kingdom, was considered outdated.⁶⁴

Mr. Hilton prepared his report and sent them to the Governor of Hong Kong. The reports on the whole focused more on the welfare of the prisoners and the condition of the prisons. The response from the Hong Kong Government on the report was however brief, saying "*Government greatly appreciates the careful study you have made of this matter and will now give detailed consideration to your recommendation.*"⁶⁵

When Mr. Hilton's report on Hong Kong was discussed in London at the 78th meeting of the Advisory Committee on the Treatment of Offenders in the Colony on 5 November 1952, the issue of having very short sentence prisoners in Hong Kong's penal system was raised. The Committee "*re-iterated their view that this was a ridiculous practice and observe that, put at its lowest, to carry out the admission and discharge procedure, medical examination, cleaning up etc. for such a short stay must be expensive and wasteful.*"⁶⁶

⁶⁴ Ibid.

⁶⁵ Ibid. Reply letter by H.G. Richards, Deputy Colonial Secretary dated 23 January 1952.

⁶⁶ Ibid. Draft minutes of the 78th meeting.

It was noted that the Committee was reluctant to push the matter on the provision of education for women prisoners to the Governor of Hong Kong again as they believed that they could not achieve much from the current Commissioner of Prisons and *“came to the conclusion that it would be better to take no further action pending the appointment of a new Commissioner when an opportunity for informal discussion on these problems may present itself.”*⁶⁷

In the same report by Mr. Hilton, it was mentioned that he had chaired a ‘Regional Conference of Prison Commissioners in South East Asia and Hong Kong’ at Penang, Malaya from 10 to 14 December 1951. The meeting was attended by prisons officials from Hong Kong, British North Borneo, Sarawak, Singapore and Malaya.⁶⁸

Other Colonial Office official, in particular Mr. Chinn, Advisor on Social Welfare to the Secretary of State for the Colonies, had visited Hong Kong on a number of occasions. During his earlier visit to the colony in late 1940s, he had visited all the prisons and had discussed with the Chief Justice on Hong Kong’s under-used probation services and the need to improve the physical set up of the juvenile court rooms. During his visit in 1954, he had expressed that it was quite wrong that the Salvation Army should have the task of after-care which was the Government’s responsibility and should be taken-up by the Government.⁶⁹

Despite these criticisms, Hong Kong’s prison service did receive quite a high regard from the Colonial Office. Sir Kenneth Roberts-Wray, Chairman of the Advisory Committee on the Treatment of Offenders visited Hong Kong and other British

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ See HKRS 146-13-7.

colonies and territories in the Far East between 24 April and 24 June 1959. When in Hong Kong, he visited all the penal institutions and on his visit to Chi Ma Wan Prison on 1 May, 1959, he was accompanied by the Governor of Hong Kong.⁷⁰ In Sir Roberts-Wray's subsequent report to the Advisory Council, he remarked that "*Before I left England Mr. Chinn said that Hong Kong probably had the best administered overseas prison service. I have no reason to differ.*"⁷¹

The influence from the Colonial Office however was not always welcomed by the colony. Shortly after Hong Kong's return to civil administration in 1946, the Chief Justice's displeasure with the Colonial Office's interference on colonial penal policy was plain and open as reflected in part of his minutes to the Governor of Hong Kong stating that:

*"I have a sort of recollection that there was a circular despatch from the C.O. [Colonial Office] when I was in the Gold Coast, suggesting that the remission period should be increased as this had either been done in the U.K. or had been recommended by some Commission. There is a Penal Reform Committee attached to the C.O. [Colonial Office] under the Chairmanship of D.N. Pritt. RC. M.P. (a gentleman whose admiration for Soviet Russia presumably does not extend to its penal system) which is very active in pressing penal reforms on Colonial Governments without much regard to local conditions."*⁷²

The crux of the problem appeared to rest with Hong Kong's top government administrative officials' reluctance and resistance of having the United Kingdom Government exerting pressure onto the local policies. This feeling remained strong

⁷⁰ Commissioner of Prisons, *Annual Departmental Reports 1959/60*.

⁷¹ "Report by Sir Kenneth Roberts-Wray on his tour abroad between 24th April and 24th June 1959". See Encl. (38) in C.O. 912/21.

⁷² See HKRS 146-13-5. The Chief Justice had written to the Governor on 14 November 1946 regarding the subject on forms of imprisonment, the 'Marks System' and the duration of life sentence.

within the senior Government officials in Hong Kong even after the Colonial Office ceased to exist in 1967. The Commissioner of Prisons proposed to the Colonial Secretary in 1968 to enter into direct correspondence with his counter part in the Home Office regarding after-care cases for ex-addicts, the Deputy Colonial Secretary commented in the minutes to the Colonial Secretary that:

*“Better not, I think. We allowed limited discretion to Heads of Dept. to correspond with the S. of S.’s [Secretary of State] technical advisors under para. 30 of the M.O.P. But we don’t normally allow them to correspond with U.K. departments. The transmission of information can too easily develop into pressure on policy matters.”*⁷³

Despite these guarded feelings with the Colonial Office, Hong Kong as a British crown colony still had to seek the endorsement from London before new penal initiatives were to be implemented in Hong Kong as law. The draft Training Centre Ordinance was forwarded to the Secretary of State for the Colonies in 1951 for approval and with the endorsement from London became law in Hong Kong on 6 March 1953.⁷⁴

However on the topic of direct influence from the Colonial Office, an example could be taken from the Corporal Punishment Ordinance 1954. When this legislation was vetted in London, the official response from the Colonial Office given on 24 March 1955 was *“The power of disallowance will not be exercised in respect of these Ordinances.”*⁷⁵ Nevertheless there were further comments to the Ordinance that:

“2. I note that Section 4(e) of Ordinance No. 39 of 1954 stipulates that [w]shipping shall be administered as soon as possible after the final

⁷³ See HKRS 146-13-7. op. cit., Minutes 59 of 1 June 1968.

⁷⁴ Commissioner of Prisons, *Annual Departmental Reports 1946-47, 1951-52.*

⁷⁵ See Encl. 20 of HKRS 41-1-1425-2.

determination of the proceedings in consequence of which the offender was sentenced. No time limit, however, is mentioned, and I suggest, for your consideration, that the words “and in any case before the expiry of 15 days” should be inserted after the word “practicable” in a future amendment to the Ordinance. The previous time limit was six months which, however, I regard as far too long a period for any offender to remain in doubt whether or not he may be whipped.

3. *I note that Section 4(b) and (c) make no distinction between children and young persons. I am advised that the number of strokes inflicted on a child under 14 should not exceed six and the number of strokes inflicted on a young person between 14 and 17 years of age should not exceed twelve.”⁷⁶*

Hong Kong Government officials had to take note of the comments made by the Colonial Office and the Governor of Hong Kong replied the Secretary of State on 8 June 1955 accepting comments on point 3 but amending suggestion of point 2 from 15 days to 6 weeks.⁷⁷ This indicates officials in Hong Kong still had a limited degree of flexibility in adopting instructions from London.

As the need to bring back a new legislation to the Legislative Council for amendment within such a short period of time frame was rare, the Attorney General had to explain the rationale of proposing the Bill when it was tabled at the Legislative Council for its first reading:

“In conformity with general policy within Colonial Territories, it is considered desirable to remove progressively, or to reduce, the penalty of corporal punishment in criminal cases. It is thought that further limitation

⁷⁶ Ibid.

⁷⁷ See Encl. 22, *ibid.*

may safely be imposed on the extent to which such punishment may be ordered to be administered to young offenders.”⁷⁸

The subsequent amendment was made under the Magistrate (Amendment) (No. 2) Ordinance, 1955 dated 14 October 1955.⁷⁹

Further example can be found on 27 May 1959 when the Secretary of State sent a memo to the colonies calling to cease in using the term ‘flogging and whipping’ and to replace such term with ‘caning’ as:

“From time to time corporal punishment in overseas territories is the subject of Parliamentary Questions and sensational reporting in the Press. Misleading impressions are created by such words as “flogging”, “beating” or “whipping”, when a less colourful word such as “caning” would more accurately describe the kind of corporal punishment which is actually administered to adult or juvenile offenders.”⁸⁰

Hong Kong followed the Colonial Office instruction promptly and the Corporal Punishment (Amendment) Ordinance 1959 was enacted on 8 October 1959 to comply with the Secretary of State’s directive.

The Colonial Office was paying special attention on the physical punishment of prisoners in the colonies, including the use of mechanical restrains, corporal punishment and the capital punishment. The explanation to this could be owing to the anti-colonial feeling displayed by the Americans after the War who had exert

⁷⁸ Circular 609/59 dated 27 May 1959 from the Secretary of State for the Colonies to the Officer Administering the Government of Hong Kong. HKRS 41-1-1425-2 refers.

⁷⁹ See Encl. 39, *ibid.*

⁸⁰ Circular 609/59 dated 27 May 1959 from the Secretary of State for the Colonies to the Officer Administering the Government of Hong Kong. HKRS 41-1-1425-2.

pressures at the United Nations for Western countries, including Britain, to give up their colonies. Under such political climate, Britain had to be careful not to project an image of ruling the colonies with draconian penal policies and exercising inhumane penal practices. Another concern was the Parliamentary questions concerning inhumane treatment of colonial prisoners raised by the Members of the Parliament at the House of Commons debates of which the Secretary had to respond to. Details of this will be discussed in the following section.

The post of the Secretary of State for the Colonies was deleted in 1966 and so was the Colonial Office in view of the diminishing British overseas colonies and territories following the de-colonisation process. A new position of Secretary of State for Commonwealth Affairs was created on 1 August 1966 and the post eventually became the Secretary of State for Foreign and Commonwealth Affairs from 1968 onwards taking over the responsibility of Hong Kong affairs till the colony's return to the People's Republic of China in 1997.

7.5 Parliamentary Interests on Hong Kong's Penal System

The British Parliament was another place where penal policy and programme could be influenced.⁸¹ Not only penal policies at home were affected but Parliamentary interest could extend to penal policies for the colonies, including Hong Kong. It was done through questions raised by the Members of the Parliament at the House of Commons on matters connecting to the penal system in Hong Kong. The Secretary of State for

⁸¹ See Drewry, G. (1977) 'Parliament in Penal Policy' in Walker, N. (Ed.) *Penal Policy-Making in England*. Cambridge: Institute of Criminology, University of Cambridge.

the Colonies and after 1968 the Secretary of State for Foreign and Commonwealth Affairs had to prepare replies either in person at the House of Commons debates or by written response in forms of official reports if information was not readily available during the debates.

Records from the Hansard indicated that the Parliamentary questions regarding Hong Kong's prison service or penal system were diversify in nature and originated from different Members of the Parliament. The number of questions raised was however infrequent suggesting the general lack of interest on the prison conditions in the Far East. On the other hand from the questions raised, it is possible to form a general indication on the type of issues that would cause sufficient interest for the Members of the Parliament to speak out at the House of Commons.

The nature of the Parliamentary question in the earlier days could be extremely trivial in nature. Mr J. McKay raised a question in 1946 asking why a British prisoner serving sentence in Hong Kong had not written to his mother for a year and asked if it was possible for him to be sent back to the United Kingdom to serve his sentence. In this case, the Colonial Office had to ascertain information from the Governor of Hong Kong in order to provide the necessary answer to the Members of the Parliament.⁸²

There was also parliamentary question being asked simply out of the Members of the Parliament's lack of understanding on the situation of Hong Kong. Mr Rankin asked in 1970 whether the Secretary of State for Foreign and Commonwealth Affairs would "*direct the Hong Kong Government, as an act of clemency, to free those long-term*

⁸² See Hansard 20 November 1946, vol. 430 cc 128-9W.

prisoners suffering from incurable illness.”⁸³ This scenario was in fact adequately covered by the Prison Rules in Hong Kong.⁸⁴ There were well established procedures for the Commissioner of Prisons to report cases of prisoner confirmed to be terminally ill to the Governor who would then order early release of the prisoner accordingly.

On the whole, most the Parliamentary questions raised on colonial prisoners were related to their treatment. Members of the Parliament were concerned that any inhumane or improper treatments on the colonial prisoners would tarnish the image of the Britain Empire. An example of this was the Parliamentary question raised by Mr. Manuel in 1954 asking the Secretary of State for the Colonies “*in which Colonies and Protectorates it is the practice to attach chains to the ankle of prisoners, and to what categories of prisoners this treatment is applied.*”⁸⁵ The question was raised after the Member of the Parliament saw a photo in the newspaper that prisoners in the colonies were chained. The British Government’s response was that:

“In 1952, the attention of all Colonial Governments was drawn to the very strict Regulations governing the use of mechanical restrains on prisoners in the United Kingdom. They were invited to bring local practice as far as possible into conformity with United Kingdom practice.

...But let me point out those are Territories in many cases – both in West Africa, East Africa and the West Indies – with a very high degree of self-government. Territories such as Nigeria, in which we must be very careful how far we interfere.”⁸⁶

This issue on the use of chains in the colonial prisons was being followed-up on several House of Common debates into 1957 and the response from the Colonial

⁸³ See Hansard 2 November 1970, vol. 805 c269W.

⁸⁴ See Prison Rule 148 (2), Cap. 234A, Laws of Hong Kong.

⁸⁵ See Hansard 8 December 1954, vol. 535 cc 951-3.

⁸⁶ Ibid.

Office was that *“I cannot say when it will be possible to abolish the use of this form of restrain completely in all Territories.”*⁸⁷ On this issue, Hong Kong was more in line with the practice in England and no follow-up actions were required.

The Parliament was also showing special concern on the detention of young offenders in Hong Kong. Mr Ronald Atkins in 1969 raised the question on the case of imprisonment of an eleven year old boy in Hong Kong. The Secretary of State for Foreign and Commonwealth Affairs was able to explain the case of the boy who was given a small fine with one day’s imprisonment, and the time the boy spent on remand had been accepted in lieu of the one day imprisonment sentence. Mr Atkins however felt that the penal system in Hong Kong should be following the progressive approach of the Western countries so that other countries in the region, especially China to follow. He remarked that:

*“Is my hon. Friend aware, nevertheless, that there are a number of arrests and imprisonments in Hong Kong in circumstances which we would not tolerate in this country? Is it not imperative that we show our best, not our shoddiest, political goods in this shop window which is so close to the Chinese Republic, and which is watched so carefully by the Chinese people?”*⁸⁸

Other Parliamentary questions were raised from time to time on the numbers and categories of prisoners kept in Hong Kong and how they were treated in general. These were specific questions raised on capital punishment, corporal punishment and the fate of the prisoners in relating to the handing over of Hong Kong to China in 1997. As there are separate Chapters covering these more complex issues, these will

⁸⁷ See Hansard 15 December 1954, vol. 535 c1771; Hansard 13 March 1957, vol. 566 c175W.

⁸⁸ See Hansard 17 February 1969, vol. 778 c29.

not be repeated in this section.

7.6 Conclusion

In this Chapter, it is suggested that the penal policies in Hong Kong were heavily influenced by Britain during the period from 1945 till the disbandment of the Colonial Office in 1968. Through a well structured system of Advisory Committees, the work of the prison service in the colonies, Hong Kong included, were under close monitoring of the Colonial Office.

In view of the vast size of the British Empire immediately after the Second World War, the varied cultural, social, economic backgrounds and the different administrative pattern between the crown colonies and territories, the ambivalence of the Colonial Office was that it was in no position to dictate a standardised set of preferred penal policies for the colonies and territories to follow suit. Instead the colonies and territories were invited to take note on what England was practicing in the management of prisons and prisoners and the colonies and territories were encouraged to follow the British approach. Unavoidably the response from the colonies and territories were varied with some taking up the Home practice while others were more concerned with their local situation as in the case of prisoners wearing ankle iron in some of the colonies.

Apart from sending Circular Despatch and copies of the Prison Rules used by Her Majesty's Prison Service to the colonies and territories as model rules on various penal matters, the Colonial Office also took direct action in picking the key penal

administrators to run the prisons in the colonies and territories. This ensured that the European prison officers who were middle and upper managers in the respective penal systems were selected from the Home service or at least to receive some training in the United Kingdom. This had allowed for the maintenance of the British approach in dealing with prisoners could be extended to the rest of the British Empire.

Furthermore through regional conferences, visits by Colonial Office officials and discussions with colonial prison administrators whilst on leave in the United Kingdom, the Colonial Office could exercise its influence through direct dialogue with the respective prison administrators and the administrators or governors of the respective colonies and territories.

From the composition of the Advisory Committees memberships, it is evident that colonial penal policies were dominated by a small group of penal elites as suggested by Ryan (2003):

*“In the decades immediately following 1945-indeed until well into the 1970s-penal policy making was in the hands of a relatively small, male metropolitan elite which, although never wholly in agreement, nonetheless saw itself as a barrier against what it took to be a more punitive public mostly more interested in punishment than in welfare or reform.”*⁸⁹

The emphasis on promoting penal reform in the colonies and territories apparently was on the top of the agendas of these Advisory Committees. Not only did the penal elites want to export the more ‘civilized’ and ‘progressive’ penal system to the colonies and territories, it was necessary to protect the image of Britain when the

⁸⁹ Ryan, M. (2003) *Penal Policy and Political Culture in England and Wales*. Winchester: Waterside Press, p. 16.

treatment of offenders in the colonies and territories could attract adverse international or local attention if found not in line with the Western standard. After all, penal policy “*is particularly bound up with popular sentiment*”⁹⁰ and Members of the Parliament would not hesitate to question the Secretary of State for the Colonies during Parliamentary debates. Adverse prison conditions in the Empire thus became the liability of the Colonial Office and had to be addressed.

Despite the strong colonial influence on Hong Kong’s penal policies during the immediate years after the War, it is suggested in this Chapter that the Colonial Office was only partially responsible for the formulation of penal policies in Hong Kong. There were penal policies in England such as preventive detention and corrective trainings initiated under Criminal Justice Act 1948 that were not followed by Hong Kong at all. There were also occasions when some of these recommended policies were only partially adopted or adopted after a long lapse of time in comparison to their implementation in the UK. The case on the use of corporal punishment in post-War Hong Kong as described in Chapter Six is an example to illustrate this point. All these variations and the reasons for such will be further discussed in the latter Chapters of this thesis.

⁹⁰ Drewry, G. (1977) ‘Parliament and Penal Policy’ in Walker, N., (Ed.) *Penal Policy-Making in England*. Cambridge: University of Cambridge Institute of Criminology, p. 40.

Chapter Eight

Penal Policy in Post-War Hong Kong (1945-1969)

8.1 Introduction

This Chapter together with the following two Chapters will provide a detail analysis on the way Hong Kong selected the penal policies or programmes from Britain. The study aims to find out why certain British penal policies or programmes were adopted by Hong Kong whilst some were discarded. For penal policies and programmes adopted by Hong Kong, the changes made for its local adaptation, if any and the reasons behind such changes. Another area of study to be highlighted is on penal policies and programmes solely developed in Hong Kong. Again the rationales for the formulation of such penal policies and programmes are to be identified.

To allow a systemic analysis on this area, it is necessary to divide Hong Kong's post-War penal policy development into three phases according to the way penal policies were formulated. The first phase covers the period from 1945 to 1969 when there were strong Colonial Office influences as highlighted in the previous Chapter. The second phase starts from 1970 and end in 1981 when penal policies formulated in Hong Kong were mainly directed at addressing local law and order issues in the 1970s. The third and final phase of the penal policy development started in 1982 and ended in 1997 with Hong Kong preparing for its return to the Chinese sovereignty marred by the Peking incident in 1989.

This Chapter focuses on penal policies formulated in Hong Kong at a time when Hong Kong had just been liberated from Japanese occupation after the Second World War until 1969. Despite the close monitoring of the Colonial Office at the time as mentioned in the previous Chapter, a number of major penal policies developed in England during the same time frame under the Criminal Justice Acts of 1948, 1961 and 1967 were not being followed by Hong Kong.

The first key legislation in post-War Britain concerning penal reform was the Criminal Justice Act 1948. The substance of this legislation was based largely on the Criminal Justice Bill of 1938 which had “*embodied several forward looking measures, tidied up the legislation by repealing various obsolete aspects, and complemented the numerous changes which had already been made.*”¹

The Criminal Justice Act of 1948 was indeed the first major penal legislation since 1914. The Act removed those pre-War obsolete concepts such as penal servitude, hard labour and the triple division of offenders. Under the provisions of this Act, “*the court determines only the length of the imprisonment, and all measures for classification and the individualisation of the punishment are left to the administration within the framework of the Prison Rules.*”²

In this new Act, whipping together with the remaining restrictions on the power to impose fines in case of felony were removed. As this Act did not spell out any

¹ Edwards, A. (1978) *The Prison System in England & Wales, 1878–1978*. Edinburgh: HMSO, p. 7.

² Home Office (1960) *Prisons and Borstals, Statement of Policy and Practice in the administration of Prisons and Borstal Institutions in England and Wales*, 4th edition. London: HMSO, p.3.

sentencing philosophy, the sentencers were given the liberty to decide the use of imprisonment or fines in dealing with the offenders.³

New types of correctional programmes and institutions such as the detention centre and the remand centre were proposed and imprisonment for young offenders would only be used as a last resort. Central After-Care Association was established to coordinate statutory after-care supervision on prisoners released from penal institutions. Under the same Act, the new sentence of corrective training for young offenders was introduced and the provision on preventive detention for habitual offenders was strengthened. These measures were based on the belief that a longer period of imprisonment within a proper corrective environment would reduce recidivism through training, discipline and reformation.⁴

The reformatory approach of the British penal system at this time was marked by the extension of the education facilities provided by the local authorities to prisoners as recommended by the 1947 report of the Education Advisory Committee; the introduction of home leave for adult prisoners in 1951 and the setting up of the first pre-release hostel at Bristol in 1953. There was also the trend of the increasing involvement of specialists such as psychologists and welfare officers in the management of prisoners.⁵

To address the problem of overcrowding in the penal establishments in the 1950s as well as other issues related to penal administration, the British Government published

³ Thomas, D.A. (1995) 'Sentencing Reform: England and Wales' in Clarkson, C. & Morgan, R. (Eds.) *The Politics of Sentencing Reform*. Oxford: Clarendon Press, p. 125.

⁴ Ibid. Also see Home Office (1960) op cit., p. 8.

⁵ Home Office (1960) op cit., p. 8.

in 1959 the White Paper on '*Penal Practice in a Changing Society.*' The Paper outlined ways to reduce recidivism and reiterated the importance of keeping young offenders away from prison. Many of these principles from the White Paper were subsequently incorporated in the Criminal Justice Act 1961.

The main purpose of the Criminal Justice Act 1961 was to encourage the use of Borstal training for offenders under 21 and raised the minimum age for the imprisonment of young offenders from 15 to 17. Furthermore, the power of the courts was further restricted in the sentencing of the young offenders.

“The scheme of the Act was that for an offence justifying a sentence of up to six months, the normal custodial sentence on a young offender would be detention in a detention centre, for a sentence justifying a sentence of more than six months and less than three years, the sentence would normally be Borstal training, and a sentence of imprisonment would be permissible (with certain exceptions) only if the offence warranted a sentence of three years or more.”⁶

These provisions had changed the former therapeutic role of the Borstal in providing reformatory trainings for selected young offenders with such needs to that of a general custodial sentence with prime consideration on the gravity of the crime. Also this had taken away some of the discretionary power of the sentencers, a prerogative guarded dearly by the Magistrates and Judges under the English legal system.⁷

The Prison Commission in England was dissolved in 1963 and replaced by the establishment of the Prisons Department under the Home Office, a move after some heated debate in the House of Commons.⁸ The proposal for such change was included

⁶ Thomas, D.A. (1995) op cit., p. 126.

⁷ Ibid.

⁸ See *Hansard House of Commons debate*, 12 March 1963. The Prison Commissioners Dissolution Order 1963 was approved with a vote of 140 against 63.

in the Criminal Justice Act 1961 as it was “*an acknowledgement of the increasing complex nature of many of the issues which had to be faced, and of the growing political significance of penal affairs.*”⁹

The year 1963 also witnessed the British Government’s move to combine the probation and after-care service as suggested by the Advisory Council on the Treatment of Offenders. The Council also stressed the importance of providing welfare work within prison establishments. From 1966 onwards, the probation and after-care service took over the duties for providing welfare services to the prisoners but prison officers were still expected to assist the prisoners on welfare matters whenever possible.¹⁰

The Criminal Justice Act 1967 dealt with a number of criminal justice issues and court procedures such as committal proceedings, bail, legal aid, etc. apart from matters relating to penal policies. In this Act, suspended sentence and discretionary parole were introduced. The courts were empowered to suspend any sentence of imprisonment not exceeding two years, and required to suspend any sentence of imprisonment which did not exceed six months unless the case fell within the list of scheduled offences or the offender had a previous custodial sentence.

As to the newly introduced parole system, it allowed prisoners to be released on parole after serving one third of the sentence or twelve month imprisonment, whichever was longer, thus allowing prisoners with a sentence of imprisonment of more than eighteen month eligible for parole. Other initiatives of the Act included the

⁹ Edwards, A. (1978) op cit., p. 9.

¹⁰ Ibid.

abolition of corrective training and the preventive detention, with the latter being replaced by extended sentence.¹¹ The Criminal Justice Act 1967 had achieved its desired result of seeing the prison population dropped through the use of suspended sentences and the parole. However this downward trend was only short-lived and the penal population soon picked up again.

To gain a better understanding on why Hong Kong had developed a set of penal policies and programmes with both similarities and differences with that of the British system, it is necessary to provide background information on Hong Kong's post-War political, social, cultural and economics developments during these three phases. The flashpoints responsible for penal policy formulation process are also covered in the discussion. It is argued in the following Chapters that the political, social, cultural and economical state of the colony at the time had dictated the Government's approach towards law and order and eventually set the scene for the development of the unique penal system in post-War Hong Kong.

8.2 Political Scene of Hong Kong after the War

1945 to 1969 marked the immediate years of Hong Kong's return to British administration after the Second World War. During this period, Britain had largely completed her decolonization process and had withdrawal from the East of Suez. For political and economical reasons, Hong Kong was being treated differently from the other British colonies and remained to be the crown colony of Britain. Hong Kong

¹¹ Thomas, D.A. (1995) op cit., p. 127.

was in a 'garrison state' for most of the time during this period and riding out the political turmoil in the face of Communist expansion in the neighbouring regions.

The return of Hong Kong to British sovereignty after the War was in fact not a smooth process and this British crown colony was almost handed back to the Nationalist China with little opposition from the Foreign Office.¹² Nevertheless the Colonial Office stood firm on the issue of Hong Kong and objected strongly the giving up of this colony despite America's strong anti-imperialism attitude. The newly elected Labour government was backing the idea that "*...if Hong Kong was to be excluded from the general principle of restoring the pre-war situation, it could only be as part of a wider regional settlement which might also include Malaya, the Philippines and the Netherlands East Indies.*"¹³

The Foreign and Colonial Offices finally agreed in 1942 that Britain should regain her Dependencies after the war but should develop their resources, ensure their security and prepare them for eventual self-government, in accordance with the principles of the Atlantic Charter.¹⁴ As General MacArthur tends to favour the British to re-occupy Hong Kong and on the understanding that this would not preclude future negotiation on Hong Kong's status, President Truman reluctantly concurred.¹⁵

¹² See Porter, A.N., & Stockwell, A.J. (1987) *British Imperial Policy and Decolonization, 1938-64*, London: Macmillan Press.

¹³ *Ibid.*, pp. 327-8.

¹⁴ After their meeting off Newfoundland in August 1941, Churchill and Roosevelt issued a joint statement (The Atlantic Charter) affirming their solidarity of purpose and nobility of principle in the face of Axis propaganda. Article 3 of the Atlantic Charter reads, "[t]hird, they respect the right of all people to choose the form of government under which they will live; and they wish to see the sovereign rights and self-government restored to those who have been forcibly deprived of them." (*Ibid.*, pp. 101-2)

¹⁵ See Porter, A.N., & Stockwell, A.J. (1987) *op cit.*

On 30 August 1945, Rear Admiral Harcourt on board HMS Swiftsure, together with the Allied fleet, entered Hong Kong marking the British Government's official re-occupation of the colony.¹⁶ After three years and eight months' internment in Stanley Camp, the surviving Hong Kong civil servants and the police personnel were no longer capable of carrying out the enormous duties in putting Hong Kong back into order after the Japanese surrender. A Proclamation by the Hong Kong Government on 1 September 1945 established a Military Administration and on the next day, Admiral Harcourt was appointed as the Commander-in-Chief and Head of the Military Administration in Hong Kong and Gimson, the Colonial Secretary of Hong Kong being interned by the Japanese during the War, temporarily assumed the role of Lieutenant Governor.¹⁷ On 7 September 1945, Brigadier D. M. MacDougall, the appointed Chief Civil Affairs Officer, landed in Hong Kong with a team of nine officers from the Civil Affairs Service. Full powers of administration were delegated to them from 4 December 1945 onwards.¹⁸

The return of Governor Sir Mark Young in April 1946 marked the end of the Military Administration in Hong Kong. However the declining health condition of Sir Young resulting from the harsh conditions in northern China during his internment saw his retirement in May 1947 without being able to inject more input in the implementation of his 'Young Plan'.¹⁹

¹⁶ See Spurr, R. (1995) *Excellency: The Governors of Hong Kong*. Hong Kong: FormAsia Books.

¹⁷ C.O. 129/595

¹⁸ Ibid.

¹⁹ Whilst a Japanese prisoner in northern China, Sir Young had planned for the future of Hong Kong and in line with the post War colonial policy, he put forth his 'Young Plan' on 26 August 1946 by promising the people of Hong Kong fuller and more responsible share in their management of their own affairs. The Plan centred on the formation of a Municipal Council with the proposed electoral procedures much more liberal than any electoral system in the Colony's history.

Sir Young's successor, Sir Alexander Grantham, was not a keen supporter of the 'Young Plan' though he did express his willingness to consider further proposal for constitutional reform. He understood fully the post-War view of London was to prepare the colonies for independence but Hong Kong would never be granted such a status.²⁰

Though Britain and China were allies during the War, yet the return of Hong Kong to Britain after the War and for Rear Admiral Harcourt to receive the Instrument of Surrender from the Japanese on behalf of the Allies in the China War Theatre had upset China. On the diplomatic front, there were however still good co-operation between Britain and China.²¹

Some local Chinese in Hong Kong also shared this nationalist sentiment and would like to see Hong Kong's return to Chinese rule. In the first Chinese National Day after the War, i.e., 10 October 1945, there had been written representations from some locals calling the Chinese Government to take back Hong Kong. The Nationalist Government however had no such plan in mind but had strong desire to exercise its jurisdiction over the Walled City (九龍城寨) in Kowloon, which was historically claimed by the Chinese to be the piece of land excluded from the '1898 Lease' of 99 years covering the northern part of Kowloon and the New Territories.²²

During a clearance operation inside the Walled City on 12 January 1948, the police had to use firearm in breaking up the resistance inside the Walled City who felt that this place belonged to the Chinese and not the British. The police action had resulted

²⁰ See Spurr, R. (1995) op cit.

²¹ See '1st Quarterly Review of the Military Administration' in C.O. 129/595.

²² Ibid.

in strong protest across China and the burning down of the British Consulate, the British Information Services, the Swire and the Jardine House in Canton (廣東) on 16th January 1948.²³

With the intensification of the civil war in China, the Nationalist Government was no longer having the time and energy in addressing the Hong Kong issue. On the other hand, both London and Hong Kong realised another threat would be coming from the north with the sweeping victory of the Communist forcing the Nationalist armies on a rapid retreat. The British Government was determined not to repeat the defeat of the colony in 1941 and started to build-up troops in Hong Kong with numbers over 30,000. Furthermore, the Hong Kong Defence Force Ordinance was enacted on 23 December 1949 to enable the Hong Kong Government to raise a volunteer force of 6,000 strong. All members of the garrison were briefed on the importance of defending Hong Kong by emphasising on Hong Kong's link with Britain and that *"...the presence of a British Government and of British troops in Hong Kong is alone responsible for the city's present flourishing condition and its maintenance as a free port which in fact constitutes its value as a commercial centre."*²⁴

On another occasion, the British were even more frank in stating their determination in preventing a possible Communist take-over by saying *"We can only repeat that we do not intend to be talked or jostled out of the Colony. We would resist a military assault and we have no intention of withdrawing."*²⁵

²³ See 梁炳華：《城寨與中英外交》，麒麟書業有限公司，1995年初版。

²⁴ See Bruce, P. (1991) *Second to None: The Story of the Hong Kong Volunteers*. Hong Kong: Oxford University Press, p. 286.

²⁵ *Ibid.*

The Communist taking over of Mainland China was completed in 1949 with the Nationalists retreated to Taiwan and 1 October was declared the National Day for the People's Republic of China. British Government weighted the situation and came to the conclusion that keeping Beijing at a distance politically and economically by non recognition and embargo as suggested by the American would damage the established trade relationship with China and the position of Hong Kong.²⁶ On 6 January 1950, the British Government, in line with her habitual doctrine of recognizing governments in de facto control;²⁷ extended diplomatic recognition to the People's Republic of China and the border between Hong Kong and China remained intact.

Britain was unable to establish an agreeable relationship with China despite Britain was one of the first Western Governments giving recognition to the new Chinese regime. British business interest in China suffered greatly under the new Chinese Government. There were also occasional armed incidents involving the military units of China and the Royal Navy in Hong Kong water. A more serious incident happened in September 1953 resulted in the death of seven Royal Navy crew members with another five wounded.²⁸

To further safeguard Hong Kong's position by showing signs of co-operation with China, the Foreign Office tried to persuade the Americans to allow the new Chinese Government to take over the seat at the United Nation's Security Council which was being occupied by the Nationalist Government of China. The Foreign Office's argument was:

²⁶ See Lehmkuhl, U. (2000) 'Difficult Challenges: the Far East' in Kaiser, W. & Staerck, G. (eds.), *British Foreign Policy, 1955-64 - Contracting Options*. Hampshire: Macmillan Press, pp. 257-279.

²⁷ See Frankel, J. (1975) *British Foreign Policy 1945-1973*. London: Oxford University Press.

²⁸ See *Colonial Reports Hong Kong 1953*.

“...our weak position in Hong Kong gives us a very real motive for wanting to see the People’s Government inside the United Nations. A new government like the Peking Government is likely to attach great importance to its position as the one permanent Asian member of the Council, and it seems to me a good deal less likely that they will allow themselves to be used by the Russians for a direct or indirect attack on Hong Kong if by so doing they endanger their position in the United Nations. Such a situation is unlikely to arise this year but might well arise fairly quickly once they have settled with Formosa.”²⁹

It eventually took more than four and half years before a normal diplomatic relationship was established with the formal exchange of Charges d’affaires between Britain and China.³⁰ One of the reasons for this strained diplomatic relationship between the two countries was the Korean War.

On 27 June 1950 the United Nations Security Council passed a resolution sponsored by America calling member nations to *“render such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security to the area.”*³¹ Britain was one of the Western nations backing the Americans by sending its military forces to Korea under the banner of the United Nations.

During the course of the Korean War, General MacArthur’s offensive in late November 1950 resulted in the full scale Chinese intervention and the Chinese Liberation Army were sent to Korea as volunteers to assist the North Koreans in battle. Britain differed in opinion with America on the counter measures as remarked by

²⁹ See Bullen, R. & Pelly, M.E., (eds.), (1987) *Documents on British Policy Overseas, Series II, Volume II*. London: Her Majesty’s Stationery Office.

³⁰ Ibid.

³¹ See Hastings, M. (1987) *The Korean War*. London: Macmillan, p. 56.

Oliver Franks, the British Ambassador to America at the time, saying “*British trade with China through Hong Kong made Britain reluctant to introduce economic measures against China, not only for economic reasons, but also out of fear of provoking a Chinese assault on Hong Kong.*”³²

With the Communist military success in January 1951, China rejected the United Nations’ cease fire resolution and as a result, the United Nation on 1 February 1951 declares China to be engaged in aggression and imposed embargo on strategic goods to China. On top of this, the United States further imposed a total embargo on trade of any kind with China. Hong Kong, being the British colony, had to conform to these embargoes which caused dearly to the colony’s economy. The situation only improved with the stabilization of the Korean Peninsula situation after the signing of the Armistice at Panmunjom on 27 July 1953.³³

Korea was not the only country in this region being affected by the Communist aggression. In South East Asia, a State of Emergency had been declared in Malaya since June 1948 and British troops were involved in the counter insurgency campaign against the Communist backed Malayan Races’ Liberation Army until the granting of independency to Malaya in 1957 and the eventual lifting of the State of Emergency in 1960. In Indo-China, the Communist backed Viet Ming had broken the French in the jungle and in possession of the North Vietnam. The Communist infiltration however did not stopped and soon South Vietnam was faced with the Communist backed Viet Cong and American Special Forces were deployed to Vietnam from 1957 acting as military advisors in support of the South Vietnamese Government. Elsewhere in

³² See Boyle, P.G. (1990) ‘Oliver Franks and the Washington Embassy’ in Zametica, J., (ed.), *British Officials and British Foreign Policy*. Leicester: Leicester University Press, pp. 202-3.

³³ See Hastings, M. (1987) op cit.

South East Asia, countries like Indonesia and Thailand were also feeling the Communist threat and took preventive or counter measures in preventing the Communist topping their governments.³⁴

Hong Kong, being situated next to China, was naturally becoming the most important outpost for the British and the Americans in this region. The Americans was doing everything they could to hold the tide of Chinese Communist backed revolutionary movement spreading further across South East Asia and topping other pro-Western governments.

Prior to the Second World War, there were only a Consul-General, two Consuls and two Vice-Consuls in Hong Kong's American Consulate. In 1953, there were 115 personnel in total, including four Consuls and twenty Vice-Consuls, with roles certainly more than looking after the affairs of only 1,262 American in Hong Kong, including themselves.³⁵ Whitehall also felt that its military presence in the Far East was essential to contain Communist China in the region and to protect Hong Kong against internal subversion.³⁶ The Permanent Under-Secretary at the Foreign Office Sir Ivone Kirkpatrick told the Americans on 15 January 1957 that "*In the fight against communism Britain was the only country which was really making a substantial contribution whether in Germany or in the Middle East or in Hong Kong...*"³⁷

³⁴ See Tarling, N. (1998) *Britain, Southeast Asia and the onset of the Cold War*. Cambridge: Cambridge University Press.

³⁵ See Welsh, F. (1997) *A History of Hong Kong*. London: HarperCollins Publishers, p. 447.

³⁶ See Dockrill, S. (2002) *Britain's retreat from East of Suez – The Choice between Europe and the World*. Hampshire: Palgrave Macmillan, p. 34.

³⁷ See Pickering, J. (1998) *Britain's Withdrawal from East of Suez - The Politics of Retrenchment*. Hampshire: Macmillan Press, p. 101.

Welsh (1997) suggested that with the Malayan independence in 1957, British strategic interests in the Far East were almost at an end. The British garrison in Hong Kong was reduced to a level compatible only with the maintenance of internal security. In 1958, the closure of the naval dockyard in Hong Kong which used to be the major naval base for the Royal Navy fleets in the Far East further demonstrated Britain's reduction of its military presence in the region.³⁸

The Colonial Office was disbanded in 1966 in view of the diminishing British overseas interests following the de-colonisation process. A new position of Secretary of State for Commonwealth Affairs was created on 1 August 1966 taking over the responsibility of Hong Kong affairs on top of its designated roles. From 1968 onwards the post became the Secretary of State for Foreign and Commonwealth Affairs within the Foreign and Commonwealth Office.

8.3 The Social, Cultural and Economic Scene in Hong Kong

The Military Administration set up in Hong Kong on 1 September 1945 was facing enormous difficulties in putting Hong Kong back into order in view of the shortage of supply and experienced personnel as a result of the Second World War. The norm of the day was:

“Whatever was most urgent was done in the easiest and quickest way. Whatever could be postponed was forgotten for the time. Only in a very few undertakings was it found possible to look further ahead than a few months and no question of long term policy was ever considered unless an irrevocable decision could no longer be postponed.”³⁹

³⁸ See Welsh, F. (1997) op cit.

³⁹ See *Colonial Reports Hong Kong 1947*.

From Admiral Harcourt's account, Hong Kong did not suffer too much damage whilst under the Japanese occupation except the city was being greatly neglected by the occupation force and left in filth. The real damage in Hong Kong was caused by large scale looting where every empty building "*had been completely gutted*" with all removable items being taken away and floorboards torn up for firewood.⁴⁰ Food was of particular concern for the 600,000 survivors of the war and they were all appeared to be suffering from malnutrition.⁴¹

Apart from rebuilding the city, the Military Administration had to restore a good working relationship with China, who felt betrayed by the Allied in not returning Hong Kong to the motherland and allowing the British to re-occupy the colony. Only through high level visits and substantive assistance offered by the Military Administration in Hong Kong that this strained relationship with China was restored gradually.⁴²

Civil Government was restored on 1 May 1946 with the return of the Governor Sir Mark Young. His immediate problem was to find enough food in particular rice to feed the population. Apart from the 'Young Plan' proposed as mentioned earlier, Governor Young also determined to reduce the racial impact of the colonial administration in Hong Kong by repealing the Peak District (Residence) Ordinance 1918,⁴³ The Acting Attorney General explained during a Legislative Council meeting

⁴⁰ See Harcourt, C. (1947) 'The Military Administration of Hong Kong', *Journal of the Royal Central Asian Society*, 34 (1), pp. 7-18.

⁴¹ Ibid.

⁴² Ibid. Royal Navy minesweepers were sent to help clearing mines in the waterways of Canton and safe passage was given to four armies of Chinese soldiers to board transports in Hong Kong heading for North China.

⁴³ The 1918 Ordinance stipulates that no person should reside in the Peak area of Hong Kong Island without the permission of the Governor-in-Council, thus in essence banning any Chinese to reside in the Peak before the War.

in 1946 that “*the repeal of this measure would tend or might tend to encourage rebuilding and reconstruction [at the Peak] and that it would be out of harmony with the spirit of the times to retain it.*” This had drawn the prompt response from one of the Chinese Council member commenting that “*This Ordinance has been a source of resentment to the Chinese ever since its enactment and I feel sure the repeal of this Ordinance, which is being effected by this Bill, will give universal satisfaction to the Chinese...*”⁴⁴

Prior to the War, the Colonial Government in Hong Kong relied heavily on cadet officers and British recruited officials in running the affairs in Hong Kong. During the period of Military Administration immediately after the War, the remaining British ex-internees in Hong Kong were simply not sufficient nor fit enough to take up the managerial roles. As stated by Admiral Harcourt in his report, “*In those difficult days the administration relied on its Chinese and Portuguese assistants. Without them the personnel position would have been untenable, and it can hardly be denied that they thereby established credentials which it would be hard for any future Government to ignore.*”⁴⁵ This observation was noted by Governor Young who during the budget debate for 1946-1947, stated that:

“*The policy of Government is to ensure that every opportunity shall be given to locally recruited persons not only to enter but to rise in the service of the public up to the highest posts and to fulfil the highest responsibilities of which they are capable or can be assisted to become capable.*”⁴⁶

⁴⁴ See *Hong Kong Hansard*, 25 July 1946, p. 78.

⁴⁵ See *Colonial Reports Hong Kong 1947*, p. 6.

⁴⁶ *Ibid.*

In the Secretary of State for the Colonies' memorandum dated 17 July 1950 to the Cabinet concerning employment of native born administrators in the higher grades of Colonial civil servants, the situation of Hong Kong on this subject was mentioned:

“In Hong Kong there are 395 higher civil service posts, of which 51 are at present held by local officers, mostly in the educational, medical, nursing and other professional services. There is one local-born member of the Administrative Service.

In correspondence concerning a Bill to authorise the appointment of a Public Service Commission the Governor expressed the opinion that for some years to come the majority of Hong Kong vacancies in the higher posts would have to be filled from the United Kingdom; he emphasised in particular the difficulty of finding good local material for the Administrative Service and the Police.”⁴⁷

The 1946 Annual Report on Hong Kong records that the last population census held in Hong Kong before the War was in 1931 and the population was recorded to be 864,117. Immediately before the War in 1941, an unofficial census was conducted by the Air Raid Precautions wardens and the population of Hong Kong was estimated to be 1,600,000 of whom 150,000 were fishermen living on board fishing junks. During the Japanese occupation of the colony from 1941 to 1945, the population was dropped to less than 750,000 as a result of the forced repatriation of Chinese to the mainland by the Japanese as well as shortage of food in the colony. Soon after the War, there were great influxes of population from China to Hong Kong. By the end of 1946, the population of Hong Kong had returned to the pre-War level of 1.6 million, with around 10,000 being non-Chinese.⁴⁸

⁴⁷ See Porter, A.N., & Stockwell, A.J. (1987) op cit., p. 352.

⁴⁸ See *Colonial Reports Hong Kong 1946*.

The vast increase of population in Hong Kong after the War was the direct result of the political turmoil happening north of the border. During the Sino-Japanese conflict and the Second World War, the civil war in China had stopped briefly when both the Nationalists and Communist armies joint hand to fight the Japanese. With Japan's surrender, fighting between the two Chinese armies resumed and intensified with the Communist gaining the upper hand with its forces sweeping across China. Refugees in hundreds of thousands fled south and a large number of them eventually arrived and settled in Hong Kong causing the great population influx. Population at June 1947 was estimated to be 1.75 million and quickly shot up to 2.32 million at end of March 1950.⁴⁹ Hong Kong's population continued to grow year by year and reached an estimate of 2.68 million in 1957.⁵⁰

Arising from this chaotic situation, a quota system was introduced in 1950 to balance the number of people entering and leaving Hong Kong. This was the first time the Government exercise border control as Chinese were allowed free movement to and from Hong Kong prior to this arrangement.⁵¹ Nonetheless, Hong Kong had already experienced great hardship in coping with this population explosion particularly in the area of housing, employment, education and social facilities. On the other hand, the influx of refugees also brought along successful and experienced manufacturers from China whom had managed to move their assets to Hong Kong before the Communist taking-over. With the ample supply of cheap refugee labour force in Hong Kong and the decline of the shipping related business owing to the embargo, the setting up of

⁴⁹ See *Annual Report of the Commissioner of Prisons, Hong Kong for the period 1st April, 1947 – 31st March, 1948*, Prisons Department, Hong Kong Government and *Annual Report of the Commissioner of Prisons, Hong Kong for the period 1st April, 1950 – 31st March, 1951*, Prisons Department, Hong Kong Government.

⁵⁰ See *Hong Kong Annual Report 1957*.

⁵¹ *Ibid.*

light manufacturing industries in the 1950s had laid the foundation of economic success in Hong Kong for the years to come.

Hong Kong's economy continued to boom and in the 1960s was among the twelve top exporters in the world. With a population of less than four million, the colony's export exceeded that of Mainland China, who had a population 180 times more than Hong Kong.⁵²

One of the characteristics of the local Chinese population was their apathy towards politics in Hong Kong. Many had only thought of Hong Kong was a place of transit for them to ride out the political storms in the near by region. The Hong Kong Government was fully aware of this and designed its management approach accordingly as stated by Governor Grantham:

“Hong Kong is...different in that the Chinese population is politically apathetic. Provided that the government maintains law and order, does not tax them too much and ensures they get justice in the courts, they are content to leave the business of government to the professionals.”⁵³

8.4 Major Law and Order Issues in Hong Kong

Crimes in Hong Kong

The War-torn Hong Kong rehabilitated gradually but crime rate was very high during the immediate years after the War. Crime rates for the second half of 1946 showed an increase of 25% above the pre-War normal and 9,908 cases were recorded from 1

⁵² See Spurr, R. (1995) op cit., p. 219.

⁵³ Ibid, p. 204.

May to 3 December 1946. There were 522 cases of robbery and 20 cases of assault with intent to rob. 73 cases of possession or use of firearms were recorded and two police officers were killed and eight wounded during some of these firearm related encounters.

During the period from May to December 1946, the magistrate courts in Hong Kong had dealt with 36,248 prosecutions (both crime and non-crime cases), convicted 29,284 cases with 4,856 adults sentenced to imprisonment (1,067 sentenced for default of fine payment) and 250 juveniles sentenced to reformatory or to approved institutions.⁵⁴ In 1957, there were 18,992 serious offences and 225,045 cases being reported with a total of 171,602 persons convicted.⁵⁵

However one must look carefully at the overall crime figures in Hong Kong of which a large number of arrested and prosecuted cases were of minor or even non crime nature such as hawking and obstruction which were the direct results of the poor economy at the time. It was also reported by the Hong Kong Government that a large number of these trivial offences were committed by the new immigrants “...*who had arrived from China only a few weeks or even days, before committing the offences for which they were charged.*”⁵⁶

Throughout the first century after the War, Hong Kong was as a whole showing relatively low violent crime rates. In the year 1956 – 1957, the overall violent crime

⁵⁴ See Hong Kong Government, (1948) *Annual Report on Hong Kong for the year 1947*. Hong Kong: Hong Kong Government.

⁵⁵ See Hong Kong Government, (1959) *Colonial Reports Hong Kong 1958*. London: HMSO.

⁵⁶ See Hong Kong Government, (1952) *Colonial Reports Hong Kong 1951*, London: HMSO.

rates in Hong Kong was only 24.8 per 100,000 population, which included murder, manslaughter, rape, indecent assault, robbery, armed robbery and serious assault.⁵⁷

Broadhurst (2000) argued that these low crime rates might have been the unintended result of the Hong Kong Government's focus on public order by police during the colonial 'garrison phase' rather than on crime suppression.⁵⁸ Sinclair (1983) however suggested that extensive corruption practices were common amongst the Police and other Government departments in Hong Kong since the 1950. Some of the illicit profits made by the Police as well as their linkage with the organized criminals were used to maintain peace in the streets, coped with the public's lack of confidence in reporting crime to the Police were contributing factors for Hong Kong's low crime-rates during this period of time.⁵⁹

One of the example on the organized crime and triad happened in Hong Kong was the issue of the Walled City in Kowloon. Further to the Wall City incident of 1948 mentioned earlier when the British authority over the Walled City was challenged by the Chinese Government, the Hong Kong Government had basically ceased its law enforcement action inside this tidy spot turning this place the haven for criminals and triads with vice and drug dens operated openly. It was only after a murder trial in the 1959 that the court affirmed Hong Kong Government's authority over the Walled City. Major police actions were launched within the Walled City and ended up with an influx of over 1,500 prisoners to Stanley Prison since August 1959.⁶⁰

⁵⁷ See Traver, H. & Gaylord, M. (1991) op cit., p. 13.

⁵⁸ See Broadhurst, R. (2000) *Crime Trends in Hong Kong*. Hong Kong: University of Hong Kong, p. 15, retrieved on 25 February 2007, <http://www.crime.hku.hk/rb-crimetrends.htm>

⁵⁹ See Sinclair, K. (1983) *Asia's Finest: An Illustrated Account of the Royal Hong Kong Police*. Hong Kong: Unicorn.

⁶⁰ Commissioner of Prisons, *Annual Departmental Report, 1959-60*, p. 1.

The 1956, 1966 and 1967 Riots

This strong stance of the government in maintaining social stability by force had in fact been a long standing government policy in Hong Kong. The last thing the Hong Kong Government would like to see were the Communist and Nationals factions using Hong Kong as the arena for direct confrontation. As early as in 1949, the Hong Kong Government was quite explicit to state that:

“...it is inevitable that some of their political quarrels have been fought out again in the Colony. The policy of the Hong Kong Government has been to keep Hong Kong free of external political faction. Certain action has therefore been taken against those elements which have sought to make the Colony an arena for propagating their own political ideas.”⁶¹

There were a number of politically instigated public order incidents occurred during this period such as the ‘Comfort Mission’ incident started by the Communists in 1952 and the Kowloon (九龍) and the Tsuen Wan (荃灣) Riot started by the Nationalists and the triads instigated riot in 1956. During the latter incident, over 6,000 people were arrested.⁶²

The 1956 riot started when a housing estate officer ordered the Nationalist flags to be removed from the estate during the national day of the Republic of China on 10 October 1956. Mobs, many with triad backgrounds, used this as an excuse to start a disturbance and looted shops and property owned by the known Communists groups in Kowloon. This soon broke into a full scale riot which lasted for three days. Over a thousand policemen were deployed on the streets of Shum Shui Po (深水埗) where the heat of the riot took place. The British Garrison was called to back-up the police

⁶¹ See Hong Kong Government, (1950) *Colonial Reports Hong Kong 1949*. London: HMSO, p. 3.

⁶² See Lee, H.C. (1995) *Society and Policing in Hong Kong – A Study of the 1956 Riot*, *MSc in Criminology Dissertation*. Hong Kong: University of Hong Kong.

and three battalions of soldiers were deployed to the streets with fixed bayonets to restore order.

The three day riot resulted in the lost of at least 62 lives, including the Swiss Consul's wife who was burnt to death when the car she was travelling was being set on fire in Kowloon. Over a thousand people were brought before the court and it was the first curfew to be imposed in the history of Hong Kong.⁶³ In the subsequent trials, four were convicted of murder and sentenced to death. Special arrangement had to be made by the Prisons Department for the reception of over 1,300 prisoners involved in the riots, with most of the curfew breakers sentenced to less than six weeks.⁶⁴ The Emergency (Detention Orders) Regulations passed in the same year was part of the aftermath of the Kowloon Riot. The Regulation had provided the Government an efficient and speedy tool for the detention and deportation of triad society leaders and other unwelcomed characters in the colony.⁶⁵

Differed from the 1956 riot which was politically instigated, the 1966 riot was purely resulted from social discontent sparked off by the five cents fare hike of the Star Ferry Company. The company provided cheap and regular shuttle ferry service between the island of Hong Kong and the Kowloon peninsula in Victoria harbour. The arrest of the lone protestor lead to mobs of youth marched to the police stations and later ended in a nightly riot along the Nathan Road in Kowloon on 6 and 7 April 1966.

⁶³ See Sinclair, K., and Ng, K C. (1997) op cit., pp. 39-42.

⁶⁴ Commissioner of Prisons, *Annual Departmental Report 1956-57*, p. 2.

⁶⁵ The Colonial Office did express concern over the Hong Kong government's authority to apply the use of Emergency Regulations which bypassed the legislative process. This exceptional authority was however deemed necessary in the case of Hong Kong as this provision would remove the Hong Kong Government's need for declaring a general state of emergency in the Colony which would be seen as an act of provocation by the Chinese Government. See Tsang, S. (Ed.) (1996) *A Documentary History of Hong Kong-Government and Politics*. Hong Kong: Hong Kong University Press, pp. 53-56.

Troops were called out by the Governor to support the police and Hong Kong was again placed on curfew during the evenings. More than 425 people were arrested with 334 charged. Throughout the two nights of street battle with the mobs, the police *“fired 772 gas shells, 62 wooden projectiles and 62 rounds of carbine or revolver fire.”*⁶⁶ The subsequent investigation on the riot had identified a number of local issues including the public’s hostility to the police. Negative feelings were directed at the police for their ineffective action against illegal gambling, narcotics and corruption.⁶⁷

The riot that followed in 1967 was entirely different in nature. China in 1967 was embroiled in the ‘Cultural Revolution’ (文化大革命) with groups of ‘Red Guard’ (紅衛兵) moving around the country attempting to remove or to destroy the heritage relics, putting public figures as well as officials and scholars on public trial and fighting with rival groups of red guards. In 1966, the Red Guards had overrun Macau with the Portuguese Governor and his officials publicly humiliated. The British Consul General was made to stand in the sun for eight hours. The administration of Macau had since being controlled by Mainland China.⁶⁸

Noting the success of the neighbouring city of Macau, the leftist factions in Hong Kong were looking for opportunities to take on their fight with the Hong Kong Government. An industrial dispute by workers of a plastic flower factory in San Po Kong, (新蒲崗) Kowloon in May 1967 had provided the flash point for the local Communists. Rioting spread over three days before the police could restore order.

⁶⁶ See Sinclair, K., and Ng, K C. (1997) op cit., pp. 43-44.

⁶⁷ Ibid.

⁶⁸ See Spurr, R. (1995) op cit., p. 219.

As the demonstrations and protest were endorsed by the Chinese Government, the Chinese State and local media fared up the sentiments of those sympathising the Communist ideology in Hong Kong. Marches were made to the Governor House with anti-colonial posts pasted to the wall of the buildings. The demonstration soon ended with clashes with the police and riots broke out from place to place and the police were targeted for the attack. In July 1967, the police border post at Sha Tau Kok, (沙頭角) next to the Chinese border was machine-gunned by militiaman across the border resulted in the death of five policemen with another eleven wounded.⁶⁹

The Communists changed to a tactic of instilling terror in Hong Kong by planting fake and real bombs in the streets and buildings of Hong Kong. It was estimated some 4,000 bombs were exploded during the months of the riot. More than 50 lives had been lost under various circumstances. This terror tactic however caused the public to turn away from the leftist as a large portion of the local residents had fled from the Communist regime in Mainland China since 1949 and during the period of Cultural Revolution. This allowed the Government the opportunities to win the heart and minds of the general public in Hong Kong.

Armed with the public support, the Government took decisive actions to rid the Communist strong holds with the close support of the British Armed Forces. Many suspects were arrested and eventually over 1,700 rioters were sentenced to imprisonment, with 214 being females.⁷⁰ China also withheld its hostility towards Hong Kong and the colony gradually returned to normal from November 1967 onwards.

⁶⁹ Ibid., p. 220.

⁷⁰ Ibid., p. 221. Also see Commissioner of Prisons, *Annual Departmental Report, 1967-68*, p. 10.

The 1967 riot was indeed the watershed for the political reform of the Hong Kong Government. The Government had learnt its lessons from the riots and initiated plans to open up the government and to become less bureaucratic in order to gain the trust and support of the locals. As Scott (1989) suggested:

*“[O]nce the need for change was accepted, the colonial state underwent a remarkably rapid and successful transformation. The new order stressed ‘consultation’ as the basis of its legitimacy, a more direct relationship with the population as its immediate goal and new and improved social policies as its future objectives.”*⁷¹

8.5 Penal Policies in Hong Kong (1945-1969)

As suggested in the earlier sections of this Chapter, the Hong Kong Government had to adopt extraordinary measures during the immediate years after the War to maintain public order in a city undergoing the process of recovery and rebuilding. The tense political conditions with China and the poor social and economic conditions in the colony during this time had generated a large under-class; many of them were arrested and imprisoned for non-criminal offences. Corporal punishment and deportation orders were handed down en masse as quick fixes for deterrence of crime and offenders in Hong Kong.

During these early post-War years, the general attitude of the Government and the public in Hong Kong were in favour of hard lined approaches towards crime. On the treatment of the prisoners in Hong Kong, the Chief Justice in 1958 stated that:

⁷¹ Scott, I. (1989) *Political Change and the Crisis of Legitimacy in Hong Kong*. Hong Kong: Oxford University Press, p. 82.

*“So far as the Colony is concerned, I do not think a prisoner’s (life) should be made to compare too favourably with that in the country from which such a large proportion of our gangsters came, or at any rate that the disparity between them should not be further increased.”*⁷²

This remark was given after the Prisons Department had initiated the enhancement of the prisoner’s diet in Hong Kong in 1952. Food provided to the prisoners after the War were of minimum quantity and standard. This was owing to the fact that the basis of the dietary scale for prisoners was worked out at a time when food supply were short and most of the prisoners remained idle inside the prison with little or no employment owing to the lack of materials, tools, staff and orders.⁷³

When debating the improvement of the prisoners’ ration in the Executive Council on 19 August 1952, the prison Medical Officer revealed that half of the long term prisoners were losing weight during their sentences.⁷⁴

*“...the present diet scale, though not frankly inimical to the prisoners’ health and such as to cause constitutional or malnutritional harm to prisoners, is just barely enough to maintain their health....”*⁷⁵

The Executive Council approved the new dietary scale for the prisoners during the meeting on the grounds that all able-bodied prisoners were now usefully employed with many of them on hard manual labour or in productive industries. Cost of prison food was increase from \$1,500,000 to \$1,730,000 per year as a result.⁷⁶

⁷² See Hong Kong Government, *Colonial Reports Hong Kong 1958*.

⁷³ See HKRS 146-13-1.

⁷⁴ Ibid. See Executive Council paper 7053/45 in Encl. 1.

⁷⁵ Ibid.

⁷⁶ Ibid.

The Prisons Department, charged with the reception of all persons sentenced to custody by the courts, was in the main following the penal reform moves in Britain in the management of the prison. From what had been described so far, the Prisons Department in Hong Kong was closely linked with the Colonial Office as well as the HM Prison Service in the United Kingdom. The senior prison officials were picked by the Colonial Office with colonial prison services backgrounds like Shillingford and Burdett or in the case of Norman, experience with the Borstal system in England. The Hong Kong Prisons Department was in fact modelled after the HM Prison Service not only by adoption of the similar outlook as in the case of uniform, departmental insignia and the operational procedures but more importantly in the adoption of the Prison Rules in use by the HM Prison Service except those parts which were not applicable to Hong Kong.

It was therefore very natural for the Prisons Department in Hong Kong to follow the British practice under the Criminal Justice Act 1948 in particular the removal of those obsolete penal concepts such as penal servitude, hard labour and the triple division of offenders. Apparently there was another reason for Hong Kong to adopt some of these changes, which was to simplify the administrative work of the Prisons Department. This was important at the time immediately after the War when clerical support was in short supply and the penal record systems had yet to be rebuilt.

Apart from drawing the British experience in proposing new penal programmes, there were occasions when the Colonial Office had to be consulted for expert opinion on the application of laws regarding the management of the prisons in Hong Kong. An example could be found in the interpretation of the length of sentence for those sentenced to life imprisonment. Though there were initial hesitation and divided

views as to whether the Secretary of State for the Colonies should be consulted and eventually the views from the Secretary of State were sought.⁷⁷

The only Commissioner of Prisons during the period from 1945 to 1969 with pre-War link with the Hong Kong prison service was Commissioner Norman. He worked in the Borstal system as housemaster in the North Sea Camp in England before joining the Prisons Department in Hong Kong in 1941. He had taken part in the Battle of Hong Kong and handed over the Stanley Prison to the Japanese upon Hong Kong's surrender. He became an internee in Stanley for three years and eight months and had experienced being locked-up inside the cells of Stanley Prison during the period of internment. Norman took up the post of the Commissioner upon the death of Burdett in February 1953 after a brief illness and became the longest serving Commissioner of Prisons after the War from 1953 to 1968. He was instrumental in guiding Hong Kong's penal services along the British welfarism model at the time.⁷⁸

Despite the removal of corporal punishment in Britain under the Criminal Justice Act 1948, corporal punishment was never removed from the statutes in Hong Kong. Against the public's hard lined approach and attitude towards offenders, the penal elites in Hong Kong were able to stand fast with more liberal and reformatory measures adopted during this period. Corporal punishment was no longer awarded to prisoners in breach of prison discipline in the fiscal year 1952/53.⁷⁹

⁷⁷ Ibid, see Minutes 18. The policy on length of sentence for lifer was endorsed by the Executive Council on 6 May 1952.

⁷⁸ See Norman, J. (undated) op cit.

⁷⁹ See Commissioner of Prisons, *Annual Departmental Report, 1952-53*.

Apart from corporal punishment, there were other penal policies and programmes such as the detention centre programme, the preventive detention and corrective trainings under the Criminal Justice Act 1948 in the United Kingdom not being followed. One possible explanation was the lack of resources for Hong Kong to launch these programmes after the War. The continued use of corporal punishment in Hong Kong after the War might be the other reason for not taking up the detention centre programme from Britain.⁸⁰ Commissioner Norman did suggest another explanation that the first Commissioner of Prisons after the War, Shillingford was not keen in prison reform because of his personal reasons.

“Shillingford was Commissioner of Prisons, Jamaica....He had reached pensionable age in Jamaica, where salaries and conditions of service were not to be compared with Hong Kong. He came to Hong Kong with the prospect of a considerable better pension if he did a couple of tours there. I do not think he had any further interest in us...No use now to press for better conditions for the staff, better food for the prisoners, for a much-needed expansion programme. For four years the department stagnated.”⁸¹

Regarding preventive detention and corrective trainings, apparently there were different views towards these two programmes within the United Kingdom and thus the Colonial Office was not keen to press such to be implemented in the colonies.

Norman had commented that:

“A memorandum was received from the Secretary of State, whose Advisory Committee was not in favour of the introduction of legislation for Preventive Detention and Corrective Training unless a real need existed and adequate facilities were available. A survey of 517 long-term ordinary prisoners at Stanley showed that for Preventive Detention, as defined by the Criminal Justice Act, two prisoners would be eligible, and for

⁸⁰ See Ryan, M. (2003) *Penal Policy and Political Culture in England and Wales*. Winchester: Waterside Press, p. 14. He suggested the Detention Centre programme was the replacement for the corporal punishment under the Criminal Justice Act 1948.

⁸¹ Commissioner of Prisons, *Annual Departmental Report, 1952-5*, p. 47.

*Corrective Training one prisoner would be eligible. There is clearly no need for such legislation at present, nor are separate institutions available to implement it. However, the pattern may change in years to come, and the situation will be kept under review.”*⁸²

Interestingly, the detention centre programme and the preventive detention plan were eventually brought back to Hong Kong in the 1970s and these will be elaborated in more detail in the next Chapter.

Another aspect advocated in the Criminal Justice Act 1948 was the introduction of after-care and welfare services to the prisoners. In Hong Kong there was no organized after-care services for offenders after the War despite England had been introducing after-care to prisoners upon discharge by probation officers as early as in 1908 under the Prevention of Crime Act.⁸³ The main reason given by the authorities in Hong Kong was that majority of the prisoners were from mainland China and that they would be deported from Hong Kong on completion of their sentences. For those local prisoners, they would “return to their “families,” the family being the unit in the Chinese social structure comparable with the African tribe. Thus the need for an elaborate aftercare system is not pressing.”⁸⁴ In the believe that the imprisonment of Chinese prisoners did not carry the same stigma as the Europeans,⁸⁵ the government felt no urgency in establishing after-care services within the government and the service was left to be operated by the non-government social welfare agencies.

⁸² See Commissioner of Prisons, *Annual Departmental Reports, 1955-56*, para. 49.

⁸³ See Robinson, G. & Crow, I. (2009) *Offender Rehabilitation – Theory, Research and Practice*. London: Sage, p. 24.

⁸⁴ See *Prisons Department Annual Departmental Report 1949/50*, para.39.

⁸⁵ See *Prisons Department Annual Departmental Report 1950/51*, para.90.

A six-month pilot after-care scheme was launched at Stanley Prison and Lai Chi Kok Female Prison starting from November, 1951. The services were arranged by the 'Discharged Prisoners' Aid Sub-committee' of the Hong Kong Council of Social Services with caseworkers sent from the Salvation Army to interview and to give assistance to all non-deportable prisoners. The Hong Kong Family Welfare Society was also offering after-care services for the female prisoners at Lai Chi Kok prison.⁸⁶

The pilot after-care scheme continued after the six month period. In 1955 after the enactment of the Deportation of Aliens Ordinance reducing the number of prisoners liable to be deported at the end of their sentences, the government saw that there were greater roles in after-care and that it should be the government's responsibility to take up this function. One post of After-care Officer for the Training Centre was approved during the year by a new grade of staff, the Social Welfare Officer grade was created.⁸⁷

Additional posts of After-care Officers were created with the pilot treatment centre for addicted prisoners at Tai Lam. In the year 1965-66, this new grade of social welfare officer was merged with the prison officer grade for better promotion prospect and to have their salary lifted to that of the prison officers. The word prison was dropped for the grade of 'Prison Officer' to become 'Officer', thus allowing the Prisons Department to have more flexibility in the deployment of officers who were deemed to be suitable to perform after-care duties without having to enter a separate grade.⁸⁸ It was further suggested by the Commissioner that:

⁸⁶ See *Prisons Department Annual Departmental Report 1951/52*, p.25.

⁸⁷ See *Prisons Department Annual Departmental Report 1954/55*.

⁸⁸ Commissioner of Prisons, *Prisons Department Annual Departmental Report 1965-66*.

“The expansion of the after-care service depends upon the number of additional posts which can be approved each year. It remains the policy of the Department that after-care, and welfare generally, are not separate issues which do not concern the majority of the staff, but are vital to the whole system of rehabilitation. The changes which have been made are in line with this policy.”⁸⁹

Prisoner welfare, in particular adult prisoners, was always believed to be the duty of the head of the penal establishment in Hong Kong whom through their daily contact during interviews and inspections should be able to address issues and problems of the prisoners. *“In Stanley the second Superintendent and in other institutions the officer in charge act in the capacity of Welfare Officer dealing daily with prisoners requests and queries.”⁹⁰* Designated Prison Welfare Officers with social work trainings were not introduced to the Hong Kong penal system until 1975.

It is fair to comment that the Prisons Department was adapting a more progressing approach towards treatment of prisoners, especially young offenders, during Commissioner Norman’s time. The ‘Training Centre’ programme was established since 1953 basing on the Borstal model in Britain. The first open prison, HM Prison Chimawan was opened on 3 December 1956 using the former buildings of a home for the handicapped to house short-sentence prisoners with no added security features added to the site.

⁸⁹ Ibid., p. 11.

⁹⁰ See *Prisons Department Annual Departmental Report 1951/52*.

Other measures including the provision of open visits at Stanley and Lai Chi Kok Women Prison⁹¹ and the granting of home leave up to five days at a time for prisoners in their last six-months of a sentence of four years and over as mentioned earlier.

The question on the retention of lunatics in Colonial prisons had been a subject of concern for the Advisory Committees of the Colonial Office even before the Second World War. It was only in 1959 the Prisons Department's proposed plan for building a mental hospital was approved by the Government. The proposed prison for prisoners with mental disorder was to be modelled after the 'Broadmoor Prison' in England with accommodation for 120 patients. The post of one Assistant Chief Officer and one Principal Officer were to be recruited from the United Kingdom with relevant qualifications. A Psychiatric Observation Unit was opened at Victoria Prison on 10 July 1961 with accommodation for 29 patients. Patients were receiving insulin and shock therapy treatment under the supervision of the part-time Government Psychiatrist.⁹²

For general nursing duties, the Prisons Department organized in-service hospital warder course since 1961. The syllabus used was drawn from that in use for hospital training courses for prison officers in England and Wales. An end of the course qualifying examination, approved by Hong Kong's Medical and Health Department, would determine whether the warder is quality to his/her future promotion to the grade of Hospital Officer.⁹³

⁹¹ A table was provided in the prison garden for the open visit where the prisoner and the visitor were sitting across the table. Previously prisoners had to shout tot their visitors through double wire mesh with a Warder patrolling in between.

⁹² See Commissioner of Prisons, *Annual Departmental Report, 1959-60, 60-61 and 61-62.*

⁹³ See Commissioner of Prisons, *Annual Departmental Report, 1961-62, pp. 2-3.*

The Commissioner himself was appointed by the Government as member of a Working Party set up to advise on the adequacy of the law in relation to crimes of violence committed by young persons in November 1964. Recommendations covered in the Report, published in January 1965, suggested current legal provision adequate in dealing with the youth crime issues, the Training Centre programme successful, corporal punishment for young offender be abolished, supervision of persons under 21 by Probation rather than Police Officers.

Penal elites in Hong Kong also paid close attention on the United Kingdom's prison issues especially on discipline and control of prisoners in penal establishments. When Lord Mountbatten's report came out in 1966 recommending the overhaul of the security state of the British prisons, Commissioner Norman commented that:

“It is interesting to compare these developments with the recommendations of Lord MOUNTBATTEN's report on the Prison Department in the United Kingdom. His main recommendations-that there should be one truly secure prison capable of detaining security risks, that apart from these many more people could go to open prisons and that greater attention should be paid to staff welfare or training-have in fact been the main planks of our policy for many years.”⁹⁴

There were also major penal policy initiatives in Hong Kong such as the special treatment programme provided to prisoners with drug habits leading to the setting up of the first half-way house operated by the Prisons Department in 1968 and the enactment of the Drug Addiction Treatment Centre Ordinance in 1969 which was unique to other parts of the British Empire. Penal elites in Hong Kong believed Hong Kong's approach in dealing with drug addiction was the solution in addressing a major social and penal problem at the time. Reports and reviews on the Hong Kong

⁹⁴ See Commissioner of Prisons, *Prisons Department Annual Departmental Report 1966-67*, p.1

experience were shared⁹⁵ and had attracted international attention. The birth of this special drug addiction treatment programme in Hong Kong and the details of its operation together with evaluation on its success are covered in Chapter Four.

8.6 Conclusion

Owing to the post-War political situation in the Far East, the Hong Kong Government's prime concern was to maintain security and stability in the colony. This was a difficult task complicated with the influx of refugees from Mainland China when the Communist took over the country in 1949. Public order became a prime concern of the Government and draconian penal measures were adopted with recorded imprisonment rate as a result of mass incarceration. Corporal punishments were handed down to both adults and juveniles as quick fixes and deportation was used to clear the undesirables who had no right of abode in the colony. Prison overcrowding was inevitable and the government had to resort to extraordinary measures in releasing prisoners early in order to keep the prison figures down.

Crime rates at the time, though appeared low in current standards, might not be reflecting the true picture of the law and order situation in Hong Kong at the time. Law enforcement was primarily concerning with internal security issues and the problem of wide spread corruption within the society including the law-enforcement community had facilitated the emergence of the under world order colluding with the law enforcers in regulating the drug, gambling, extortion and vice activities in Hong

⁹⁵ See Norman, J. (1971) *How to Cure Drug Addicts*. London: Tom Stacy; Garner, T. (undated) *An Authoritative Approach to the Treatment of Drug Dependence*. Hong Kong: Prisons Department.

Kong. A high number of court cases were in fact relating to non-crime cases committed by people trying to support their livelihood.

Major public order incidents happened in Hong Kong during this period including several large scale riots which occurred in 1956, 1966 and 1967. The last riot, in particular, changed the Hong Kong Government's approach in the administration of Hong Kong.

The Advisory Committees of the Colonial Office during this time was playing an important role in encouraging the colonies to follow the British penal models. Government officials in Hong Kong were nevertheless trying to keep a distance from London's influence by limiting the information that London could obtain from Hong Kong. Social and cultural reasons were used to defend the more draconian approach in dealing with crime and offenders in Hong Kong.

The decolonization process in other parts of the Empire also sees the reduction of direct influences from London in the operation of the prison service in Hong Kong. Interestingly, penal policies adopted by the penal elites in Hong Kong at the time were closely adhered to Britain's welfare approach towards person under custody, in particular young offenders.

It is noted that most of the local penal policy initiatives were from the Prisons Department. Commissioner Norman was particularly instrumental in introducing a more reformatory regime in the prisons as well as setting up the Training Centre programme in Hong Kong and ignored the detention centre experiments in Britain. It is argued that this was heavily affected by his background and experience at North

Sea Camp in England and his War time experience as a prisoner. The long period of service in the Department as the Commissioner allowed him to follow through his reformatory plans meeting his desires for change. It was because of this reason that the prison services during this period had become more liberal and reformatory in nature amidst the public's punitive attitude towards crime and criminals. Norman's initiatives happened to match the progressive penal reform move of the time in England and gained the endorsement from London as evidenced by his being honoured with the award of the CBE upon his retirement.

The Prisons Department of Hong Kong maintained very close connection with its counterpart in England at operational level. Not only Prison Rules were adopted in the colony, new European Prison Officers as well as specialists were recruited and trained the same job skills as that of the Prison Officers of Her Majesty's Prison Service. This knowledge transfer process ensured the framework of the British penal system was being carried out in Hong Kong during this period.

With the Colonial Office gone and the practice of employing European prison officers from home discontinued, Hong Kong began to venture more on its own penal development in the 1970s which will be discussed in the next Chapter.

Chapter Nine

Balancing Security and Disciplinary Welfare (1970-1981)

9.1 Introduction

This Chapter summarises changes on Hong Kong's penal policies during the period from 1970 to 1981. Penal policy initiatives in England, the Colonial influences as well as local penal initiatives are studied to find out their respective roles in the formulation of penal policies in Hong Kong.

In England, a number of statutes on penal policy were developed during the period from 1970 to 1981. The Criminal Justice Act 1972 empowered the courts to make Compensation Orders, introduced the Deferment of Sentence and the Community Service Orders. In this Act, the obligation to suspend sentences of imprisonment of not more than six month was also repealed.¹

Most legislation covering the sentencing powers of the courts was consolidated in the Powers of Criminal Courts Act 1973. The Criminal Law Act 1977 had included a provision allowing a court to suspend a sentence of imprisonment in part, though this provision was not brought into force until 1982.²

In this Chapter, it is elaborated that Hong Kong during this period had only taken up two of the earlier initiatives from England's Criminal Justice Act 1948, the detention

¹ Thomas, D.A. (1995) 'Sentencing Reform: England and Wales' in Clarkson, C. & Morgan, R., (Eds.) *The Politics of Sentencing Reform*. Oxford: Clarendon Press, p. 127.

² Ibid.

centre programme and the preventive detention system. These two British penal practices were not being incorporated in Hong Kong until the 1970s. These were launched in Hong Kong not by pressure from England but resurrected through local initiative as counter-measures against the rising crimes in Hong Kong.

Hong Kong society was facing a surge of crimes in the beginning of the 1970s in particular violent crimes committed by young offenders. The public's attention was on law and order with crime prevention and crime reduction high on Government's agenda. Penal policies in Hong Kong were accordingly shifted from a more liberal and reformatory approach to that of disciplinary welfare approach with emphasis on deterrence and security over offender rehabilitation.

The birth of the detention centre in Hong Kong in 1972 and a detailed evaluation on its programme has already been covered in Chapter Three and would not be repeated. The issue on preventive detention as a penal policy for Hong Kong however required more detailed examination as this Ordinance was never put into operation in Hong Kong after its enactment.

Another piece of penal policy inherited from the British during this period was the suspended sentence. Suspended sentence was introduced in England and Wales under the Criminal Justice Act 1967 and was enacted in Hong Kong in 1971. The legislation of the suspended sentence, which was considered a 'soft option' at the time when Hong Kong was taking strong measures to fight against rising crime, requires in-depth discussion in this Chapter.

The period from 1970 to 1981 could also be described as a time of transformation on

Hong Kong Prisons Department's penal philosophies and the resultant quantum jump on its organization structure. The 1973 Stanley Prison riot was the watershed for the Prisons Department's subsequent development. The penal philosophy and system were shifted from reformation in the 1960s to discipline and control with emphasis on penal security. Additional posts for prison staff were created and filled by better quality personnel in executing the new penal initiatives. The aftermath of this riot had deep and far-reaching implications on the subsequent development of the penal system and the organisational structure of the Prisons Department in Hong Kong.

9.2 Hong Kong Society in the 1970s

The political situation in the South East Asia region had stabilised after President Nixon of the United States visited China in February 1972. The successful meeting marked the beginning of the Sino-American rapprochement leading to the subsequent withdrawal of the American troops from Vietnam in 1973.³ The fall of the South Vietnam Government in 1975 however generated a mass exodus of Vietnamese seeking political refuge. Hong Kong was one of their favourite destinations because of its close geographical location to Vietnam and being the only British colony in the region; allowing the refugees better chances to be re-settled to Western countries in future.

As described in Chapter Two, the law enforcement community in Hong Kong, in particular the Prisons Department, was severely affected not only with the task in the

³ See MacMillan, M. (2007) *Nixon and Mao: The Week that Changed the World*. New York: Random House.

management of the Vietnamese detainees but had to maintain order in the camps in view of the rising tensions between the detainees and the Hong Kong Government as well as amongst detainees of different ethnical background.

Within the British Empire, the de-colonisation process was taking rapid pace in the 1960s as mentioned in Chapter Seven. The United Nations was actively involved in promoting the independence of these colonial territories through ‘*The Declaration on the Granting of Independence to Colonial Countries and Peoples*’ adopted by the United Nations General Assembly on 14 December 1960. Article 5 of the *Declaration* states that:

“[I]mmediate steps shall be taken, in United Nations Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories.”⁴

Hong Kong was however treated differently from this UN Declaration mainly because of opposition from Mainland China. In 1972, The Chinese Government wrote to the United Nations expressing the view that Hong Kong and Macao were, and always had been, part of Chinese territory. Accordingly these two places should be removed from the United Nation’s list of colonial territories covered by the ‘*Declaration on the Granting of Independence to Colonial Countries and Peoples*’. The Chinese Government would resolve the territorial issue when the time was ripe. According to Keay (1997):

“*The Chinese letter had been duly noted by the UN, Hong Kong had been removed from the UN’s list of colonies and the British in due course*

⁴ ‘*The Declaration on the Granting of Independence to Colonial Countries and Peoples, New York, 14 December 1960*’. <http://untreaty.un.org/cod/avl/ha/dicc/dicc.html>. Accessed on 20 January 2012.

obligingly began to refer to the place as 'the Territory of Hong Kong' rather than 'the Colony of Hong Kong'."⁵

Mainland China had gradually opened up to the West with the normalization of the relationship with America. After the death of Chairman Mao Zedong (毛澤東) in 1976 and the arrest of the 'Gang of Four' (四人幫) in the subsequent year, Deng Xiaoping (鄧小平) won the power struggle in China and began to launch his economic reforms in China and Hong Kong benefitted greatly out of this change of political climate.

Hong Kong in the 1970s had recovered from the 1966 and 1967 riots and had benefitted economically from the stabilized situation in the Mainland through trade and industry. During Governor MacLehose's visit to Mainland China in March 1979, he had taken the opportunity to raise the question on the future of Hong Kong. The need for bringing up this question was owing to the fact that the 99 year lease of the New Territories from China would expire in 1997. Upon his return from Beijing, the message he presented to the people of Hong Kong suggested he had secured the Chinese leader's blessing on the future of Hong Kong with status quo to be remained after 1997.⁶

The Governor was in fact receiving a very clear message from Deng Xiaoping that China was determined to regain the sovereignty of Hong Kong. This message was not revealed in Hong Kong but secretly related to London due to its extreme sensitivity to the Hong Kong community. The British Government took no risk from this news by

⁵ Keay, J. (1997) *Last Post – The End of Empire in the Far East*. London: John Murray, p. 363.

⁶ See Spurr, R. (1995) *Excellency: The Governors of Hong Kong*. Hong Kong: FormAsia Books.

instigating preventive measures leading to the subsequent enactment of the British Nationality Act in 1981. This amendment on British nationality changed the status of the Hong Kong residents from ‘British Citizens’ to ‘British Overseas Citizens’ cancelling their rights of abode in the United Kingdom should China took back Hong Kong.⁷

Locally, the Hong Kong Government readjusted its ways of administration of Hong Kong after the 1967 riot. Jack Cater, a former deputy Colonial Secretary and Special Assistant to the Governor during the 1967 riot was quoted by Cheung (2009):

*“The government learned the lesson from the riots and introduced a series of reforms. Certainly we took the opportunity of producing a new system and reform...before 1967, there was no real channel of contact between the government and the people. After the riots, we set up district offices to improve communication with the people. I don’t think there would have been any reform at all.”*⁸

The Hong Kong Government also agreed that social and economic development were needed to improve the condition of living in Hong Kong, in particular housing programme including urban renewal plans with the target of providing quality housing for 1.8 million people in ten years. Other plans included the provision of social security schemes for the needed and action against the wide spread corruption practice in the colony, both within and outside the civil service.⁹

These plans were materialised with the arrival of the new Governor of Hong Kong,

⁷ Ibid.

⁸ Cheung, K.W. (2009) *Hong Kong’s Watershed: The 1967 Riots*. Hong Kong: Hong Kong University Press, p. 139.

⁹ Ibid, p. 140.

Sir Murray MacLehose in 1971. Governor MacLehose, later Lord, was the first Governor for Hong Kong not selected from the Colonial Service but from the Foreign Office since 1904.¹⁰ Under his governorship, six year free primary education was introduced in 1972; and in 1978, nine year compulsory education was launched for the children in Hong Kong. A ten-year housing programme was commenced in 1973 to addressing the housing problem in Hong Kong with extensive public housing building projects planned. A public assistance scheme was also launch during this period to provide a social security network for the disadvantaged. These social reforms enabled the local residents to feel that *“the governance of the colonial administration had become relatively reasonable and was one of the most efficient governments in Asia even though it remained a colonial regime.”*¹¹

There were further evidences on the gradual social reforms in Hong Kong where the local Chinese were given more recognition in the 1970s, such as allowing the legislators in using Chinese in the Legislative Council debates in 1970. The Government also improved the representativeness of the Executive Council and the Legislative Council in 1976, the two power source in Hong Kong, by having equal number of fifteen official and unofficial members each in the Legislative Council. For the Executive Council, the unofficial member exceeds the official members by eight against seven.¹² Nevertheless, all unofficial members of both Councils were being appointed by the Governor as party politics were yet to be developed in Hong Kong in the 1970s.

Hong Kong’s population had reached 5.1 million as reflected in the 1981 population

¹⁰ See Spurr, R. (1995) op cit., p. 225.

¹¹ Cheung, K.W. (2009) op cit., p. 140.

¹² See 元邦建：《香港史畧》，中流出版社有限公司，1995年初版第 338-342 頁。

census. Work on improving the infrastructure of Hong Kong began to take shape during the 1970s. The first Cross-Harbour Tunnel linking up Hong Kong island and the Kowloon peninsula opened in 1972 allowing free flow of land traffic in the urban areas of Hong Kong. The new railway station at Hung Hom was completed in November 1975 and the opening of the Lion Rock Tunnel facilitated vehicle traffic from Kowloon to the New Territories and Mainland China.¹³

Public transportation in Hong Kong was further enhanced with the opening of the Mass Transit Railway in 1979. The year 1980 also witnessed the completion of the bridge linking the small fishermen's island of Ap Lai Chau to Aberdeen availing lands for developing housing projects. The High Island Reservoir was also completed and began operation during the year. Together with the completed water supply link from Mainland China to Hong Kong, the residents in Hong Kong could have a guaranteed fresh water supply.¹⁴

Economically, Hong Kong had gone through a period of ups and downs during the 1970s and in particular the effects of the world oil crisis and stock crash in 1973. The local stock exchange index, the Hang Seng Index, plunged from 1,774 points to 400 in April 1973 and the inflation rate for 1973 was 27% mainly due to impacts from the oil crisis. The economy of Hong Kong recovered gradually with the opening up of the China market in 1978 and the growth in the local property market. The revenue income for the Government in 1977-78 had exceeded ten billion Hong Kong dollars with a record surplus of HK\$1.2 billion. Import and export trading in 1980 had exceeded HK\$200 billion.¹⁵

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

With an impressive economic growth during the late 1970s, the Government of Hong Kong was able to inject more resources on social reforms and in the maintenance of law and order. The senior officials in Hong Kong could act with more autonomy as both Britain and China showed less interest to the Hong Kong affairs after the 1966-7 disturbances. Scott (1989) suggested that:

“The increased autonomy of the Hong Kong government, stemming from both internal and external sources and backed by the imposing figure of the Governor, enabled the senior civil service to take measures, mainly in the field of social policy expenditure, which would probably have been unthinkable to the predecessors but which fitted in well with the spirit of the new Hong Kong.”¹⁶

9.3 Crime Wave in the 1970s

Governor Murray MacLehose took over Hong Kong at the time when the colony was facing a serious crime wave. In his first address to the Legislative Council on 18 October 1972, he stated that:

“I have also spent much time and thought on the two prerequisites of the very continuance of our community – on the one hand the prosperity that has provided everything that has been done or which ever will be done and, on the other, public safety. Obviously prosperity and social progress are of little value if unaccompanied by the ease of mind that only personal safety can produce.”¹⁷

On Hong Kong’s law and order situation, Governor MacLehose further stated that:

¹⁶ Scott, I. (1989) *Political Change and the Crisis of Legitimacy in Hong Kong*. Hong Kong: Oxford University Press, p. 129-30.

¹⁷ *Hong Kong Hansard*, 18 October 1972, p. 3.

*“I am well aware of honourable Members’ concern at the growth of crime, and that their concern is well founded. The facts are that over the last four years key crime has increased by 40% and violent crime – that is to say murder, manslaughter, serious assaults and robbery – by 135%, and that the proportion of young people committing these crimes has steadily increased.”*¹⁸

A number of Legislative Councillors responded and supported the Governor’s concern on crime. The old Chinese dictum of *“Use heavy penalty when and where the social order is threatened”* was put forward suggesting deterrence is needed to combat crimes in the society of Hong Kong.¹⁹

The Attorney General echoed the Legislators’ concerns. He agreed that the growth of violent crime in the past few years had caused concern for the safety and welfare of the residents of Hong Kong and feared that the effectiveness of the Government in maintaining law and order would be compromised. He further commented that one should not try to compare the relatively low crime rate in Hong Kong with other major cities of the world but should look at the rate of increase in crime as:

*“The number of reported homicides in 1972 will be more than double the 1969 figure. The number of reported robberies this year will probably be three times the 1969 level.”*²⁰

The Attorney General also mentioned the community’s perception on the cause of this increased crime wave to the shortage of police and the inadequate punishment of offenders by the courts. He cited court figures showing the number of offenders on

¹⁸ Ibid.

¹⁹ Motions by Mr. Ann, *Hong Kong Hansard*, 2 November 1972, p. 105.

²⁰ Motions by the Attorney General, Ibid, 15 November 1972, p. 158.

robbery charges sentenced to more than twelve months imprisonment by the Supreme Court and District Courts had increased from 59% in 1971 to 69% in 1972.²¹ He further stated that:

“In the magistracies, custodial sentences were imposed on 80 per cent of such offenders during the 1972 quarter, as oppose to 39 per cent in the 1970 quarter, and the average sentence of imprisonment imposed by magistrates for robberies rose from 10 to 13 months.”²²

To combat the rising crime trend, the Attorney General further elaborated that Hong Kong needed to shift its penal policy on the treatment of offenders from reformative to deterrence as:

“During the past generation we in Hong Kong have prided ourselves upon an increasingly liberal and humane attitude towards the treatment of offenders. More and more emphasis has been put upon the needs and the rehabilitation of the offender, rather than upon the legitimate protection of the interests of the community as a whole. Generally speaking, our chief aim has been to re-educate the criminal, in the hope that he will re-enter society and make a useful contribution to it, rather than to punish him and to deter others from behaving in a similar manner. It is a matter for regret that the time has now come for us to take a harsher view.”²³

On the issue of deterrence punishment, the Attorney General acknowledged the Government would consider the introduction of compulsory corporal punishment for specific offences as measures to stop violent crimes. The other measures the Government had in mind was to give the Magistrates and the District Courts more power, in particular the latter with the maximum length of imprisonment increased to

²¹ Ibid, p. 159.

²² Ibid.

²³ Ibid, p. 160.

seven years and to remove jury trial at the District Court for efficiency. The preventive detention system was also proposed to be introduced in Hong Kong, a system which had been used in the United Kingdom for nearly twenty years after the War. He explained the proposal as:

“It provided that a person who had been convicted of a serious offence on three or more previous occasions, and had undergone at least two custodial sentences, could be ordered to be detained as a habitual criminal for between 5 and 14 years, if the court considered this to be expedient for the protection of the public.”²⁴

9.4 The Independent Commission Against Corruption (ICAC)

The Independent Commission Against Corruption, commonly known as the ICAC, was Hong Kong’s trump card in combating corrupted practices both within and outside the public organizations. The ICAC was formed under the order of Governor MacLehose in 1973 when corruption was a common practice in Hong Kong. The flash point leading to the formation of the ICAC was on a high profile corruption case against a senior police officer. Police Superintendent Peter Godber fled Hong Kong in 1973 when accused of corruption with unexplainable wealth six times more than his 21 years salary with the Royal Hong Kong Police Force.²⁵

The ICAC, staffed mostly by former British police personnel at its inception stage, was given extensive powers to investigate corruption cases in Hong Kong. During the 1970s, action against police corruption was on high priority of the ICAC in view of

²⁴ Ibid, p. 162.

²⁵ See Spurr, R. (1995) op cit.

wide spread police corruption. The ICAC operations were extremely successful with police corruption syndicates broken up one after another and many corrupted policemen left the Force prematurely with their illicit gains.²⁶

By 1977, the ICAC operation against the police had reached a point that a large number of serving police felt that they were targeted. Some 3,000 off-duty police staged a protest in Hong Kong demanding an end to prosecutions on police corruption. The ICAC headquarters which was not far from the Police Headquarters was surrounded by the protesting police, glass entrance doors were smashed and some ICAC officers received minor injuries when trying to stop the police from storming into their office. The Governor of Hong Kong eventually backed down in fear of possible police mutiny and a partial amnesty on minor corruption cases happened before 1973 was announced to pacify the police force.²⁷

The ICAC however remained active in its anti-corruption work both within as well as outside the Hong Kong Government. It was fair to comment that Hong Kong had got rid of the corruption culture which had embedded in the society before the formation of the ICAC. Government departments were taking positive action to work with the ICAC in cleaning their corrupted elements as reflected in the following example by the Prisons Department:

“The department has wholeheartedly co-operated with the Independent Commission Against Corruption and other law enforcement agencies to combat the problem of corruption which, although comparatively minor, is nevertheless detrimental to the service. The degree of co-operation is

²⁶ A report released by the Royal Canadian Mounted Police of British Columbia, Canada in 1999 revealed that at least 44 ex-Hong Kong policemen, whilst being investigated by Hong Kong’s ICAC, settled with their families in Vancouver and Toronto during the 1970s. *Ming Pao News*, 21 May, 2010.

²⁷ See Spurr, R. (1995) op cit.

amplified by the various actions which have been taken by these agencies during the year. Also in the field of anti-corruption and with the co-operation of the Independent Commission Against Corruption, the department has produced a notice, suitably worded, which is displayed in all visiting areas in penal institutions. In addition, two pamphlets, suitably worded, are enclosed in the first letter sent out by every prisoner to his family or friend after admission. I can, therefore, record with certainty that every member of the department and every prisoner is fully aware of the degree of emphasis which the prison authorities apply to stamping out corruption and at which we have been most successful."²⁸

The setting up of the ICAC and the Government's determination to rid corruption had produced a healthy law enforcement and penal environment in Hong Kong. With corrupted prison staff removed and the triad elements within the prisoner population no longer in a position to exercise influence within penal institutions through bribe, prison discipline had greatly improved.

9.5 Penal Policy Initiatives in Hong Kong during the 1970s

Preventive Detention

Preventive detention was first set up in Britain under the Prevention of Crime Act of 1908 with the aim of removing the persistent offenders from the society. The preventive detention sentence was set up as a two-stage custodial sentence. The first stage consisted of the punishment part with the normal tariff for his current offence whilst the second part being the additional minimum five years sentence of preventive detention for the protection of the society. The length of the preventive detention

²⁸ Commissioner of Prisons, *Annual Departmental Reports, 1974-75*, p. 1.

depends on his criminal history and his risk to the society.²⁹

Conditions in the special preventive detention prison in England where prisoners served their second part of the sentence were supposed to be better than a normal prison. It was the philosophy of the politicians and administrators to use this extra period of imprisonment in “*graying habituals - “old lags”- whiling away their years in a secure bucolic setting as the fire of crime dwindled into embers.*”³⁰

The preventive detention had never been a popular sentencing option for the courts in England. Winston Churchill, whilst taken over the post as Home Secretary in 1910, commented that:

*“[L]est the institution of preventive detention should lead to a reversion to the ferocious sentences of the last generation. After all preventive detention is penal servitude in all essentials, but it soothes the conscience of judges and of the public and there is a very grave danger that the administration of the law should under softer names assume in fact a more severe character.”*³¹

As the preventive detention was losing its popularity In England, the number of prisoners receiving this sentence was small. The annual average number of prisoners sentenced to preventive detention in the 1920s was only 31.³² It was under the Criminal Justice Act 1948 that the preventive detention was being revived by spelling out a clearer definition on the scope of prisoners to be cover and the arrangements to be given to these prisoners during the period of detention.

²⁹ See McConville, S. (1995) ‘The Victorian Prison’ in Morris, N. & Rothman, J. (Eds.) *The Oxford History of the Prison*. Oxford: Oxford University Press, p. 156.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

Under Prison Rule 165 of 1950, prisoners under preventive detentions in England would be paid a higher rate for their work done and with avenue to spend their earning inside the prison or to purchase approved items from outside the prison. They were also allowed to keep their own garden allotment and to keep or sold their products from the allotments. They were also enjoying better privileges than other prisoners by having additional letters and visits, to attend hobby classes and having meal and recreation in association.³³

The experiment however failed to achieve the aim of separating the persistent offender on more serious offences from the society but ended up locking the group of prisoners who were “*pathetic repeat offenders, whose harm to society amounted only to annoyance. The sentence underwent various modifications, but the fundamental notion was so flawed that it petered out in the 1970s as an order that ensured compulsory postrelease supervision.*”³⁴

The preventive detention system developed in England under the Criminal Justice Act 1948 was never transported to Hong Kong. One of the reasons of this system not being transported to Hong Kong was probably due to the divided views between the Colonial Office and the Home Office on the effectiveness of prevention detention. The Commissioner of Prisons in Hong Kong commented in the 1955-56 Annual Department Report that:

“A memorandum was received from the Secretary of State, whose Advisory Committee was not in favour of the introduction of legislation for Preventive Detention and Corrective Training unless a real need existed and adequate facilities were available. A survey of 517 long-term

³³ Fox, L. (1952) *The English Prison and Borstal Systems*. London: Routledge & Kegan Paul Ltd., pp. 317-8.

³⁴ See McConville, S. (1995) *op cit.*, p.157.

ordinary prisoners at Stanley showed that for Preventive Detention, as defined by the Criminal Justice Act, two prisoners would be eligible, and for Corrective Training one prisoner would be eligible. There is clearly no need for such legislation at present, nor are separate institutions available to implement it. However, the pattern may change in years to come, and the situation will be kept under review."³⁵

The idea of preventive detention was not being mentioned until being brought up again in the Commissioner of Prison's Annual Report of 1963-64. The system was again considered not suitable for operation in Hong Kong on reasons that:

*"Preventive Detention on the United Kingdom pattern does not exist in Hong Kong nor, from Hong Kong's point of view, would there be any use in its introduction. Prisoners with very long sentences are grouped together within the security arrangements of Stanley."*³⁶

The Hong Kong Government however made a U-turn on this penal policy during 1972 when the crime rate was on the rise. During the debate on Governor MacLehose's first Address to the Legislative Council in 1972, the Attorney General said that the Government was considering the introduction of a system of preventive detention to Hong Kong with the object to remove habitual criminals for long periods from the society.³⁷ He further explained the proposal that:

*"It provided that a person who had been convicted of a serious offence on three or more previous occasions, and had undergone at least two custodial sentences, could be ordered to be detained as a habitual criminal for between 5 and 14 years, if the court considered this to be expedient for the protection of the public."*³⁸

³⁵ Commissioner of Prisons, *Annual Departmental Reports, 1955-56*, p. 12.

³⁶ Commissioner of Prisons, *Annual Departmental Reports, 1963-64*, p. 13.

³⁷ See *Hong Kong Hansard*, 15 November 1972, pp. 158-162

³⁸ *Ibid*, p. 162.

The Attorney General also explained to the Legislative Council members how preventive detention was being operated in England after the War and the type of offenders covered by this programme, i.e., person convicted of a serious crime on three or more previous occasions with at least two custodial sentences. The period of preventive detention passed down by courts in England could be from 5 to 14 years.³⁹

The Attorney General also acknowledged that the preventive detention system in England was not successful and was abolished since 1967. The main reason for its failure was blamed to the courts' reluctance to pass a sentence of imprisonment longer than the normal tariff of the offence convicted. He stressed that Hong Kong would learn from the English experience and would avoid similar failures. The proposed preventive detention system in Hong Kong would compose of two parts: part one consisted of a normal length of sentence to be passed for the offence convicted with part two being the period of preventive detention added by the court thereafter.⁴⁰

Not all quarters in Hong Kong accepted this proposal. The Bar Association in Hong Kong raised its concern on the usefulness of the proposed preventive detention in keeping the worst offenders from the society and argued that:

“This measure is unlikely to be used against the big-time criminal for whose serious crimes long terms of imprisonment are already available.

In practice, it will probably come to be used, as it was in England, against petty criminals and hopeless recidivists who are really social misfits and who in Hongkong include large numbers of drug addicts and petty thieves.

³⁹ Ibid.

⁴⁰ Ibid.

*This was the principal reason why it was abolished in 1967 in England after an experiment lasting only 19 years. These misfits are not the offenders who are causing the present wave of public concern.*⁴¹

The Bar Association's concern was duly noted when preventive detention was finally presented under the Criminal Procedure (Amendment) Bill 1973. The Bill stated clearly that it was not intended for persistent petty thief but for '*hardened criminals who were positive menace to society*'.⁴²

The Bill targeted offenders aged 25 years or over who were convicted of offence punishable by at least two years' imprisonment. These offenders would have at least three previous convictions since the age of 17 with offence punishable by at least two years' imprisonment. Two of these previous must be custodial sentences and his aggregate sentence of imprisonment would not be less than two years. Finally it was up to the Attorney General to make application to the court within thirty days after the supporting conviction for the preventive part of the sentence.⁴³

The length of the preventive sentence proposed was similar to that of the English practice, i.e., from 5 to 14 years. The operation of this system was suggested as:

"It will be necessary to make special arrangements for the reception of offenders of this kind. Since they are not being punished for any particular offence, but being removed from society for a long period because they are a menace to it, they need to be provided with more recreational facilities, better accommodation and food and less discipline than the ordinary prisoner. This bill will therefore not come into force until such

⁴¹ See *South China Morning Post*, 13 May 1973.

⁴² *Hong Kong Hansard*, 23 May 1973, pp. 816-7.

⁴³ *Ibid.*

time as the necessary arrangements have been made for the accommodation of this new class of prisoners.”⁴⁴

This Bill received general supports from the legislators and one even commented that “*Due to different social conditions here, it is however hoped that such a system, if handled with care and caution and used only against hardened criminals who are a positive menace to society, will be good for the preservation of law and order in Hong Kong.*”⁴⁵

The Bill became law on 20 June 1973 after the third reading as Criminal Procedure (Amendment) Ordinance 1973. Apparently the Prisons Department had prepared to put this Bill into action by setting up a ‘Preventive Detention Wing’ inside Stanley Prison to house the eligible prisoners. As reported in the Prisons Department’s Annual Report, the building work of this Wing was close to completion by October 1975.⁴⁶

However nothing further was heard on the preventive detention scheme either from the Government nor the Prisons Department and this legislation was never put into operation in Hong Kong since its enactment. There was no official explanation given on the reasons for not launching this enacted Preventive Detention Ordinance in Hong Kong.

To look into the reason why preventive detention was not being put into operation in Hong Kong, the comments made by the Special Committee on Crime and Punishment of the Bar Association in 1973 might give a clue as:

⁴⁴ Ibid, p. 817.

⁴⁵ Statement by Mr. Cheong-Leen, *Hong Kong Hansard*, 20 June 1973, p. 898.

⁴⁶ *Hong Kong Hansard*, 8 October 1975, p. 31.

*“The Attorney-General declared last November that the introduction of preventive detention would depend upon the availability of special facilities. The Committee sees no sign that they are available, or will be available for a long time to come.”*⁴⁷

This prediction by the Bar Association could very well be the reason why this Criminal Procedure (Amendment) Ordinance 1973 was not put into operation in Hong Kong. In 1975 the average daily penal population of Hong Kong was 8,467 against the certified accommodation of 6,503. In another words, prisons in Hong Kong were at the time 30% overcrowded.⁴⁸ With such high occupancy rate in the penal institutions, it would not be surprise for the Prisons Department to have no enthusiasm in setting aside accommodation to operate the preventive detention programme in Hong Kong and to provide special ‘privileged’ treatments for a small group of habitual offenders.

As nothing further was mentioned on preventive detention, the Criminal Procedure (Amendment) Ordinance 1973 with the enactment of preventive detention in Hong Kong was repealed on 31 May 2000 under the Statute Law (Miscellaneous Provisions) Ordinance 2000.⁴⁹ The only statement on preventive detention made by the Government to the Legislators during the Bills examination stage was that:

*“the Criminal Procedure (Amendment) Ordinance was enacted on 27 June 1973 but had not taken effect. The Administration proposed to repeal the Ordinance because the object of the Ordinance was to introduce preventive detention which was now an outdated concept.”*⁵⁰

⁴⁷ See *South China Sunday Post*, 13 May 1973.

⁴⁸ See Commissioner of Prisons, *Annual Departmental Reports 1975-76*.

⁴⁹ *Hong Kong Hansard*, 31 May 2000, p. 6913.

⁵⁰ Minutes of 3rd Meeting, Bills Committee on Statute Law (Miscellaneous Provisions) Bill 1999, 11 April 2000.

Suspended Sentence in Hong Kong

The suspended sentence introduced in England under Criminal Justice Act 1967 was enacted in Hong Kong in February 1971. The legislation of the suspended sentence was grouped under the Criminal Procedure (Amendment) Bill 1970 tabled at the Legislative Council in December 1970. The Bill covered a number of issues including: the question of bail; arrest by police without warrant; indictments; pleas and guilt; statement of evidence; admissions; aiders and abettors and the concealing of offences and the use of force. These proposed changes were along legislations enacted in England and Wales under the Criminal Law Act 1967 and the Criminal Justice Act 1967.

In the proposed Bill on suspended sentence for Hong Kong, it was stated clearly by the Acting Attorney General that the practice of suspending all sentence of imprisonment of less than six months in England would not be adopted in Hong Kong as:

*“This means that immediate short sentences of imprisonment have been abolished in England, a principle which this Government would not like to see adopted in Hong Kong at this time.”*⁵¹

The Government fully anticipated that this proposed legislation would give the public a wrong impression that the Government was introducing a ‘*weak method of dealing with offenders*’⁵² and thus given powers to the courts “*to impose such conditions as it thinks fit upon the offender.*”⁵³ Examples given included: to order the convicted person not to undertake certain kinds of work; not to attend specific places and not to

⁵¹ *Hong Kong Hansard*, 2 December 1970, p. 226.

⁵² *Ibid*, p. 227.

⁵³ *Ibid*, p. 226.

mix with undesirable characters.

The Government also stressed that the introduction of the suspended sentence in Hong Kong was to give the court an additional sentencing option. The proposed suspended sentence was emphasised not to be interpreted to be a soft option as “*suspended sentence of imprisonment will be awarded in many cases where, at present, a fine or a probation order is imposed.*”⁵⁴

Finally, the Government stated that the proposed suspended sentence would be an experiment with a set time span for evaluation:

*“Nevertheless, the Government recognizes that this is a controversial measure and that it is difficult to assess with any accuracy the extent to which it will assist us in the prevention of crime and in dealing with offenders. Consequently, section 109H provides that these parts of the bill which deal with suspended sentence will expire at the end of 1973, unless this Council appoints a later date by resolution. The moving of that resolution, if it is thought proper to take this course in three years time, will give honourable Members an opportunity to express their views on the success or otherwise of this experiment.”*⁵⁵

Legislators were in general not in favour of launching suspended sentence in Hong Kong in particular the debate of this Bill happened at the time when the increased crime trend began to worry the public. The Legislators were also unhappy on the Bill as it did not specify the type of offences that could spare immediate imprisonment. In response, it was recorded that:

⁵⁴ Ibid, p. 228.

⁵⁵ Ibid.

“The Government appreciates that it is not easy to persuade the public of this [suspended sentence] and that there is a widespread feeling among Members of this Council and among citizens generally that the increase in violent crime has been such that it would be unwise, at this juncture, for legislation to be passed which might appear to be advocating leniency towards offenders who resort to violence.”⁵⁶

With the Government putting up a list of crimes to be excluded from the ambit of the proposed suspended sentence, the Criminal Procedure (Amendment) Bill was passed on 24 February 1971. A new Section 109B was added to the Criminal Procedure Ordinance and introduced suspended sentences to the colony. In brief, a court when passing a sentence of imprisonment for a term of not more than two years, may suspend that sentence for not less than one and not more than three years.

Suspended sentence under the Criminal Procedure Ordinance was brought up for review on 12 December 1973 as promised when this Bill was proposed in 1971. It was reported that a total of 1,362 cases of suspended sentence were given by court since March 1971 when this sentence came into operation. In 252 of these cases, the offenders had committed further crimes and their suspended sentences were activated accordingly. This was considered to be a success though the trial period of this experiment was not long. The Attorney General reported that the Chief Justice as well as the Magistrates who had more frequent use of this sentence all supported the continuation of this sentencing option and thus recommended *“the provision for the suspension of prison sentences should continue in operation for a further three years.”⁵⁷* This was agreed by the Legislative Council on the same meeting.

⁵⁶ *Hong Kong Hansard*, 20 January, 1971, p. 355.

⁵⁷ *Hong Kong Hansard*, 12 December 1973, p. 260.

On 8 December 1976, the provision of suspended sentence was again brought up for review at the Legislative Council. On this occasion, it was reported by the Legislator that suspended sentence “*is an effective form of deterrent, particularly in the case of young offenders whose offences are of less serious nature and who have not yet become hardened criminals.*”⁵⁸ The Council agreed that suspended sentence be made a part of the permanent law during the meeting.

Partial suspended sentence as practiced in England under the Criminal Justice Act 1977 was never taken up in Hong Kong although it was being considered by the Government as late as in 1986.⁵⁹ The possible explanation for such was that “*the main objective of a suspended sentence [in Hong Kong] therefore remains to avoid sending the accused to prison at all.*”⁶⁰

The introduction of the suspended sentence was only able to slow down the growth of penal population for two years and the penal population surged again in 1974. Furthermore, the suspended sentence was never meant to be used as a general sentence but to be used on exceptional circumstances for the courts as an additional sentencing option for the suitable cases.⁶¹

Disciplinary Welfare and the Prisons Department

Penal policies in the 1970s were much more deterrent in nature than the 1950s and the

⁵⁸ *Hong Kong Hansard*, 8 December 1976.

⁵⁹ *Hong Kong Hansard*, 26 November 1986, p. 527.

⁶⁰ Cross, G. & Cheung, P. (2000) *Sentencing in Hong Kong*, 3rd Edition. Hong Kong: Butterworths Asia, p. 437.

⁶¹ *Ibid*, p. 434.

1960s. The Detention Centre Ordinance was introduced in Hong Kong in March 1972 transporting the English detention centre practice, enacted under the Criminal Justice Act 1948, to Hong Kong. Not only was the ‘short, sharp and shock’ concept was introduced to Hong Kong, the colony had quietly built into the detention centre system in Hong Kong the use of caning to punish detainees for breach of centre discipline.⁶²

In 1974, a radical change was made on the Training Centre programme when caning was introduced as one of the awards for inmates found in breach of the training centre regulations. This move was in total contradiction to what Commissioner Norman’s belief that corporal punishment should not be introduced to young offenders in Hong Kong. The training centres during his time were able to reform young offenders through character training through education and vocational training without the need of physical punishment. However Commissioner Norman had already retired in 1968 and his post was taken up by Mr. Pickett. In January 1972, Mr. Thomas Garner succeeded as Commissioner of Prisons in Hong Kong upon Mr. Pickett’s retirement.⁶³

Mr. Garner joined the Hong Kong prison services in 1947 after leaving the British Army the same year at the rank of Sergeant Major. Unlike his predecessors, Commissioner Garner had no HM Prison Service or Colonial Prison Service backgrounds. During his service with the Prisons Department, he had close involvement with the experimental drug addiction treatment centre programme at Tai Lam Prison before the programme was enacted into the Drug Addiction Treatment

⁶² The detention centre programme is separately discussed in Chapter Three of this thesis. The issue on caning for the detention centre detainees is also covered in Chapter Six under the Section on Corporal Punishment.

⁶³ See Sinclair, K. (1999) *Society’s Guardians: A History of Correctional Services in Hong Kong 1841-1999*. Hong Kong: Kelvin Sinclair Associates Ltd.

Centres Ordinance in 1969. Commissioner Garner was also responsible for proposing the detention centre programme to Hong Kong addressing the Government and the community's appeal for adopting tougher and more deterrent punishment for the young offenders.⁶⁴

Mr. Garner also had to face immediate challenges shortly after taken up the post as Commissioner of Prisons Department by facing the 1973 Stanley Prison riot. Through his skilful leadership, he had succeeded to address the recommendations made by the advisors from HM Prison Service by enhancing the physical security of the penal institutions as well as re-organized the Department. Furthermore through his strong leadership style, he was able to secure vast developments both in the expansion of penal institutions as well as the 276% increase in prison staff numbers during his ten years as Commissioner.⁶⁵

Another important change happened to the Prisons Department after the 1973 Stanley Prison Riot was the change in the chain of command within the Hong Kong Government. *“On Monday 1st October, 1973 Security Branch [of the Government Secretariat] assumed responsibility from Social Services Branch for prisons matter.”*⁶⁶ Furthermore a high level Fight Crime Committee was set up during the same year under the chairmanship of the Chief Secretary for Administration. Apart from providing advice and recommending measures to prevent and reduce crime, it also coordinates crime-fighting efforts and monitors their results.⁶⁷

⁶⁴ See Obituary of Tom Garner by Kelvin Sinclair, *South China Morning Post*, 7 September 2005.

⁶⁵ Calculated from Prisons Department Annual Report 1972/73 and Correctional Services Department Annual Report 1983. The overall increase in the civil service was 77.5% during the same period; see Scott, I. (1989) op cit., p. 139.

⁶⁶ Management Circular no. 10/73 titled: Colonial Secretariat – Nominated Secretaries dated 11 September 1973 in HKRS 41-2-1-56

⁶⁷ See *Hong Kong Year Book 1974*.

These deterrent penal policy measures taken by the Government apparently did not stop the rising crime trend. During the Governor's Address in the opening session of the Legislative Council in 1975, Governor MacLehose again stressed the government's commitment in combating violent crimes in Hong Kong. He placed close attention to the law and order situation in Hong Kong and noted that the workload of the Prisons Department had a 44% increase of penal population from 1973 -1975 as the result of the fight crime campaign.⁶⁸

Despite the Prisons Department's introduction of more deterrent approach on young offenders, the Senior Legislative Council Member Dr. Chung Sze Yuen was still thinking otherwise. When responding to the Governor's Address, Dr. Chung said that the locals in Hong Kong believed that the Government was "*not putting sufficient emphasis on the fear of punishment as an effective deterrent to violent crime.*"⁶⁹ He further stated that:

*"We often hear the following comments. The terms of imprisonment with certain exceptions are generally too lenient. There is almost a complete absence of corporal punishment. The material standard of living in the prisons is even better than the normal standard of living of many prison inmates if they were on the outside."*⁷⁰

Thus the less eligibility concept was again being raised by the Legislators. In response, the Secretary for Security stressed that the Prisons Service in Hong Kong had two main tasks; prisoners be kept under discipline in secure accommodation and to reduce recidivism through rehabilitation. Both tasks would require facilities which might be greater than individual members of the public might enjoy but were necessary for

⁶⁸ *Hong Kong Hansard*, 8 October 1975, p. 31.

⁶⁹ Motion by Dr Chung Sze Yuen, CBE, JP., *Hong Kong Hansard*, 22 October 1975, p. 71.

⁷⁰ *Ibid*, p. 72.

carrying out the tasks effectively.⁷¹

The Secretary also cited some interesting figures to back his argument. Regarding the size of the living accommodation for the prisoners, he commented that the newer penal institutions, including the detention centre, were having more spacious areas in accommodation than the older prison building such as the Victoria Remand Centre. Prisoners released from these newer facilities were noted to have a higher success rate than those from the older facilities, especially Stanley Prison where “*three out of four prisoners released in 1971-73 have returned to serve a further sentence.*”⁷²

As to the prison diets, the Secretary for Security accepted that the cost of the basic prison diet at HK\$6.29 per day was higher than the cheapest hospital diet of HK\$4.63. The design of the prison diet was being monitored by the Medical and Health Department with advices from the nutritionists. The fact that prisoners had to perform physical labour and prisoners could not receive supplementary food provision from visitors as in the case of patients in the public hospitals were taken into account in designing the prison diet.⁷³

The Secretary also pointed out that dietary punishment (rice and water, salt for Chinese prisoners and bread and water, salt for European prisoners) was used to enforce prison disciplines. The cost of the food for dietary punishment was only HK99 cents per day. He mentioned that “*in the last 21 months 600 prisoners in Stanley Prison were awarded some 3,000 days’ dietary punishment and 800 prisoners*

⁷¹ Motion by Secretary for Security, *Hong Kong Hansard*, 6 November 1975, pp. 209-10.

⁷² *Ibid.*

⁷³ *Ibid.*

in other institutions were awarded a total of 3,500 days.”⁷⁴

He concluded by saying that:

“I can assure honourable Members that the Commissioner of Prisons and his staff are alive to the necessity of ensuring that those sentenced to terms of imprisonment are properly supervised in a disciplined environment, work hard and are not provided with facilities above those which are the minimum essential to ensure, so far as possible, that on release they do not revert to their criminal tendencies.”⁷⁵

On the other hand, there were special programmes set up for the treatment and welfare of prisoners during this period. The purpose built psychiatric prison, the Siu Lam Psychiatric Centre (小欖精神病治療中心) was in operation on 27 November 1972. This Centre was design in line with the English model and senior prison officers with relevant psychiatric prison experience were specially recruited from the HM Prison Service to manage this psychiatric centre, providing much needed services for the criminal insane. The setting up of Siu Lam Psychiatric Centre in Hong Kong had also fulfilled London’s expectation for the colonial prisons to address the issue on lunatic prisoners.

In January 1975, Prisoner Welfare Officers posts were provided at adult prisons holding adult prisoners. Officers with social work or related backgrounds were assigned to take care of prisoner welfare matters and to act as links between the prisoners and their families. Another important function they had to perform was to monitor prisoners’ sentiments towards the institutional management. Counselling

⁷⁴ Ibid, p. 210.

⁷⁵ Ibid, pp. 210-11.

sessions were organized to facilitate prisoners' adjustment to the institutional regime and routine. The psychologist service as recommended by the UN Advisor, Dr. Robert Andry was formally launched in Hong Kong in July 1976 and Clinical Psychologists were recruited by the Prisons Department to provide professional psychological services to the prisoners.⁷⁶

With a highly disciplined penal environment aided by the introduction of welfare and psychological services to the prisoners, Commissioner Garner began his campaign in building up the image of the Prisons Department within the region. The Prisons Department of Hong Kong hosted the first 'Asian and Pacific Conference of Correctional Administrators' in February 1980. This Conference provided the forum for the correctional administrators and senior prison officials to look at common issues that affected the region. The Conference was a great success and became an annual event hosted between different countries within the region.⁷⁷

In 1981, the Government had embarked a comprehensive review of the prison legislations. Governor MacLehose in his 1981 Address to the Legislative Council stated that:

*"A comprehensive review of our prison legislation is in train. Proposals are being put to Executive Council for a number of amendments to the Prison rules to bring them in line with modern penal practice and a Bill to amend the Prisons Ordinance will be submitted to this Council during this session."*⁷⁸

⁷⁶ Dr Robert Andry later joined the Correctional Services Department as Assistant Commissioner (Psychological Services and Programme Development) on 1 September 1982.

⁷⁷ See the official website of the Asian and Pacific Conference of Correctional Administrators at: <http://www.apcca.org/>

⁷⁸ *Hong Kong Hansard*, 7 October 1981, p. 28.

The Governor did not spell out the details on the proposed amendments and the Prisons (Amendment) Rules 1981 were laid before the Legislative Council on 25 November 1981. As Prison Rules were subsidiary legislations of the Prisons Ordinance, debates from the Legislators were not required and were endorsed by the Legislative Council accordingly.⁷⁹ This Prisons Rules amendment had included, amongst others, removal of the dietary punishment and corporal punishment from the list of awards that could be imposed by the Prison Superintendents on prisoners in breach of Prison Rules.⁸⁰

The Prisons Department's proactive move to remove dietary punishment and corporal punishment was not publicised and this was successful in keeping the amendments off the media attention. The possible reason why it was implemented with minimal publicity was due to the fact that the courts in Hong Kong were still ordering judicial corporal punishment in the 1980s, a practice which was only repealed from the statutes in 1990.⁸¹

This move could also be seemed as one of Commissioner Garner's controversial ideas which would not be appreciated by the public that favoured a stringent approach to punishment.⁸² In fact Garner had a greater plan for such actions, i.e. the re-naming of the Prisons Department in 1982 which would be discussed in the next Chapter.

⁷⁹ *Hong Kong Hansard*, 25 November 1981, p. 199.

⁸⁰ Commissioner of Prisons, *A Summary of the Work of the Prisons Department for the Year 1981*, p. 1.

⁸¹ 14, 13, 19 and 21 offenders were sentenced to corporal punishment by court in 1981, 82, 83 and 84 respectively. See Correctional Services Department Annual Reports 1982-84.

⁸² See Obituary of Tom Garner by Kelvin Sinclair, *South China Morning Post*, 7 September 2005.

9.6 Conclusion

Hong Kong during the 1970s had encountered challenges not only from within the colony itself but also from regional and global events. The vast increase of crime rate coped with the world financial crisis in the early 1970s had drawn the public and the Government's attention towards law and order and especially on how to deter potential offenders in order to stop the crime wave.

The much advocated progressive and reformatory penal policies adopted by the former Commissioner of Prisons from mid 1950s to late 1960s were criticized for lacking the deterrence effect in stopping crime. It was also criticised that the 'less eligibility' philosophy in the treatment of offenders under custody was not followed. Deterrent sanctions from the Criminal Justice Act 1948, i.e., the detention centre programme and the preventive detention system, both not being considered by Hong Kong in the last two decades were retrieved and repackaged for its adaptation in Hong Kong.

With the deletion of the Colonial Office and without the close scrutiny of the Advisory Committees on the Treatment of Offenders on the Colonies' penal services, Hong Kong apparently enjoyed more freedom in formulating its own penal policies in the 1970s. To address the public's concern on violent crimes committed by young offenders, caning was incorporated to the newly created Detention Centre programme and later extended to the Training Centre programme on male young offenders found in breach of Centre Regulations during the early part of the 1970s.

The legislation process for the suspended sentence in Hong Kong illustrated how the

Government had re-packaged this rehabilitative orientated sentence under the Criminal Justice Act 1967 to a deterrent sentence to address public demand in Hong Kong. The public of Hong Kong favoured the hard-lined approach towards crime and criminals and the Government had to formulate its penal policies along the public's expectation. The legislation process of this Bill was extremely cautious and had taken six years of trial before becoming permanent in the statute-book.

The enactment and later the inaction of the preventive detention system in Hong Kong had illustrated the differences in thinking between the penal elites in Hong Kong. The Attorney General was representing the interest of the Judiciary to satisfy the public's quest for tougher sentences in introducing the legislation. The Prisons Department, with the support of the newly created policy head, the Secretary for Security, were more concerned with operational constraints and were successful in keeping the preventive detention system from launching within the prison service in Hong Kong.

The 1973 Stanley Prison riot was indeed the watershed for the post-War Prisons Department. Commissioner Garner, taken over the Department in 1972, was able to convince the new Governor through its new chain of command with the Security Bureau to adopt the recommendations from the advisors from England and for the Government to inject resources for the implementation of these recommendations.

Security measures for the management of prisoners such as the security classification of prisoners and penal institutions, setting up of the prison inspectorates, etc. were copied from the HM Prison Service in England and transported for use in Hong Kong. Penal security overrides reformation with home leaves and open visits for adult prisoners curtailed.

Through the skilful leadership of Commissioner Garner, the Prisons Department had massive expansion programmes after the 1973 Stanley Prison riot. Many new prison projects were approved and most important of all was the generous provision of additional prison staff for the Prisons Department. With the setting up of the ICAC and the corrupted prison staff elements removed, a new breed of better educated prison officers joined the Prisons Department and they became the backbones of the Department responsible for the subsequent changes that followed.

The approved staff establishment of the Prisons Department was increased more than three-fold from around 1,500 in 1969-70 to almost 5,000 at the end of 1981. The average daily penal population was also increased from 6,000 in 1969 to near 10,000 in 1981. The net expenditure of the Prisons Department in 1981 was HK\$237 million, more than eleven-fold when compared to the expenditure of HK\$20.8 million in 1969-70.⁸³

With a highly disciplined but stable penal environment in place, the penal elites in Hong Kong were able to provide welfare and rehabilitative services for the offenders under custody. Prisoner welfare services, psychiatric treatment facilities and psychological services were set up with specialists posts established allowing the Prisons Department in Hong Kong to be one of the forerunners in the region to follow the modern rehabilitative penal model of the West.

Draconian penal punishments such as dietary and corporal punishment were quietly removed from the Prison Rules in order not to arouse public sentiment on the need for

⁸³ See Commissioner of Prisons, *Annual Departmental Report 1969-70 and A Summary of the Work of the Prisons Department by the Commissioner of Prisons, T.G. Garner, C.B.E., J.P. for the year 1981.*

deterrent punishment in Hong Kong. All these changes had prepared the Prisons Department to be transformed to a more rehabilitative orientated service in 1982 which is to be discussed in the following Chapter.

Chapter Ten

Penal Policy and the Change of Sovereignty (1982-1997)

10.1 Introduction

The period from 1982 to 1997 covered the final phase of penal policy development in Hong Kong whilst still under British administration. 1982 also started an eventful period when the future of Hong Kong was being intensively deliberated between Britain and China.

Through the signing of the “*Joint Declaration of the Government of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong*” in Beijing on 19 December 1984, the fate of Hong Kong was sealed. Hong Kong would cease to be a British colony on 1 July 1997 when she would be handed over to the People’s Republic of China and became one of China’s Special Administrative Regions.

Penal philosophies and policies between Hong Kong and Mainland China varied greatly in view of the difference in social and political background. There were grave concerns that Hong Kong’s penal system might be eroded after 1997 if safeguards were not installed before the handing over.

This Chapter will look into the political, social and cultural factors relating to Hong Kong’s preparation to the handing over of the sovereignty in 1997 and how these factors affected penal policy formulation in Hong Kong. Special attention will be

given to penal policy changes resulting from the enactment of the Hong Kong Bill of Rights together with other penal policy changes associated with the change of sovereignty in 1997. The abolishment of capital and corporal punishment in Hong Kong, the enactment of the 'Release under Supervision Scheme', the 'Post-release Supervision Scheme' and the enhancement of the sentence review system for long term prisoners all happened during this period. As these topics have been covered in the earlier Chapters in view of their more complicated nature or as a specific penal programme, these will not be repeated in this Chapter. However the benchmarking of Hong Kong's penal system and facilities by the human rights groups as precautionary measures against possible abuse of human rights in Hong Kong, including the rights for those under custody, will be covered in this Chapter.

Penal policy changes happened in England during this period was mostly not being followed by Hong Kong except the Community Service Order set up under the earlier Criminal Justice Act 1972. The reasons why it took fourteen years for Hong Kong to pick up the Community Service Order scheme and the reasons why Hong Kong did not adopt the other British penal policy initiatives during this period will also be discussed in this Chapter.

This Chapter will also provide explanation on the rationales for the change of the title of the Prisons Department to Correctional Services Department in 1982. The corresponding organisational changes taken places from 1982 to 1997 in meeting the changing penal policies in Hong Kong were also discussed.

10.2 Hong Kong Society before the Handing Over of Sovereignty

Hong Kong had a new Governor, Sir Edward Youde who succeeded Lord MacLehose in May 1982. Governor Youde was, like his predecessor, came from the Foreign Office. One of his first tasks after arriving in Hong Kong was to prepare Prime Minister Margaret Thatcher's visit to Beijing in September of the same year. The question on the future of Hong Kong was high on her agenda as the lease for the New Territories in Hong Kong would expire in fifteen years by 1997. Early decisions were anxiously awaited for by the business circle as well as those having an interest in the property market in Hong Kong as all land leases for the properties in the New Territories would expire in 1997.¹

The Prime Minister's meeting with the Chinese leaders in Beijing in 1982 was a failure. The British's hope of reasoning with China on the validity of the nineteenth century treaties or the scaled down hope of winning an administration extension on Hong Kong after 1997 was flatly rejected by the Chinese side. For two years, the two Governments locked horn in the negotiation and the residents in Hong Kong were caught in the middle and confidence dropped as a result. The economy of Hong Kong also suffered and on 23 September 1983 the Hong Kong dollar collapsed and the exchange rate dropped to HK\$9.55 to one US dollar, calling the Hong Kong Government to take the decisive action of pegging the Hong Kong dollar to the US dollar at a fixed exchange rate of HK dollar \$7.80 to one US dollar which lasted until today.²

¹ See Spurr, R. (1995) *op cit.*, p. 235.

² *Ibid*, pp. 236-8.

The painstaking negotiation eventually concluded on 18 December 1984 when both Governments signed the “*Joint Declaration of the Government of Great Britain and Northern Ireland and the Government of the People’s Republic of China on the Question of Hong Kong*” in Beijing, agreeing the handing over of Hong Kong to the Chinese Government on 1 July 1997. The Chinese Government in return agreed that Hong Kong would be given the ‘Special Administration Region’ status and allowed Hong Kong to operate the ‘one country, two systems’ way of life for fifty years from 1997.³

With the future of Hong Kong settled, the economy of Hong Kong started to prosper again. The earlier tide of brain drain had stopped and in fact many of those who left Hong Kong earlier had returned with a foreign passport trying to cash in with the renewed business opportunities in Hong Kong. Things however changed quickly after the ‘Tiananmen Square Massacre’ in Beijing when student led reform rallies were crushed by the Peoples’ Liberation Army on 4 June 1989 which was televised worldwide and stunned the residents in Hong Kong. A million people took part in a march in Hong Kong expressing their anger on the massacre and showed solidarity with the dissidents in Beijing.⁴

This incident had severely damaged the Hong Kong resident’s confidence on the future of Hong Kong especially when the city would be under the Chinese rule in less than ten years. Panic emigration from business tycoons, middle managers and civil servants were rapid and the British Government had to offer 50,000 Hong Kong families the British Citizenship to safeguard those who might be compromised by

³ Ibid.

⁴ Ibid, pp. 249-51.

their service to the colonial government so that they did not have to depart Hong Kong at once. For the majority of the Hong Kong residents who did not have the means to migrate to other countries, the Government in 1989 drawn up a 'rose-garden plan' by injecting huge capitals from its reserve for developing infrastructures in Hong Kong. This included the building of the new airport at Lantau Island and creating job opportunities in Hong Kong as well as maintaining the competitive edge of Hong Kong within the region.⁵ Action was also in hand to introduce the Bill of Rights to Hong Kong to ensure the human right conditions in Hong Kong would be legally protected after the handing over of Hong Kong in 1997.

The Chinese Government was keeping a close watch on what the Hong Kong Government had proposed and was suspicious on how the Hong Kong Government would spend its revenue. Governor David Wilson, another Foreign Office official who took over the governorship from Sir Edward Youde who died during one of his Beijing trips on 5 December 1986, was being replaced by Mr. Christopher Patten in July 1992. Governor Patten was the former Conservative Party Chairman who had lost his parliamentary seat in the 1992 election. It was unheard of in the history of Hong Kong for a politician instead of a diplomat or a Foreign / Colonial Office official to be appointed as Governor of Hong Kong. The appointment of a seasoned politician as Governor in Hong Kong was in fact a deliberate political decision to counter the stepped up pressure and interference by the Chinese Government on Hong Kong matters leading to the handing over in 1997.⁶

⁵ Ibid.

⁶ Ibid, pp. 243-60.

With the support of the British Government, Governor Patten quickly began his plans for political reform in Hong Kong as means to bolster self-confidence for the residents in Hong Kong. The idea of the political reform was to offer the public wider access to the government and gave them a stake in the political arena by expanding the number of seats in the Legislative Council and for part of these seats to be elected. The number of eligible voters to vote for the Legislative Councillors was also greatly increased empowering these elected Legislators the duty to represent the interests of their voters in various policy areas. The reform package went through the legislature in 1994 and the local political atmosphere had changed ever since. Government policies tabled for legislation would no longer be rubber-stamped by the appointed legislators but had to win the support from the legislators representing interests from different quarters as suggested by Spurr (1995):

“Hong Kong will meet its destiny with a highly vocal legislature. The old quiescence has gone for ever. The Legislative Council at least feels free to heckle the colonial government. These days questions are posed, speech delivered, that a generation ago would have been considered impermissible. Legco wields a virtual veto over budgetary affairs. The council has gone so far as to reject a Sino-British agreement restricting the number of judges from outside Hong Kong permitted to sit on its specially created Court of Final Appeal.”⁷

On the midnight of 30 June 1997, the Union Jack was lowered inside the Convention and Exhibition Centre of Hong Kong followed by the hoisting of the Hong Kong Special Administrative Region flag and the flag of the Peoples Republic of China, marking the end of the one hundred fifty-six years’ British Administration in Hong Kong.⁸

⁷ Ibid, p. 261.

⁸ Dimbleby, J. (1997) *The Last Governor, Chris Patten & the Handover of Hong Kong*. London: Little, Brown and Company, p. 425.

10.3 Law and Order Situation before the Handing Over

Crime rates during this period had fluctuated but did ease off towards the close of 1997. The overall reported crime rate in Hong Kong was at its peak of 1,610 per 100,000 in 1983. The violent crime rate dropped from 477 per 100,000 in 1976 to 259 in 1986 and 340 in 1991. In 1997, the overall crime rate was comparatively lower at 1,038 per 100,000 and violent crime rate at 212 per 100,000.⁹

One of the explanations for the lower crime rate in 1997 was the enhanced co-operation between the law enforcement agencies of Hong Kong and Mainland China. It was the wish of both Hong Kong Government and the Mainland authorities to see Hong Kong a stable and safe city by the time of its return to China. The Chinese authorities were more positive in tracking down and arresting criminals who fled to China after committing crimes in Hong Kong, in particular those robbery cases involving the use of firearms by sending them to Hong Kong for judicial action.¹⁰

10.4 Penal Policies in England (1982-1997)

This was a busy period when new penal policy for both young and adult offenders emerged in England and Wales. The borstal system established in England before the War was finally replaced by 'Youth Custody' under Criminal Justice Act 1982 which came into force in May 1983. Unlike the borstal system where inmates had to earn their release within the minimum and maximum period of stay in the borstal, the

⁹ Broadhurst, R., et. al. (2008) 'Crime Trends' in Chui, W.H., and Lo, T.W. (Eds.), *Understanding Criminal Justice in Hong Kong*. Devon: Willan Publishing, p.48.

¹⁰ *Hong Kong Standard*, 1 March 1996.

youth custody was always a determinate sentence with length of sentence set by court.¹¹ This happened at the time after the detention centre with emphasis on the ‘short, sharp and shock’ programme was being re-introduced to the England in 1980.¹²

The Criminal Justice Act of 1988 had created a new sentence of ‘detention in a young offender institution’ merging the former detention centre and youth custody sentence. Again the court would decide the length of the sentence and the HM Prison Service would decide where the young offender should be assigned to. The ‘juvenile court’ was renamed ‘youth court’ to cover cases up to seventeen years old. The maximum period of detention of young offenders in the Young Offender Institution (YOI) would be one year.

The Criminal Justice Act of 1991 also incorporated the recommendations of the ‘Carlisle Committee Report of 1988’ and replaced the remission and parole systems with a new framework to ‘restore meaning to sentence’. Prisoners with less than 12 months sentence would be automatically released after serving half of their sentence but the un-served part of the sentence might be reactivated by court if the offender was reconvicted of a fresh offence before the original term of sentence expired. Prisoners sentenced to 12 months or more but less than four years would be on ‘Automatic Conditional Release’ at the half way point and required to be supervised until the time reaching two third of the original term.¹³

¹¹ Smith, R.(1984) ‘The State of the Prisons – “Schools for criminals”’ in *British Medical Journal*, Volume 288, p. 706.

¹² Watts, C. (2001) ‘The History of the Prison System’ in Bryans, S., and Jones, R. (Eds.) *Prisons and the Prisoner – An Introduction to the Work of Her Majesty’s Prison Service*. London, the Stationery Office, p. 20.

¹³ Cavadino, M. and Dignan, J. (2004 Reprint) *The Penal System, An Introduction*, London: Sage, p. 270.

For those sentenced to four years or more with determinate sentences, they were eligible to apply for 'Discretionary Conditional Release' after serving half of the sentence. Their cases were dealt with by the Parole Board and they would normally be released after serving two third of their sentence even if their applications were unsuccessful. For prisoners sentenced to life imprisonment, they could be considered for 'Release on Licence' after completing their 'tariff' part as ordered by the court during the original sentence. Decision of their release on licence could be from the Parole Board or from the Home Office through the recommendations of the Parole Board, and the licence period was life long.¹⁴

Following the James Bulger killing case in 1993,¹⁵ the Home Secretary Michael Howard introduced the American 'Boot Camp' type of correctional programme to England in 1995 and called it the 'High Intensity Training (HIT)' programme. Two HIT centres were set up for male offenders aged 18 – 21; one at a military establishment in Colchester and the other at Thorn Cross YOI.¹⁶

Turning back to the HM Prison Service, the riots started on 1 April 1990 at Manchester's Strangeways Prison dragged on for 25 days. The media coverage of the Strangeways Prison riot had inspired copy-cat riots in another twenty penal establishments across England causing millions of pounds of damage to property. The subsequent '*Prison Disturbances April 1990: Report of an Inquiry*' prepared by Lord Justice Woolf and Sir Stephen Tumim in February 1991 called for the fundamental review of the objectives of imprisonment. The key conclusion was that a stable penal

¹⁴ Ibid. p. 271.

¹⁵ Two year old James Bulger was taken away from a shopping centre in Liverpool by two ten year old on 12 February 1993 who later tortured and killed James and abandoned him on the railway tracks. See http://www.bbc.co.uk/print/liverpool/content/articles/2006/12/04/local_history_bulger_feature.shtml

¹⁶ See Farrington, D., et. al.(2002) *Evaluation of Two Intensive Regimes for Young Offenders*, Home Office Research Study 239.

establishment had to depend on three independent pillars; i.e., security (no prisoner escape), control (safe prison without disturbance) and justice (fair and humane treatment on prisoners).¹⁷

In response to the Woolf Report, the Home Office prepared a White Paper '*Custody, Care and Justice: The Way Ahead for the Prison Service in England and Wales*' in 1991. The document outlined the future direction of the HM Prison Service in particular improvement in the three key areas of custody, care and justice. "*The aim was to provide a better prison system, with more effective measures for security and control; a better and more constructive relationship between prisoners and staff; and more active, challenging and useful programmes for prisoners.*"¹⁸

Another important penal policy under the Criminal Justice Act 1991 was the provision of the private sector involvement in the criminal justice system in England and Wales. Court security officers, prisoner escort services and penal establishments were allowed to be operated by private security companies instead of by the state. The first private penal institution operated under the provision of Criminal Justice Act 1991 was the Wolds Remand Prison in Humberside operated by Group 4 in April 1992. By 1998, six penal establishments were contracted out as well as all court security officer and prisoner escort services.¹⁹

There were further security scandals after the Strangeways Prison riot. Two high profile escape incidents took place in England in 1994 and 1995 involving 'Category A' prisoners who should be guarded under the highest security conditions. The first

¹⁷ Watts, C. (2001) op cit., p. 23.

¹⁸ Ibid, p. 23.

¹⁹ Ibid, p. 24.

incident involved the escape of six 'Category A' prisoners, five of them members of the Irish Republican Army from Whitemoor Prison in September 1994. Explosives and detonators were later searched out from the prison. The second incident took place in January 1995. Two 'Category A' and one 'Category B' prisoners escaped from the Parkhurst Prison on the Isle of Wight. The subsequent 'Woodcock Report 1994' and the 'Learmont Report 1995' led to the tightening up of security in all penal establishments and placing custody as the primary objective of imprisonment.²⁰

Another piece of important penal policy during this period was the introduction of the American style mandatory and minimum sentences to England and Wales for certain categories of offenders under the Crime (Sentences) Act 1997. Life imprisonment would be given to offender convicted of a second serious violent or sexual offence unless there were exceptional circumstances. A minimum of seven years sentence should be passed to offender who was convicted of a Class A drug trafficking offence for the third time and at least three years sentences for a third time offender with offence in domestic burglary.²¹

10.5 Penal Policies, Human Rights and Related Issues in Hong Kong

Community Services Order - The New Approach in Penal Policy Legislation

The legislation of the Community Services Order (CSO) in Hong Kong in 1984 demonstrated a change of strategies by the Government in proposing new penal

²⁰ Ibis, P. 25.

²¹ See Cavadino, M. and Dignan, J. (2004 Reprint) op cit.

policies in the 1980s. Compared to the launching of the suspended sentence in Hong Kong earlier, this new penal programme received much fewer opposition from the public and the legislators despite the fact that it is a non-custodial sentence.

The CSO was introduced to England and Wales under the Criminal Justice Act 1972, and put into operation in 1973 under the Powers of Criminal Courts Act 1973. The rationale of this sentence was for the offenders to be involved in constructive activities in the form of personal service to the community.²²

On 13 November 1981, the Chief Justice and the Attorney General of Hong Kong referred to the Law Reform Commission the question of whether CSO should be introduced as a form of sentence in Hong Kong. A Sub-committee was subsequently set up within the Commission to study to whom the CSO should apply; the kind of obligations to be imposed by CSO and how such orders be imposed and supervised.²³ This was a departure from the traditional practice of having a non-civil servant to lead the study of a new penal policy and programme, a job which used to be performed by the respective policy branch and government departments.

The Sub-committee stated clearly that as it was concerned about the views of the public on the introduction of CSO in Hong Kong, the public were invited to make submissions on the proposal. This approach was again a departure from the past when public views were represented only by the Legislators during the legislation process.

²² See Lo, T. W. and Harris, R.(2004) 'Community Service Orders in Hong Kong, England, and Wales: Twins or Cousins' *International Journal of Offender Therapy and Comparative Criminology*, 48, pp. 373-88.

²³ The Law Reform Commission of Hong Kong Report: *Community Service Orders*, 1983, p. ii.

Possible stake-holders within the government departments, voluntary agencies and various community organizations were also being consulted to gather their views towards the CSO and to identify possible job placements they could offer if such a scheme was successfully launched in Hong Kong. The consultation was further supplemented by an open forum in October 1982 to collect views from the possible stake-holders on the idea of a pilot scheme.²⁴

The Sub-committee's report was endorsed by the Law Reform Commission in April 1983 and received the Executive Council's approval. The law drafting completed and the Community Service Orders Bill 1984 was tabled at the Legislative Council for its First and Second Reading on 10 October 1984. To alleviate any possible public concern on the Government being soft on crime and punishment, the Bill stressed that violent offenders would be excluded from this programme and that the CSO would only be introduced initially on an experimental basis as a pilot scheme. It was stressed that:

“The community service order scheme has been operating successfully in the United Kingdom where the scheme was introduced in six areas as an experiment in 1972 before extending to the whole territory in 1975. As Hong Kong has different social and cultural background, it is advisable for us to learn from our own experience before deciding whether to extend the scheme or to bring the scheme to an end.”²⁵

Because of the extensive consultation and lobbying prior to the legislative process, only three legislators spoke out in the Legislative Council and all gave their support to this Bill. The Bill was passed on 21 November 1984.²⁶

²⁴ Ibid.

²⁵ *Hong Kong Hansard*, 21 November 1984, p. 372.

²⁶ Ibid, pp. 370-74, 376.

The approved CSO scheme for Hong Kong was quite similar to the English model despite the fact that the Sub-committee in the planning stage had studied CSOs in other jurisdictions. The pilot CSO scheme was launched in 1987 and as reported by the Social Welfare Department, 200 offenders had joined the pilot scheme in 1987.²⁷ In its subsequent development, Lo and Harris (2004) described the Hong Kong and the British CSO schemes were not ‘twins’ but rather ‘cousins’ in view of Hong Kong’s continuous emphasis on the rehabilitative role of this sentence whereas CSO in Britain had moved towards a more retributive end.²⁸

Offenders carrying out the CSO projects in Hong Kong are mainly invisible to the public as their identities are not reviewed for the protection of privacy. This is a vast departure from the British practice where offenders carrying out CSO tasks have to wear the ‘Community Pay Back’ vests.

The Hong Kong Bill of Rights

Attorney General Michael Thomas before he left office in 1988 had informally drafted the Bill of Rights for Hong Kong. He believed there would be a need for such legal protections to be specified in the statutes in Hong Kong in view of the limitations of the Basic Law.²⁹ Other legal experts also looked into the need for a Bill of Rights to be established in Hong Kong to “*provide an important inhibition on the misuse of power and the destruction of our freedom*”.³⁰

²⁷ Ibid, 25 February 1987.

²⁸ See Lo, T. W. and Harris, R. (2004) op cit.

²⁹ *South China Morning Post*, 18 December 1988.

³⁰ *South China Morning Post*, 24 April 1989 quoting comments from Dr Raymond Wacks, Head, Department of Law, University of Hong Kong.

In October 1989, four months after the Beijing Incident resulting from Hong Kong residents' confidence towards their future dropping to an all time low, Governor David Wilson announced that a Bill of Rights for Hong Kong would be proposed. The draft Bill was published in March 1990 and the substance of the Bill were largely the reproductions of the International Covenant on Civil and Political Rights (ICCPR) adopted by the United Nations in 1966 which was extended to Hong Kong through the British Government and entered into force in 1976. The Hong Kong Bill of Rights Ordinance was on 8 June 1991 became law in Hong Kong with a corresponding amendment on the Letters of Patent for Hong Kong.

The amended Article VII (3) of the Letters Patent specifies that:

“The provisions of the ICCPR, adopted by the General Assembly of the United Nations on 16 December 1966, as applied to Hong Kong, shall be implemented through the laws of Hong Kong. No law of Hong Kong shall be made after the coming into operation of the Hong Kong Letters Patent 1991 (No. 2) that restricts the rights and freedoms enjoyed in Hong Kong in a manner which is inconsistent with that Covenant as applied to Hong Kong.”³¹

With the entrenchment of the ICCPR in the Hong Kong Bill of Rights Ordinance, the Administration had to re-examine its existing Ordinances and practices to ensure its compliance with this human rights standard.³²

There were special human rights concerns on the penal polices and the operation of custodial services in Hong Kong especially with the capital and corporal punishments still kept in the statute book. Hong Kong had all along observing the ‘*United Nations Standard Minimum Rules for the Treatment of Prisoners of 1955*’ in its custodial

³¹ Wacks, R. (ed.), (1992) *Human Rights in Hong Kong*. Hong Kong: Oxford University Press, p. 10.

³² *South China Morning Post*, 24 April 1989.

services with most of the laid down *Rules* being practiced in full. In 1986, an internal review was carried out by the Correctional Services Department to examine the Department's compliance to the United Nations Standard Minimum Rules and the findings confirmed that CSD had measured up to most of the standards and in some cases even exceeded the standards set by the *Rules*.³³

During the drafting process of the Hong Kong Bill of Rights, the Government had identified a number of existing laws were at odds with the Bill. The Prison Rules and the Detention Centre Regulations were being identified as two out of the twenty odd problematic laws requiring rectification.³⁴

CSD, with the help of the Attorney General's Chamber, examined the related Ordinances, Rules and Regulations as well as Standing Orders and Departmental Instructions governing the operation of the Department, the penal establishments and the management of prisoners therein. Prompt remedial actions were taken on those violations which did not require the change of law.

On searching of external orifices and conducting urine tests on prisoners under Prison Rules 9(1A) and 34(a), CSD had revised its guidelines by ceasing the routine bodily search and urine tests and conducting such searching or tests only on need basis and on suspected and targeted prisoners. Other body fluids like blood, stools etc would only be taken from prisoners and examined for health reasons.

³³ Chan, S. (1994b) 'Prison Administration', in Fong, et. al. (eds.) *Hong Kong's Bill of Rights: Two Years On*. Hong Kong: Faculty of Law, The University of Hong Kong, pp. 46-7.

³⁴ *South China Morning Post*, 9 May 1990.

Prison Rule 61 (w), which stipulates that “*Every prisoner shall be guilty of an offence against prison discipline if he... is convicted of a criminal offence committed while a prisoner*” was considered to be double punishment and in breach of Article 11 (6) of the Bill of Rights which guarantees that no one shall be tried or punished for the same offence more than once. A circular instruction was issued to the Heads of Penal institutions on 24 February 1993 to cease such practices and to set aside the punishment of loss of remission imposed upon those involved prisoners still in custody.³⁵

Freedom of movement for released prisoners undergoing statutory supervision was reassured by re-phrasing the wording of the respective supervision orders from requiring the supervisees “*to obtain approval before leaving Hong Kong*” into “*a supervisee must inform his supervisor of an intention to leave Hong Kong for more than a certain number of days or of an intention to take up residence abroad.*”³⁶

Prison Rule 47 forbids a prisoner to correspond with another person other than relatives or friends unless he had obtained special permission to do so and allowing the management to censor mails for objectionable matters. This Rule contravenes with Article 14 of the Bill of Rights on the protection of privacy and correspondence and to be amended.

The other issue was on disciplinary proceedings against prisoners in breach of prison offences under Prison Rules 57 to 65. These Rules gave provision for the management to place prisoners on internal disciplinary proceedings for breach of prison offences

³⁵ Chan, S. (1994b) op cit., p. 52.

³⁶ Ibid, p. 53.

which were also criminal offences in nature such as assault, etc. In exceptional circumstances this could attract the maximum penalty of six months' loss of remission awarded by the Commissioner of Correctional Services. It was felt that disciplinary offences under Prison Rules 61 which were criminal offences in nature should be separated and prisoners found in breach of these to be charged by the Police and to go through the judicial process in the courts. This would allow prisoners to have full legal protection during the process, including the provision of legal representative. Only minor breach of prison disciplines such as 'disobeying an order', 'using abusive language' and 'minor assaults', etc should remain. Prison Rule 61(t) "makes repeated groundless complaints" was also recommended to be removed in order to avoid the impression of using prison disciplinary action to suppress prisoner complaints.³⁷

The power of the Superintendent of Correctional Services to award 'loss of remission' in prisoner adjudication cases to be scaled down to a maximum of 30 days. Nevertheless the power of the Commissioner to award a loss of remission of up to six months is deemed necessary.³⁸

Prison Rule 76(b) and 239.1(e)(ii) restricting any CSD officers on unauthorized communication with the media would require amendment to confined the disclosed information to prison security and materials related to prisoners' privacy.

The proposed amendments were tabled in the Legislative Council on 10 July 1996 under the Subsidiary Legislation section as Prison (Amendment) Rules 1996 and were to come into effect on 1 November 1996. They were however being repealed even

³⁷ Ibid, pp. 54-6.

³⁸ Ibid, p. 55.

before they came into effect. It was reported in October 1996 that the Bills Committee had finally reached its agreements on the details of the proposed Prison Rules amendments after negotiation with the Administration and the CSD.³⁹ The Prison (Amendment) Rules 1997 were introduced in 28 May 1997 by Law Notice 275 of 1997.⁴⁰ The amendments covering all of the proposed changes, under Law Notice 375 of 1997, came into effect on 30 June 1997, the last day when Hong Kong was still under British Administration.

It should be noted that no references were made to the Prison Rules in use by the HM Prison Services in England when amendments to the Prison Rules in Hong Kong were being proposed. Prison Rules in England covering prisoner discipline and adjudication had already undergone major changes as a result of the Woolf Report⁴¹ and the subsequent Home Office White Paper *Custody, Care and Justice* in 1991.⁴²

Last Minute Legislation before the Handing Over - the Long Term Prison Sentences Review Mechanism

The Board of Review, Long Term Prison Sentences was first established in 1959 under the Legal Department and chaired by the Attorney General with members from officials representing the Secretary of Security, Director of Social Welfare and the

³⁹ See *Hong Kong Economic Journal*, 10 October, 1996.

⁴⁰ See Foot Note 23, Joint Report by Human Rights Watch/Asia and Hong Kong Human Rights Monitor, *Hong Kong: Prison Condition in 1997*, Hong Kong, p. 10.

⁴¹ See “*Prison Disturbances April 1990 – Report of an Inquiry*” by the Rt. Hon Lord Justice Woolf (Parts I & II) and His Honour Judge Stephen Tumin, (Part II), HMSO, February 1991 (Cm 1456). The adjudicating role of Board of Visitors was abolished and serious criminal offences committed in prison being heard by normal criminal courts, p. 26.

⁴² See “*Custody, Care and Justice: The Way Ahead for the Prison Service in England and Wales*”, HMSO, September 1991 (Cm 1647). Prison Governors should conduct all disciplinary cases within their current powers with the maximum penalty be 28 days loss of remission, pp. 91-5.

Commissioner of Prisons Department / Correctional Services to make recommendations to the Governor on the exercise of the prerogative contained in Article XV of the Letters Patent which reads:

“...may grant to any offender convicted of any crime or offence by any court of law in the Colony (other than a court martial established under any Act of Parliament), either free or subject to such conditions as the Governor may think fit to impose, a pardon or any remission of the sentence passed on such offender, or any respite of the execution of such sentence for such period as the Governor thinks fit, and may remit any fines, penalties, or forfeitures due or accrued to Us.”⁴³

The Board was not a statutory body but served only as an advisory body with the following terms of reference:

“To review the sentences of all prisoners in the categories prescribed by Prison Rule 69A at such intervals as are thereby prescribed, or at such lesser intervals as circumstances may require, and to review such other cases as the Governor may from time to time require, and in each case to tender appropriate advice to the Governor on the exercise of the prerogative.”⁴⁴

Under Prison Rules 69A, the Commissioner of the Correctional Services was required to submit the following categories of prisoners to the Board for regular reviews:

1. Prisoners serving life sentences,
2. Prisoners with long-term sentences (i.e. 10 years or longer),
3. Prisoners on detention until Her Majesty’s pleasure be known, i.e. young prisoners who were aged below 18 when committing the offence of murder, and
4. Prisoners serving determinate sentences who were under the age of 21 at the date of conviction.

⁴³ See Article XV of the Letters Patent.

⁴⁴ Board of Review, Long Term Prison Sentences, *First Report*, Government Printer, Hong Kong, 1992, p. 2.

The Board would call for reports from the Correctional Services Department covering the prisoner's conduct whilst in prison together with a complete medical record covering the prisoner's health condition. The Police would be asked to present the prisoner's criminal history as indicated in the criminal record. The Social Welfare Department would submit report giving details of the prisoner's family circumstances, his employment prospects on release, his rehabilitation prospects and any compassionate grounds for consideration. The court would provide the Trial Judge's Report and comments made by the Judge at the sentencing and the summing-up of the case, etc in reflecting the nature of the offence.⁴⁵

Should prisoner claimed that he had provided useful assistance to the law enforcement agencies, the Board would also consider reports from the related government departments in connection to the claim. For sex offenders or prisoners with mental problems, reports from the Correctional Services Department's Clinical Psychologists and / or the Visiting Psychiatrist from public hospitals were also called.

The Board would study the submitted reports in detail and to decide whether any remission of the prisoner's sentence would be justified in the course of the sentence review, and submitted its recommendations to the Governor for sentence remission.⁴⁶

In April 1986, the Board was granted authority by the Executive Council to make its own independent recommendations to the Council as a result on the change of policy towards prisoners with indeterminate sentences. The previous assumption was that a life sentence should be imprisonment for the remainder of the prisoner's life. This

⁴⁵ Ibid., pp. 6-10.

⁴⁶ Ibid.

approach was changed as the Executive Council approved a policy of substituting determinate sentences in certain deserving cases as recommended by the Board.⁴⁷

From November 1988 onwards, the administration of the Board was transferred from the Legal Department to the Security Bureau under the Secretary of Security. The chairmanship of the Advisory Board was changed to a judge of the High Court appointed by the Governor with a normal term of three years. The ex-officio members were drawn from the related government departments, i.e. representatives from the then Security Branch, the then Legal Department, the Correctional Services Department and the Social Welfare Department. Non-official members were appointed to the Board and they were drawn from various sectors of the society with recommendation from the concerned government departments. They came with diversified backgrounds including psychology, psychiatry, social work, legal profession, education and business.

It was only in March 1992 that the Board had published its first report after operating for more than 30 years. The *Report* was printed in both English and Chinese and were made available not only to the public but also to appropriate prisoners for the sake of transparency as it contains information on what the Board would look for when reviewing a prisoner's case. According to the report, the Board had met 135 times from 1959 to 1991, roughly once per quarter. During the three years period from 1989 to 1991, the Board had reviewed 1,065 cases and had only made eleven recommendations or 1% to the Executive Council for change of sentences.⁴⁸

⁴⁷ Ibid., p. 2.

⁴⁸ Ibid., pp. 17-18.

From 1992 to 1997, the Board had reviewed a total of 2,229 cases including 416 life sentences cases and 82 cases on prisoners detained at Her Majesty's Pleasure. The Board had all along adopted a very cautious approach in its reviews and recommendations made thus only 28 prisoners' life sentences were substituted by determinate sentences during this period.⁴⁹

In January 1997, the Security Bureau of the Administration proposed to the Legislative Council Panel on Security for the establishment of a "Statutory Board of Review, Long Term Prison Sentences (BOR, LTPS)" to improve the transparency and efficiency in operation and fairness of the existing system.⁵⁰ The Executive Council approved the revised proposal on 4 March 1997. The proposed Bill was published in the Gazette on 7 March with the First Reading and commencement of Second Reading debate on 19 March 1997. A Bill's Committee was formed and six meetings were held from 11 April to 3 June to look into the proposed legislation almost clause by clause.

There were a number of changes or amendments contained in the proposal:

- To add a Deputy Chairman who will be a Judge of the High Court, and to remove government officials as ex-officio members on the Board. Government officials can attend the meeting as required but will not be members of the Board.

⁴⁹ Board of Review, Long Term Prison Sentences, *Second Report*, Printing Department, Hong Kong, 1997,

p. 17. As revealed during the subsequent Bill's Committee meeting when the author was also a member, the average recommended determinate sentences for these 28 cases were 36.5 years.

⁵⁰ See the information paper submitted to the Legislative Council Panel on Security on the "Establishment of a Statutory Board of Review Long Term Prison Sentences", 13 January 1997.

- To give separate authority to the statutory BOR, LTPS to prescribe post-release supervision for prisoners whose sentence the Governor has remitted from an indeterminate sentence to a determinate one on the advice of the BOR, LTPS.
- To introduce a "Conditional Release Under Supervision" Scheme under the statutory BOR, LTPS. This will provide an additional tool for the Board to perform its sentence reviewing role better.
- To make changes to the present system for reviewing discretionary life sentence cases, to bring it into line with the provisions of Article 5(4) of European Convention on Human Rights, this is virtually identical with Article 5(4) of the Hong Kong Bill of Rights.⁵¹ The main proposals were –

in cases of prisoners already serving discretionary life sentence at the time the legislation comes into effect, the Chief Justice should make recommendations to the Governor on the appropriate punitive tariff period to be set. Such recommendations would be submitted to the Governor for approval and the decision made by the Governor in each case should be binding and final. (There were 22 cases of prisoners serving discretionary life sentences in 1997);

in respect of new cases, a trial judge would be required to specify in open court the tariff period in handing down a discretionary life sentence, and to

⁵¹ The European Court of Human Rights (ECHR) has taken the view that discretionary life sentences comprise two parts, namely a punitive tariff period for the offence itself and a subsequent discretionary period the purpose of which is to protect the public from the danger of that prisoner reoffending if released. The ECHR has ruled that discretionary life prisoners are entitled to have the lawfulness of their continued detention tested before a court after expiry of the punitive tariff period under Article 5(4) of the European Convention on Human Rights. The term "court" within the meaning of the ECHR jurisprudence does not necessarily mean a judicial court of law, but could include an independent tribunal to which a prisoner may fairly put his case, and which has the power to order release if it believes that it is safe to do so.

submit a written report to the Governor setting out any special considerations or circumstances for future review purposes; and

the statutory BOR, LTPS would have the power to determine whether discretionary life sentence prisoners should be released upon the expiry of the tariff period of their sentences.

Apart from preventing the possible influence by the future Administration at the Board meetings by removing government officials from the Board and the alignment of the standards entrenched under the Hong Kong Bill of Rights in dealing with indeterminate cases, the range of options open to the Board to discharge its functions was greatly broadened under the proposed legislation. For example, the Board could decide on a determinate sentence with post-release supervision, a determinate sentence without any supervision, or conditional release under supervision to be followed by a determinate sentence. The availability of these tools would provide better safeguard to both the interests of the affected prisoners and the community.

The urgency of the legislation appeared not corresponding with the explanations given by the Administration during the meeting with the legislators on 13 January 1997. It was stated that the operation of the Board would not be affected if the legislation could not be enacted before the handing over of the sovereignty and that the future Chief Executive of the Hong Kong Special Administrative Region could still have the same authority under the Basic Law to pardon prisoners. It was however brought out that there would not be legal basis for introducing the punitive tariff period into discretionary life sentences as covered in the ECHR case sample until the

legislation is in place.⁵² Furthermore the concern on the fate of the twenty odd prisoners who were young murders at time of conviction and were sentenced to be detained under Her Majesty's Pleasure were mounting with the approach of the handing over on 1 July. Both the Security Bureau and the Legislators were facing pressure from prisoners' family members to have this issue resolves before the handing over.⁵³

In May 1997 following a successful judicial review challenging the review process by one of the prisoners detained under Her Majesty's Pleasure, the Administration had asked the BOR, LTPS to review all the remaining twenty cases still being detained under Her Majesty's Pleasure. As a result, one prisoner was granted release on licence without determinate sentence, three were granted release on licence with determinate sentences and two had their indeterminate sentences commuted to determinate sentences. The remaining fourteen prisoners' sentences of detained under Her Majesty's Pleasure remained unchanged and the Administration mentioned that *"...their indeterminate sentences will continue to be reviewed, on a regular basis, by the Board of Review, Long Term Prison Sentences, -which may recommend to the Governor that their sentences be changed. The change of sovereignty will not affect these arrangements."*⁵⁴

The Long Term Prison Sentences Review Bill was passed by the Legislative Council on 23 June 1997, published in the Gazette on 27 June and have the notice published in

⁵² See the Legislative Council Panel on Security information paper *"Establishment of a Statutory Board of Review Long Term Prison Sentences"*, 13 January 1997.

⁵³ See *Apple Daily*, 17 November 1996; *Hong Kong Standard*, 26 December 1996; *South China Morning Posts*, 27 December 1996, 12 January 1997 and 14 January 1997.

⁵⁴ Security Branch Press Release, 16 June 1997.

an extraordinary Gazette on 29 June 1997 (Sunday) for the Ordinance to be brought into effect on the same day, just one day before Hong Kong becomes China's Special Administrative Region.⁵⁵

10.6 Benchmarking Hong Kong's Penal Policy and System in 1997

With the approach of 1997, the fate of Hong Kong's prison and the prisoners therein became a concern not only to the prisoners but also to the human rights groups in Hong Kong and in overseas. Their main concerns were the poor prison conditions in Mainland China as reported by the media and the extensive use of death penalty not only on murder cases but also on a wide range of crimes including economic offences.

The Human Rights Watch and the Hong Kong Human Rights Monitor in 1996 decided to investigate the human rights conditions of Hong Kong's prisons with an aim "*to establish a benchmark of prison conditions prior to the changeover. It was also meant to establish a precedent of independent monitoring of Hong Kong's prison conditions, to encourage future monitoring.*"⁵⁶

Hong Kong's prison system had never been subject to a full scale inspection by an outside body although the CSD has a well established system of internal inspection conducted by a team of correctional officers working under the Department's Inspectorate Unit. The initial negative response and reaction from the CSD on such a

⁵⁵ See *South China Morning Post*, 24 May 1999. The fate of the remaining 14 DDHMP cases were much worst off than those who had their sentences reviewed and amended before the handing over. Under the new Ordinance, they were reviewed and placed as detained at Executive discretion and were required to complete the tariff part of 15 to 30 years sentences without remission before the Chief Executive could consider their releases.

⁵⁶ Joint Report by Human Rights Watch/Asia and Hong Kong Human Rights Monitor, *Hong Kong: Prison Condition in 1997*, Hong Kong, p. 2.

suggestion was predictable especially there had been many prior disagreements between the Department and the human rights groups over the management of Vietnamese refugees and boat people under the care of the CSD. Nevertheless with support from the Government, the Human Rights Watch/Asia and the Hong Kong Human Rights Monitor were allowed to proceed with their inspection.

The two human rights groups had assembled a team with members including Sir Stephen Tumim, the former Chief Inspector of Prisons for England and Wales, inspected twelve out of Hong Kong's twenty-two penal institutions from 17 March to 4 April 1997. The inspections covered a closed detention camp for screened-out Vietnamese migrants, two women prisons, a psychiatric centre, a drug treatment centre and a detention centre for young offenders.⁵⁷ The inspections were aiming to assess *“the government's practices with reference to the relevant provisions of international human rights treaties binding on the territory, and to other authoritative international standards, in particular the United Nations Standard Minimum Rules for the Treatment of Prisoners.”*⁵⁸

The inspections went on smoothly with the full co-operation of the CSD and the findings and recommendations from the inspections were in general favourable giving positive comments on the prison conditions in Hong Kong. It was reported that:

“The territory's prisons are administered by an extremely competent and professional corps of correctional officers. Under their vigilance, the prisons are relatively safe and secure, and serious physical violence is a rare occurrence. The physical infrastructure of the prison system is, with the exception of a couple of facilities, in very good shape. The Prison Rules that regulate the operation of the prisons, particularly after their

⁵⁷ Ibid, p. 4, 48.

⁵⁸ Ibid, p.2.

recent amendment, reflect a healthy concern for prisoners' fundamental rights: among other provisions, they do not allow corporal punishment; they carefully limit the use of mechanical restraints, and they specifically enumerate the types of conduct that constitute disciplinary offenses and the ways in which such offenses may be punished.”⁵⁹

Apart from the positive comments, there were a number of observations and criticisms made after the inspections and overcrowding was one of the key concerns raised in the report. Hong Kong's prison system was at the time bearing the burden of keeping a large number of screened-out Vietnamese boat people in closed centres, which at times outnumbered the entire prisoner population.⁶⁰ Owing to the size of this detained population group, the CSD had to reshuffle large numbers of prisoners within the penal institutions to make way to accommodate the Vietnamese detainees as well as setting up temporarily holding centres for such purposes, and employing temporary correctional staff for their management. The High Island Detention Centre with a population of 2,700 Vietnamese detainees at the time of the inspection was facing most of the criticisms in this Report.⁶¹

The *Report* on the other hand recognised the efforts made by the CSD in maintaining “*a high degree of order and regimentation*” in its penal institutions enabling a clean and orderly environment for those under custody. The inspecting teams were “*impressed with the functioning of Hong Kong's penal facilities. The filth, corruption, extreme violence, lack of adequate food and medical care, and corporal punishments that afflict the great majority of the world's prisoners are not an issue in the Hong*

⁵⁹ Ibid, p. 6.

⁶⁰ See Note 20, Ibid. The Vietnamese migrant population in 1991 was 34,297, more than triple the penal population.

⁶¹ Ibid, pp. 20-22.

*Kong prison system. The U.N. Standard Minimum Rules for the Treatment of Prisoners are, to a notable degree, respected.”*⁶²

The *Report* when commenting on the prisoner adjudication system in Hong Kong remarked that ‘*the welcome development*’ on ‘*the recent amendments to the Prison Rules lowered the maximum amount of forfeiture of remission from two months to one month. In special cases, the Commissioner can order up to three months’ loss of remission (previously six months)*’⁶³

Two sample cases on prisoner adjudication and punishment are cited in the *Report*. “*At Shek Pik Prison, a prisoner found guilty of gambling received twenty-eight days’ loss of remission, twenty-eight days’ loss of privileges, and twenty-eight days separate confinement. At Victoria Prison, a prisoner found guilty of verbally abusing CSD staff received fourteen days’ loss of remission, fourteen days’ loss of privilege, and fourteen days’ separate confinement.*”⁶⁴ The *Report* was however silent on the level of award given by the Prison Superintendents in these cited cases as well as on all other cases examined.

The completed report thus presented a snapshot on conditions of the Hong Kong penal system in 1997 and could be used for benchmarking with the conditions of the prison in Hong Kong after 1997.

⁶² Ibid, pp. 7-8.

⁶³ See Note 91, Ibid, p. 25.

⁶⁴ See Note 93, Ibid, p. 26.

10.7 Conclusion

The set timeline for Hong Kong to be handed over to the Chinese Government on 1 July 1997 had generated unprecedented penal policy changes and advancements that would unlikely to have taken place in Hong Kong by 1997 without this change of sovereignty.

Despite the signing of the Joint Declaration guaranteeing Hong Kong's capitalist style of life for fifty years after the handing over, the 4 June incident taken place in Beijing in 1989 had altered the British Government as well as the local Administration's plans for Hong Kong. With same feeling shared by the legislators, the Government had launched different plans to regain the confidence of the Hong Kong residents and to look into ways to safeguard the degree of freedom and way of life enjoyed by the Hong Kong residents would not be adversely affected after the handing over.

One of the areas which worried Hong Kong residents most was law and order under the Chinese Government after 1997. The media had painted a rather negative picture on China's law enforcement mechanism and the treatment of offenders. Prison management in China was in particular at the centre of many critical reports covering issues such as forced prison labour camps, brutal prison regimes and the extensive use of the death sentences even on crimes other than murder. There were genuine fear that the prisons in Hong Kong might adopt the Chinese way of operation after the handing over with tightened prison regime in line with prisons run in China and the re-introduction of the death penalty in Hong Kong.

The speedy enactment of the Hong Kong Bill of Rights was the most important move the British government had made in Hong Kong to safeguard the rights enjoyed by the Hong Kong residents not be corrupted after the handing over. With the Bill of Rights encompassing the internationally recognized International Covenant on Civil and Political Rights, those legislations enacted before the Bill of Rights and the subsequent legislations all required to take into consideration the Bill of Rights factors and implications.

It is of interest to note that when the Hong Kong Bill of Rights was enacted in 1991, similar legislative provisions were absent in England as it was only in 1998 that the Human Rights Act 1998 was enacted in the United Kingdom which became fully operational in 2000. This sequence of having the colony of Hong Kong enacting such an important piece of legislation before the Home Government was indeed extraordinary and could only be attributed to the 1997 change of sovereignty.

As illustrated in this Chapter and in the earlier chapters on death sentences and corporal punishments in Hong Kong, there were step by step moves taking by the Administration after the 1989 Beijing Incident to rectify various penal laws, Ordinances and procedures which might have negative impacts on the ordinary people of Hong Kong as well as prisoners in custody after 1997. The last minute rush of the legislative enactment to amend the Prison Rules up to the requirements of the Hong Kong Bill of Rights and the setting up of a statutory Board of Review, Long Term Prison Sentences to safe guard the fate of prisoners serving indeterminate sentences were cases in point.

From the example on the enactment of the Community Services Order Ordinance, it demonstrated that the Hong Kong Government was still very cautious in putting forward penal policy which might be perceived by the public as soft on criminals. With lessons learnt from the strong reactions from the Legislators when suspense sentence was introduced in Hong Kong earlier, the Government had used the Law Reform Commission to test the water with extensive consultation held before the legislative process, which proved to be effective at the end.

Most of the British penal initiatives under the Criminal Justice Act 1991 were not taken up by Hong Kong. The detention and training centre programmes in Hong Kong were considered very effective and there was no reason to introduce the British youth justice system to Hong Kong which would not be welcomed by the community for its soft approach on young offenders.

Hong Kong did not follow Britain's amendment of the remission system under the Criminal Justice Act 1991. There was a real danger that the British move for releasing prisoners with less than twelve months sentence at half way point, if followed in Hong Kong, would be considered by the public as getting soft onto the fight against crime. This was particularly true at time when Hong Kong's crime rate was on the rise during early 1990s. The only similar approach Hong Kong had adopted was the provisions of 'release on licence' for lifers being granted determinate sentences.

The other thing which Hong Kong resisted most was the privatisation of the criminal justice system. It was a firm belief by the penal elites in Hong Kong that the criminal justice system in Hong Kong should not be privatised as there was no such need for Hong Kong to follow suit the English practice. Hong Kong's law enforcement

community had no militant or confrontational staff unions like the Prison Officers Association in the United Kingdom and the Hong Kong Government was not short on resources in launching capital projects within the general revenue.

Another point worth noting is that when proposing amendments to the Prison Rules found in conflict to the Bill of Rights, the Administration or the CSD seldom made reference to the penal policies and practices taken place in England at the time. An example on this was the curtailment of the power of the Prison Superintendent in awarding 'Loss of Remission' in prisoner adjudication to thirty days. There were no record showing the CSD had taken note of the penal practices in England after the Woolf Report and the subsequent Home Office White Paper '*Custody, Care and Justice*' in 1991 where similar recommendations in redefining prison offences and limiting the power of awards in prisoner adjudication had been proposed. This example reaffirms the argument that the Administration and the Correctional Services in Hong Kong at the time had been moving away from the penal policies and practices in England and was comfortable in the design and to develop its own penal policies and practices deemed fit to the Hong Kong setting.

Finally the bench marking exercise by the Human Rights Watch in 1997 was a blunt reminder to the Chinese that any future change of penal policies in Hong Kong resulting in the deterioration of prison conditions would be condemned as the British had laid a set of penal policies setting prison conditions in Hong Kong in par with international standards. Despite the political agenda behind the inspections, it did however provide a rare opportunity for the public to gain an in-depth understanding on the work of the Correctional Services in Hong Kong in 1997.

Conclusion

This is the first comprehensive analysis on the topic of colonial penalty exhibited in post-War Hong Kong. Hong Kong was chosen as the place for this case study as it had been a British crown colony for more than one hundred fifty years from 1841 to 1997. Regarded as the “Pearl of the Orient”¹, Hong Kong could be said as one of the most successfully developed British colonies in the history of the British Empire. When Hong Kong was returned to Chinese sovereignty on 1 July 1997, it was one of the world class metropolitan cities and the global centre for business, finance and communication. The global positioning of Hong Kong as reported by the Hong Kong Government in 1997 was:

*“Hong Kong is ranked the seventh-largest trading entity in the world. It operates the busiest container port in the world in terms of throughput, and the busiest airport in the volume of international cargo handled. It is the world’s fourth-largest banking centre in terms of external banking transactions, and the fifth-largest foreign exchange market by turnover. Its stock market has Asia’s second largest market per capitalisation.”*²

By end of 1997, Hong Kong was estimated to have a population of 6.62 million. Owing to its geographical location with Mainland China, Chinese are the most predominant ethnic group in Hong Kong. Hong Kong is small in size with a total land area of only 1,096 square kilometres. This makes Hong Kong one of the most densely populated cities in the world with an overall population density of 6,160 per square kilometre in 1997. With a hilly typography and large sectors of rural area designated

¹ See Hamilton, G. (1963) *Flag Badges, Seals and Arms of Hong Kong*. Hong Kong: Government Press, p. 37. The lion was holding a pearl in the armorial bearings of Hong Kong.

² See Chapter 5, *Hong Kong Year Book 1997*, <http://www.yearbook.gov.hk/1997/eindex.htm>

as green belt, the build-up areas in Hong Kong are limited. In Hong Kong Island and Kowloon, which represent Hong Kong's older urban areas, the population density had reached 27,230 people per square kilometre in 1997.³

Despite this dense population jam-packed in a metropolitan city, Hong Kong is considered as one of the safest cities in the world with a low reported crime rate. The crime rate for 1997 as reported by the Hong Kong Police was 1,036 per 100,000, which was the lowest in the past 24 years.⁴ One of the contributing factors for this low crime rate was the existence of a highly efficient police force in Hong Kong which was also very well staffed. In 1997, the Hong Kong Police Force composed of 38,969 personnel including 5,455 Auxiliary Police and 5,926 civilian support staff, making a high police population ratio of 499 per 100,000 population or 1 police (regular or auxiliary) to 200 citizens.⁵ On the other hand, the imprisonment rate for Hong Kong in 1998 was 181 per 100,000 population, which is much higher when compared to the figure of 126 per 100,000 for England and Wales in 1998.⁶

The successful use of punishment through its penal policies and the related programmes are another essential factor for Hong Kong's success in the maintenance of law and order whilst a British colony. Part of this thesis presents an in-depth historical study on how penal policies and programmes in Hong Kong were formulated during the post-War years from 1945 to 1997. In this case study, it is revealed that Hong Kong had at times followed the history of penal development in

³ See Chapter 24, *ibid.*

⁴ See Chapter 18, *ibid.*

⁵ See Traver, H. (2009) 'Hong Kong Police Force' in Gaylord, M., Gittings, D. and Traver, H. (Eds.) *Introduction to Crime, Law and Justice in Hong Kong*. Hong Kong: Hong Kong University Press.

⁶ See International Centre for Prison Studies, World Prison Brief. University of Essex.
<http://www.prisonstudies.org/info/worldbrief/index.php?search=U>

England and Wales but had also developed its unique penal policies and programmes. Signs of colonial penalty were abundant during the post-War years in Hong Kong requiring the scope of this study to extend beyond the penal institutions and its activities to include wider social factors in Hong Kong and England.

Punishment in a colonial setting is more than just crime control and offender management but complicated by its other function in upholding the colonial authority as agent of social control. In the case of Hong Kong, a place where the West meets the East with “*a history of suspicion between the majority Chinese population and the British colonists*”,⁷ there is the additional cultural factor to be considered where penal philosophies of the West may not be agreed by the dominant Chinese population where the traditional Chinese penal philosophy prevails. The colonial administration would not hesitate to exercise draconian punitive measures for law and order maintenance but at times this had the support of the locals. The public consensus in Hong Kong, representing the interest of both Chinese and Western business circles as well as the majority Chinese population, welcomed the adaptation of deterrent punitive sanctions in dealing with law breakers which ties closely with the Asian value of which offenders should always be dealt with severely.

Penal reform in England that took place before and after the Second World War had become models and examples for the British colonies to follow and directives from the Colonial Office were keeping the colonies in close check on their reform progress.

The various penal reform measures at home were however not transported to Hong

⁷ Howell, P. and Lambert, D. (2006) ‘Sir John Pope Hennessy and colonial government: humanitarianism and the translation of slavery in the imperial network’ in Lambert, D. and Lester, A. (eds.) *Colonial Lives Across the British Empire: Imperial Career in the Long Nineteenth Century*. Cambridge: Cambridge University Press, p.244.

Kong en bloc but were only selectively picked and adopted according to the needs and the time table dictated by the local penal elites. The political, social and economic conditions in Hong Kong were the key factors influencing this small circle of decision makers in Hong Kong.

The present study has identified a three-phase transformation of penal discourse in Hong Kong during the post-War period. The first phase is from 1945 to 1969 when Hong Kong had recovered from the impacts of the Second World War and developed gradually into a period of penal welfarism following closely the welfare model of the English penal system. The War had provided opportunities for the penal services in Hong Kong to start afresh. The Prisons Department had in fact changed in organisation and administration drastically after the Second World War by allowing the local Chinese to join as Warders. This was in contrary to the pre-War colonial mentality of which Chinese were never trusted to manage prisoners of which the majority of them were of the same race. This localisation trend, partly because of the decolonisation policy and partly because of the difficulties in getting non-Chinese staff to work in the Prisons Department after the War, had gradually opened up to the Prison Officer grades to the Chinese until all recruitment, including induction trainings, was conducted locally. This move had paved the way for the development of a progressive penal system in Hong Kong whereas the cultural barriers were lifted with needs of the local prisoners more readily addressed.

The second phase is from 1970 to 1981 when penal policies in Hong Kong had moved away from the British penal welfarism model and focused more on deterrence, security, discipline and control to fight the rising crime trend. The 1973 Stanley Prison

riot turned out to be the watershed for the post-War penal services in Hong Kong laying foundations for the organisational and administrative revamp of the key operating agent, the Prisons Department to model after its counter-part in England.

The third and final phase of penal policy development prior to 1997 was on enhancing and preserving the British penal and human rights standards in Hong Kong to safeguard the penal system in Hong Kong not to be eroded after the return of the British colony to China in 1997.

This study further revealed that colonial influence was more prominent in the first phase when the British Empire was still strong and the Colonial Office was keeping a close watch on colonial affairs. Penal issues in the colonies were high on the Colonial Office's agenda to prevent any negative publicity arising from colonial penal matters that might tarnish the image of the British Empire represented by a modern and civilised value and culture. However it is also revealed in this study that local consideration, in particular political, social and cultural issues had played important roles in deciding which British penal initiatives to be adopted and which should be discarded. In the case of Hong Kong, not many post-War penal initiatives developed in England under the various Criminal Justice Acts, etc. were adopted by Hong Kong. Instead, local law and order issues such as the wide spread problem of drug addiction in Hong Kong was being addressed through local initiatives.

With the downsizing of the British Empire and the subsequent closing down of the Colonial Office in late 1960s, Hong Kong had more freedom in deciding its own

penal policies. During the late 1960s and early 1970s, youths were blamed for the high crime rates when half of the population in Hong Kong was young people of the post-War baby boom generation. The colonial government was always able to defend its deterrent penal policy and practice such as the introduction of the detention centre programme and corporal punishment in the name of maintaining law and order. The only exception, as illustrated in this study, was the suspension of capital punishment in Hong Kong after 1966. Despite the overwhelming public support for carrying out execution in Hong Kong, it was not possible to carry out this sentence as the British Government had direct control over the legal procedures on capital cases and there was not a chance for the public opinions of the colonies to override those in London, especially when the penal reform movement in England was strong after the Second World War.

Penal policies in Hong Kong were indeed derived from a very small circle of penal elites from within the Government. The Attorney General would consider issues concerning sentencing options and their effects whereas the Commissioner of Prisons or after 1982 the Commissioner of Correctional Services would consider penal initiatives towards the treatment of offenders, the correctional programmes and their effectiveness. The two parties did not necessarily share the same penal philosophies as illustrated by Commissioner Norman's strong anti-corporal punishment stances and the resistance of the Prisons Department in launching the preventive detention scheme after its enactment.

Nevertheless there were more examples of close co-operation between the two. Many penal initiatives were generated from the different Commissioner of Prisons such as

the setting up of the training centre programme, the drug addiction treatment centre programme and the detention centre programme. Except the drug treatment centre programme which was a local initiative, the other two programmes were modified after the British borstal and detention centre programmes respectively. The backgrounds of the different Commissioners on the other hand would also lead to rather different approaches adopted in the treatment of offenders. Norman's welfare approach towards young and adult offenders was rather different from Garner's authoritarian approach. Furthermore both of them had served long years as Commissioners which allowed them to fully develop their respective visions on penal initiatives into reality.

The Prisons Department had a close link at operational level with its counterparts in England and thus able to find out and learn from the penal policy issues and problems at home. In the cases of the borstal and later the detention centre programmes, their problems and issues encountered at home were studied with local adaptations made to fit in the local situation when the legislations were being drafted in Hong Kong so as not to repeat the same mistakes that occurred in England and Wales. The Prisons / Correctional Services Department faced little challenges on its work as the public in general were in lack of interest on penal matters and pressure groups for penal reform did not exist in Hong Kong during this period. This situation was different from England reflecting the differed public perceptions on punishment between the two societies.

With the Department's rapid expansion and focus on institutional order and discipline after the 1973 Stanley Prison riot, the penal system in Hong Kong has enjoyed a

rather stable and peaceful period despite being tied down by the additional task of managing the Vietnamese refugees / detainees. This stable penal environment allowed the Prisons Department to develop gradually in the area of offender rehabilitation through disciplinary welfare. Corporal punishment and dietary punishment as awards for breach of prison discipline were quietly removed in meeting international standards. The re-focus on rehabilitation subsequently led to the change of the department's title to that of the Correctional Services Department in 1982.

There was no demand or necessity for Hong Kong to follow the later penal policy changes in England especially changes on the youth justice system and the revised sentencing practices. The exceptions were the introduction of the suspended sentence in 1970 and the community service order in 1984 as additional non-custodial sentencing options. The legislative process of these two non-custodial sentencing options in Hong Kong had however clearly demonstrated the Government's apprehension on the public opinion towards punishment of offenders. As reflected by the legislators on many occasions when penal policies were debated at the Legislative Council, the Government was repeatedly urged not to be soft on crime and criminals for fear that laws would not be respected and more crimes would emerge.

Another indication on Hong Kong people's cautious approach towards punishment was demonstrated by the cases reviewed by the Release under Supervision Board established since 1987. The Board, with appointed members from the public, was extremely selective and cautious in releasing long serving prisoners from prison to undergo supervision in the community by after-care officers of the Correctional Services Department.

Penal policies in Hong Kong after 1982 were focused more on addressing the issue of possible erosion of the penal system after Hong Kong's change of sovereignty in 1997. The Hong Kong Bill of Rights were enacted to safeguard the international human rights standards would still be observed in Hong Kong after 1997 and there were moves to take out the draconian penal practices from the statutes such as the sentence of corporal punishment by court and finally the abolition of the death sentence in Hong Kong. Prison Rules were reviewed and amended to align with the spirit of the Hong Kong Bill of Rights.

The political reform in Hong Kong during Governor Patten's time in late 1990s had witnessed the increased participation and influence of the legislators in penal policy legislation. In the legislative process for the Post-release Supervision Scheme, the initial proposal by the Correctional Services Department and the Government carried a much stronger disciplinary welfare principle with the involvement of a policeman in the supervision team. This was however voted down by the legislators and the policeman post being replaced by a social worker from the Social Welfare Department. This has reflected a new development of having penal elites' proposal challenged and the legislators' changing attitude towards penal reform and rehabilitation. The community's shifting attitude on the treatment of offenders had led to the changing approach of the Government in launching subsequent penal policies. In proposing the community service order programme in Hong Kong, extensive public consultation and engagement were carried out by the Administration.

The legislation relating to prisoner's sentence review mechanism was rushed before the handing over in 1997 as a further protection on the rights of the prisoners. The

contained amendments allowed the review authority to be placed under a statutory board so that its operation could be governed by law rather than by executive decision after the handing over.

In order to take stock of the development of Hong Kong's penal system under the British administration, the human rights groups were even allowed to inspect and audit the work of the penal institutions operated by the Correctional Services Department before the handing over. This served as a parting testimony to the incoming Special Administration Region Government in 1997 what the British had left was a well managed, humane and internationally renowned penal system in Hong Kong.

This thesis has attempted to analysis Hong Kong's penal development and reform after the Second World War not only through the history of the penal institutions and programmes but more importantly the interaction between the social, economic, cultural and political conditions and the resultant penal policies that existed at the time and accounted for the changes.

Colonial penalty, as illustrated in the case example of Hong Kong, has demonstrated the complex issues related to penal policy formation and execution in a colonial setting. Political, cultural and social factors all had its contributions during the different period of time in shaping Hong Kong's penal policy and programme. The ambivalence on the concept of punishment between the penal elites and the community at large had on occasions found to be at odds with Hong Kong's penal

systems and services for the offenders. This 'tough on crime' attitude, not part of the colonial penalty, but voiced from the local community, had dominated Hong Kong's penal policy development throughout the post-War period.

In this thesis, various drivers of penal changes in post-War Hong Kong have been identified and examined. These included the influence of the key individuals mainly law makers and top officials within the Government administration who were in the position of making policy decisions; the impacts of the local penal elites who had tailored the specific penal programmes that suits Hong Kong; the influence of the Colonial Office and the British Government in advocating the western penological ideals to the colonies; the changing composition of the local population; the problems of drugs and triads; the rising crime tides and the moral panics in the 1970s; the impact of the prison riots and the subsequent reform of the Prisons Department and finally the change of government in 1997 and the issues on human rights.

Each of these drivers had its specific impacts on shaping Hong Kong's penal policies and system as elaborated in this thesis. However when comparing and weighting the importance of these drivers, it is argued that political impacts were the most prominent driving force responsible for shaping the colonial penalty in Hong Kong. The political impacts were not only coming from within the colony but also being affected by regional as well as global dynamics.

Hong Kong's economic and social changes after the War were heavily influenced by international politics. The resumption of the British administration after the Second

World War had major political impact on Hong Kong ensuring Hong Kong to remain a British crown colony with the adaptation of the British legal system and under the control of the Colonial Office in London. With penal elites with British penal service backgrounds selected by the Colonial Office, it was not surprising that the colony had followed the British penal progress of which penal welfarism was emphasised in the 1950s and 60s.

It was also because of the unstable political situation in the neighbouring region right after the end of the Second World War and up to the 1960s that saw Hong Kong flooded with migrants, some brought with them wealth and talents but a greater part of them came as refugees bringing with them major social problems in employment, housing and public order issues to the colony. The consequences of the use of punishment as a tool of social control was a rise in the prison population. Open prisons and the drug treatment centres were developed not only on operational needs but as measures to respond to the social and economic conditions at the time.

Britain's decolonisation process after the War, a major move affected by international as well as national political interests, saw the down sizing of the British Empire and Hong Kong became the only sizable British colony since late 1960s. With the deletion of the Colonial Office from the British governmental structure, the previous monitoring roles of the various advisory committees on colonial penal matters were no longer in place. Hong Kong was able to enjoy greater autonomy in designing its own penal policies according to the social and cultural needs which sometimes in contradiction with the welfare and rehabilitative penal philosophies at home, such as the insistence on the use of corporal punishment as deterrence to juvenile crime in

Hong Kong. There were nonetheless limitations on this penal autonomy as reflected in the example of the death sentence in Hong Kong where condemned prisoners were no longer executed after 1966 despite the calls for execution to be carried out in the colony by the locals. This was only possible because of Hong Kong's position as a British colony when the judicial process of a capital case required the intervention of the Privy Council which would uphold the British value and interest over the locals.

Hong Kong had enjoyed a period of political stability after the 1967 riots with rapid economic growth benefitted by China's modernisation process. However with the approach of 1997 and the signing of the Joint Declaration by the British and Chinese governments during the 1980s deciding on the future of the colony, the days of which the British Government could influence the governance of the colony were numbered. Nevertheless the brutal suppression of demonstrations by force at Beijing in 1989 had shocked the world and caused major confidence crisis amongst the local residents on the future of Hong Kong. Both the British Government and the Hong Kong Administration had to plan for contingencies and the introduction of human rights instrument to Hong Kong and its legislation had become a matter of great urgency in addressing the anxieties of the local residents.

Fearing punishment after Hong Kong's return to China would become the state apparatus for oppressing the dissidents and the possibilities of the return of death sentences to Hong Kong after 1997, major overhaul of the penal system in Hong Kong was carried out by removing rules and practices that were found in conflict with the human rights instrument. The removal of the capital sentence from the statute even before Britain and against local public opinion was only possible under such

unique political background.

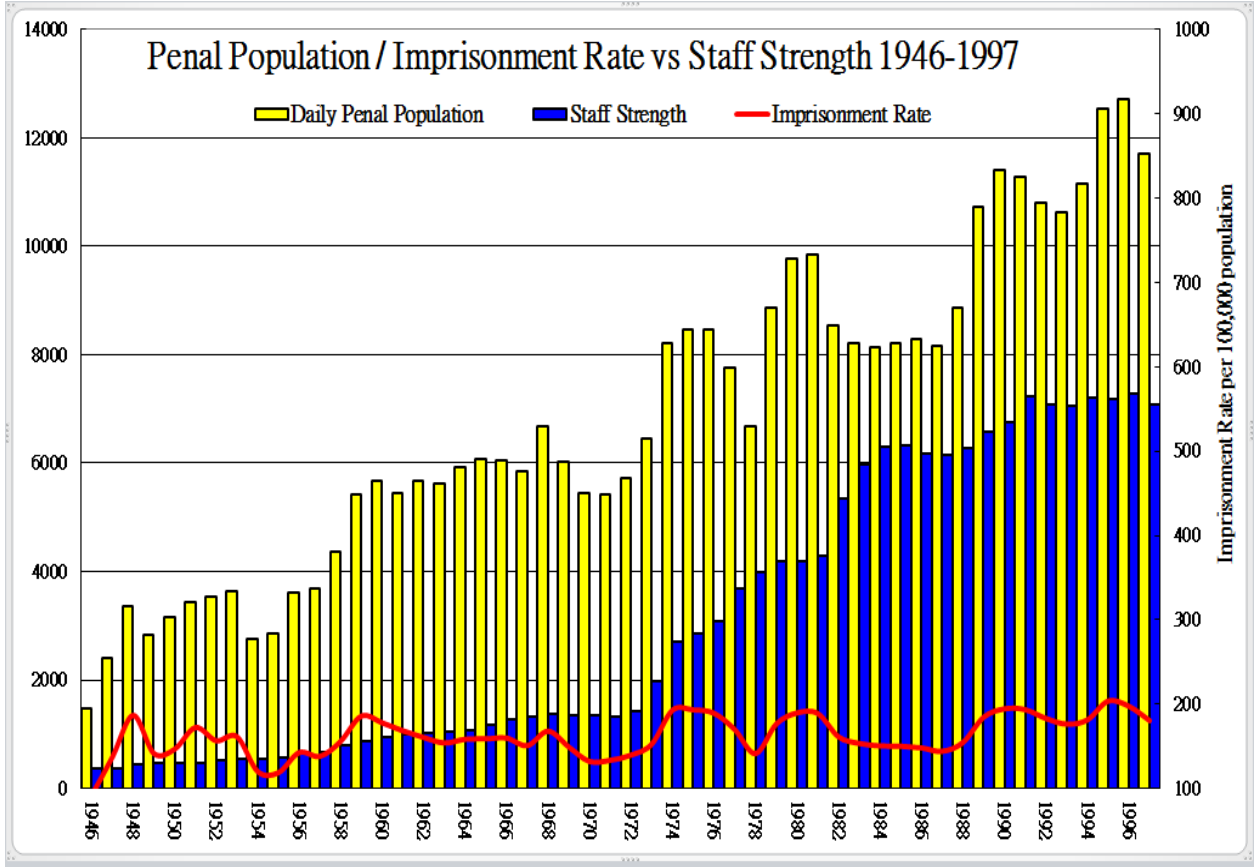
Alexander and Anderson (2008) after analysing a number of British colonial penal systems in Africa and Asia from the eighteenth century through to the 1970s suggest that “*there was something peculiarly colonial about the politics of punishment in the age of empire, for the politics of social difference and repression informed the politics of confinement in significant ways. Thus, in the colonial context, imprisonment could never be anything but political.*”⁸ This case study on penalty in Hong Kong has illustrated the relationships of punishment with the broader set of social institutions and affirms the argument that political elements were the key drivers of penal changes under the colonial context even up to the end of the twentieth century. With the unique and distinctive characteristics exhibited in the case study of colonial penalty in Hong Kong, Britain’s last crown colony; this thesis has contributed to the understanding of colonial penalty in the final chapter of the British Empire.

⁸ Alexander, J. and Anderson, C. (2008) Politics, Penalty and (Post-) Colonialism, *Cultural and Social History: The Journal of the Social History Society*, 5(4), pp. 391-4.

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Penal Population / Imprisonment Rate and Staff Strength (1946-1997)



Source:

Figures compiled from Prisons Department / Correctional Services Department
Annual Reports, 1946 – 1997.

**Regulations for the Government of
Her Majesty's Gaol in the Island of Hongkong**

One European Constable will be ordered for duty daily, he will never leave his post unless by order of the Magistrate. He will keep in his possession the key of the door of the prison yard, and which door must never be opened unless in his presence. One sub Inspector and four Privates of the Native Police will constantly attend at the prison, this Guard will furnish a Sentry day and night to be stationed in the Verandah.

On occasions of alarm the Constables will instantly accoutre, two will remain to guard the Gaol, and the others will proceed to the Magistrate for orders.

The keys of the Gaol will be under the charge of the Senior Non-Commissioned Officer and must be always at hand.

1. Each prisoner must be searched before he is locked up, and knives or other cutting instruments taken from him.
2. No clothes, food or anything else will be allowed to enter the Gaol without being previously inspected by the Constable on duty.
3. No prisoner will be allowed to quit his cell, unless to labour, or to obey a call of nature, without the Magistrate's permission.
4. No prisoner will be allowed to receive visitors unless by the sanction of the Magistrate, and in the Verandah. Prisoners so receiving visits will be searched after their friends shall have left them.
5. Permission to purchase tobacco, fruit, and other harmless luxuries, will be given to well-behaved prisoners.
6. No unnecessary communication to be allowed between prisoners and policemen.

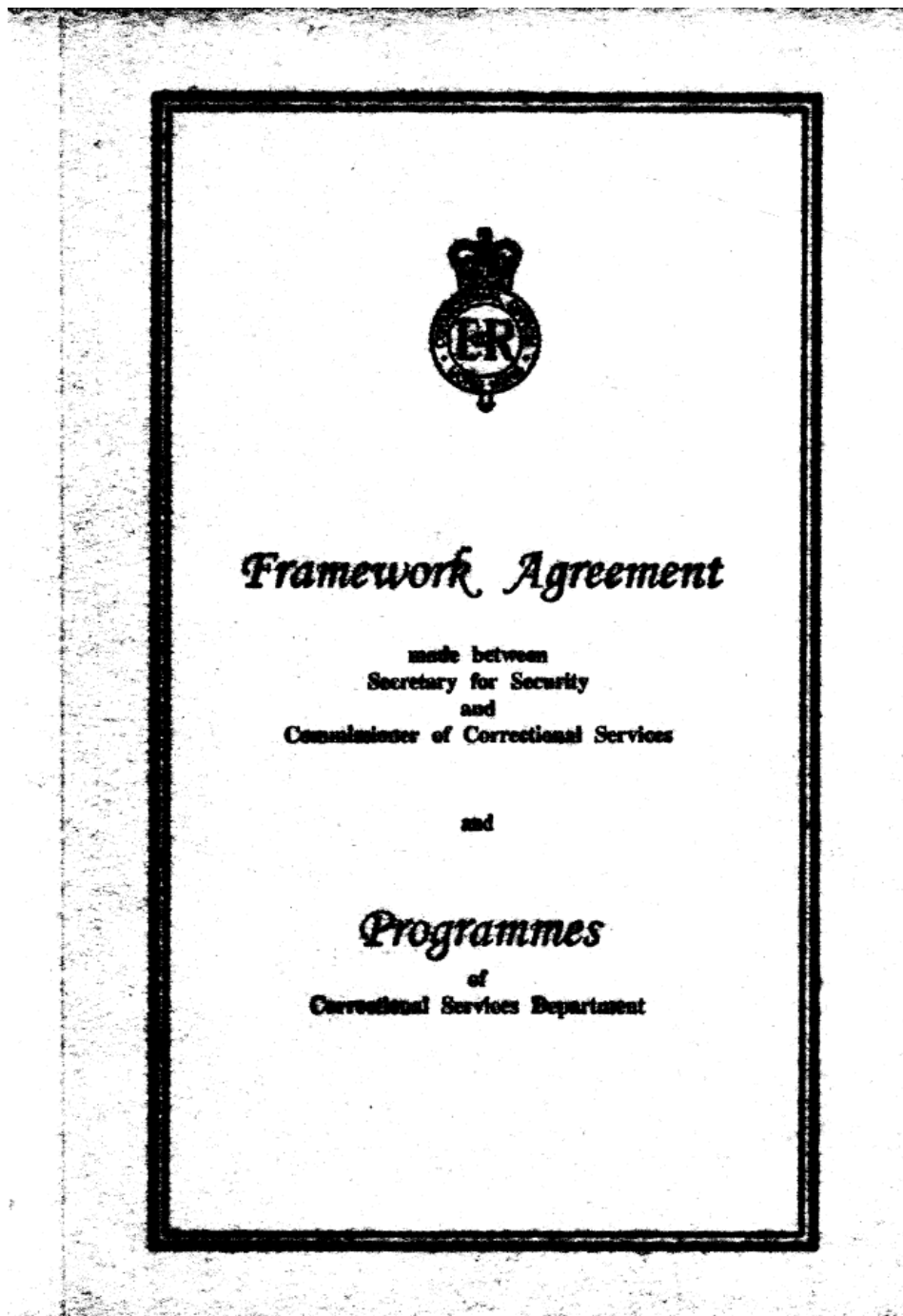
7. The Senior Non-Commissioned Officer will visit the cells morning and evening, and satisfy himself of the safety of his prisoners. He will recollect that the preservation of their health will mainly depend upon cleanliness of person and abode, to which he will particularly direct his attention.

8. The Constable on duty will see that no prisoners leaves the prison unless under the special charge of a policeman.

Source:

1845 Annual Return on Goals and Prisoners in CO 133/2, pp 120-6

**Framework Agreement made between Secretary for Security and
Commissioner of Correctional Services and Programmes of
Correctional Services Department (1993)**





Framework Agreement

1. SCOPE

- 1.1 The agreement specifies the relationship between, and the respective responsibilities of, the Commissioner of Correctional Services and the Secretary for Security. They will be referred to as "the Commissioner" and "the Secretary" in the ensuing paragraphs of this document.
- 1.2 The provisions will take effect from 1st April 1993. This agreement will be reviewed by the Secretary in consultation with the Commissioner after one year, and subsequently every two years.

2. STATUS AND RESPONSIBILITIES

- 2.1 The working relationship between the Secretary and the Commissioner is stipulated under the framework specified below.
- 2.2 The Secretary will provide the Commissioner with policy guidance and support as follows :
 - (i) defining the core activities encompassed by each programme area;
 - (ii) formulating and reviewing policy aspects of each programme;
 - (iii) coordination of programmes and objectives between and within policy areas;
 - (iv) securing resources, and determining the allocation of those resources within the estimates procedures;
 - (v) setting performance targets, in consultation with the Commissioner, to achieve specified value for money objectives;
 - (vi) reviewing biannually with the Commissioner, at a set time, the achievement of these targets, and any resulting actions required;
 - (vii) speaking for the Government on policy matters relating to the policy areas; and
 - (viii) processing draft drafting instructions for legislative amendments and taking these forward for final legislative enactment.
- 2.3 The Commissioner will be responsible to the Secretary for :
 - (i) managing the activities in the programme areas on a day to day basis;
 - (ii) helping the Secretary to define and review objectives;
 - (iii) enhancing the morale and abilities of staff by providing the appropriate conditions of service, management structures and training;
 - (iv) deploying resources allocated to the Department within the estimate year;

- (v) achieving the performance targets as agreed with the Secretary;
- (vi) reviewing biannually with the Secretary, at a set time, the achievement of the targets, and implementing any follow-up resulting action required;
- (vii) speaking for the government on matters relating to the operation and management of the Department; and
- (viii) keeping under review existing legislation and initiating draft drafting instructions for legislative amendments.

3. ACTIVITIES

- (i) Prison Management;
- (ii) Re-integration; and
- (iii) Management of Vietnamese Migrants

4. AIMS AND OBJECTIVES

The Department's principal objectives are to give effect to court orders involving custody; to facilitate prisoners/detainees' re-integration into society; and to provide safe and humane accommodation for Vietnamese migrants, pending their repatriation or resettlement. Within this framework, the major objectives with regard to each of the major programmes are :

- (i) To provide safe and humane custody for all persons sentenced by the courts;
- (ii) To facilitate the re-integration of prisoners and inmates into society as law-abiding citizens through the various rehabilitation programmes provided for different types of prisoners and inmates; and
- (iii) To manage Vietnamese Migrants detention centres to provide safe and humane accommodation for Vietnamese Migrants, pending their repatriation or resettlement.

5. FINANCIAL PLANNING AND CONTROL

- 5.1 Financial objectives will be set in the context of the annual Estimates exercise and the annual resource allocation process by the Secretary.
- 5.2 Any shortfall in financial objectives as a result of action outside the control of the Commissioner will be taken into account when evaluating the performance of the department.
- 5.3 The accounts produced by the department in the annual Estimates and resource allocation process will include information on performance against agreed financial and operating targets.



Programmes

PRISON MANAGEMENT

- * Prisons, remand centres, and psychiatric centre
 - * Medical services
- * Custodial wards in public hospitals
- * Escort and emergency support services
 - * Inspectorate and security services
 - * Correctional Services Industries

Programme Name : Prison Management

Aim : To provide safe and humane custody of all persons sentenced by the courts

Brief Description : The Correctional Services Department, through its Operations Division, Industries Division and Inspectorate and Management Services Division, provides a safe and humane environment for the custody of prisoners. The Department maintains good order and discipline in the routine management of prisons, psychiatric centres and remand centres. It provides accommodation and services catering for the basic needs of prisoners. These include a comprehensive medical service provided both in prison clinics and in custodial wards in Government hospitals. Opportunities are also given, through the Correctional Services Industries, to engage prisoners in work so as to avoid unrest arising from boredom, and to instil among them a good working habit.

Responsibility : The Assistant Commissioner (Operations), together with the heads of institutions, are responsible for the management of all penal institutions. The former also oversees the medical services, custodial wards and escort and emergency support activities. The overall control and management of the Correctional Services Industries (CSI) is the responsibility of the Civil Secretary and his General Manager (CSI). The Inspectorate Division is the responsibility of the Assistant Commissioner (Inspectorate & Management Services).

Operational Objectives :

1. To maintain order, control and discipline so as to minimize the number of escapes and acts of indiscipline;
2. To provide the basic necessities and a reasonable living environment for prisoners;
3. To provide adequate medical, welfare and psychological services for the prisoners;
4. To provide opportunities for prisoners to work so as to avoid unrest due to boredom and to help them to develop a good working habit; and
5. To employ resources effectively in penal management.

Matters requiring special attention in 1993/94

Prison overcrowding, at 20% over the certified accommodation, will continue to be the prevailing problem which could adversely affect overall security, control and accommodation standards. There is an urgent need to provide additional prison capacity and adequate manpower coverage if the standards of service and security are to be maintained.

In addition to the need for early policy and resource support for the prison building and expansion programmes, the successful repatriation of Vietnamese Migrants (VM) will also provide opportunities for relieving overcrowding, through the conversion of some VM centres into prisons. A plan is in hand to convert Hei Ling Detention Centre into a medium security prison in 1993/94.

In addition, recommendations of the Manpower Review should be implemented to allow sufficient staff to deal with overcrowding in prisons.

Performance Measurement :

- Actual penal population against the certified accommodation level of penal establishments
- Percentage of all routine requests entertained within 7 days
- Percentage of inmates out of cell/dormitory 10 hours per day
- Number of successful escapes
- Number of absconders from escort/working groups outside the institutions
- Number of concerted acts of indiscipline
- Number of complaints regarding the treatment of prisoners and/or management of penal institutions
- Number of cases of counselling and welfare services provided
- Average daily cost of maintaining a prisoner
- Number of prisoners engaged in work
- Number of workposts provided under CSI
- Value of annual production/services of CSI

Financial Summary :

	93/94 Budget \$M
<i>Revenue :</i>	nil
<i>Costs :</i>	
Prisons Management	780.2
Medical Services (including psychiatric services)	73.9
Custodial Wards	12.6
Escort and Emergency Support	53.5
Inspectorate and Security	5.6
Industries	114.9
Total :	1,040.7

RE - INTEGRATION

- * Management of training centres, detention centre and drug addiction treatment centre
 - * Aftercare services
 - * Education and vocational training
 - * Psychological services
 - * Management of half-way houses

Programme Name :	Re-integration
Aim :	To facilitate the re-integration of prisoners and inmates into the community as law-abiding citizens.
Brief Description :	The Training and Detention Centres provide correctional training for young offenders. Drug addiction treatment programme is designed to help rehabilitate drug addict offenders by restoring their physical health, curing their psychological dependence on drugs, and establishing self-confidence. Education/Vocational training is provided for inmates to enable them to acquire the knowledge/skills that may enhance their job opportunities upon discharge, while psychological services are provided for inmates who may need assistance in coping with their emotional and behavioural problems. The statutory after-care service is currently provided to inmates of the different training, detention and drug addiction treatment centres, as well as young prisoners and prisoners released under the Release under Supervision and Pre-release Employment Schemes. The primary objective is to assist them to lead an industrious and law-abiding life upon release.
Responsibility :	The Assistant Commissioner (Operations), together with the heads of detention, training and treatment centres, are responsible for the administration of the re-integration programmes.
Operational Objectives :	<ol style="list-style-type: none"> 1. To continuously develop positive and constructive regime which will encourage inmates to exercise self-control, and behave with a sense of personal responsibility; 2. To encourage inmates to take full advantage of the opportunities offered during their confinement; 3. To facilitate inmates to retain links with their families; 4. To integrate the work of education and vocational training so as to enhance the opportunity of gainful employment on release; 5. To facilitate the inmates' return to the community by building upon the existing schemes for home leave, liaison with other voluntary groups and agencies; and 6. To provide aftercare and supporting services to help discharges during the period of supervision.

Matters requiring special attention in 1993/94 :

A review of the rehabilitation service is being conducted by a Working Group appointed to examine and make recommendations on how the rehabilitation services for offenders could be improved. The Department will seek policy and resource support for the implementation of recommendations resulting from the review.

Policy support has been obtained from the Fight Crime Committee to extend to a selected group of adult prisoners, aftercare supervision upon their discharge. Subject to the approval of the Governor in Council and the necessary legislative amendments by Legislative Council, the Post Release Supervision of Prisoners Scheme will be introduced in 1993/94.

Performance Measurement :

- ❑ Successful rates of the re-integration programmes within the supervision period.
- ❑ Successful rates of DATC discharges within the supervision period.
- ❑ Number of young inmates engaged in different education/vocational training programmes.
- ❑ Average hours per day per inmate engaged in education/vocational training activities.
- ❑ Number of inmates engaged in character development programmes and activities.
- ❑ Number of cases provided with counselling, psychological and welfare services.

Financial Summary		93/94 Budget \$M
<i>Revenue :</i>		nil
<i>Costs :</i>	Management of detention centre	32.4
	Management of training centres	65.3
	Management of drug addiction treatment centre	45.5
	Provision of aftercare services	39.5
	Management of education/vocational training programmes	18.2
	Provision of psychological services	20.5
	Management of half-way houses	9.1
Total :		230.5

VIETNAMESE MIGRANTS

* Management of Vietnamese Migrants centres

Programme Name : Management of Vietnamese Migrants

Aim : To detain and provide safe accommodation for Vietnamese Migrants

Brief Description : The Vietnamese Migrants Division is responsible for the provision of safe and humane accommodation for Vietnamese Migrants pending their repatriation or resettlement. The Department, with the cooperation of the UNHCR and voluntary agencies, provides for the accommodation and the basic necessities for Vietnamese Migrants, and fosters a peaceful living environment in Vietnamese Migrants detention centres. Staff resources are also devoted to counselling Vietnamese Migrants to return home through the voluntary repatriation programme.

Responsibility : Management of Vietnamese Migrants is the responsibility of the Assistant Commissioner (Vietnamese Migrants), together with the heads of the Vietnamese Migrants detention centres.

Operational Objectives :

1. To ensure the security and safety of the Vietnamese Migrants detention centres and to minimize the number of acts of indiscipline; and
2. To employ resources effectively in Vietnamese Migrants detention centres.

Matters requiring special attention in 1993/94

The Department is keen to ensure that the momentum with regard to voluntary repatriation is maintained at a satisfactory level so that the Vietnamese Migrants detention centres can be vacated as early as possible.

Performance Measurement :

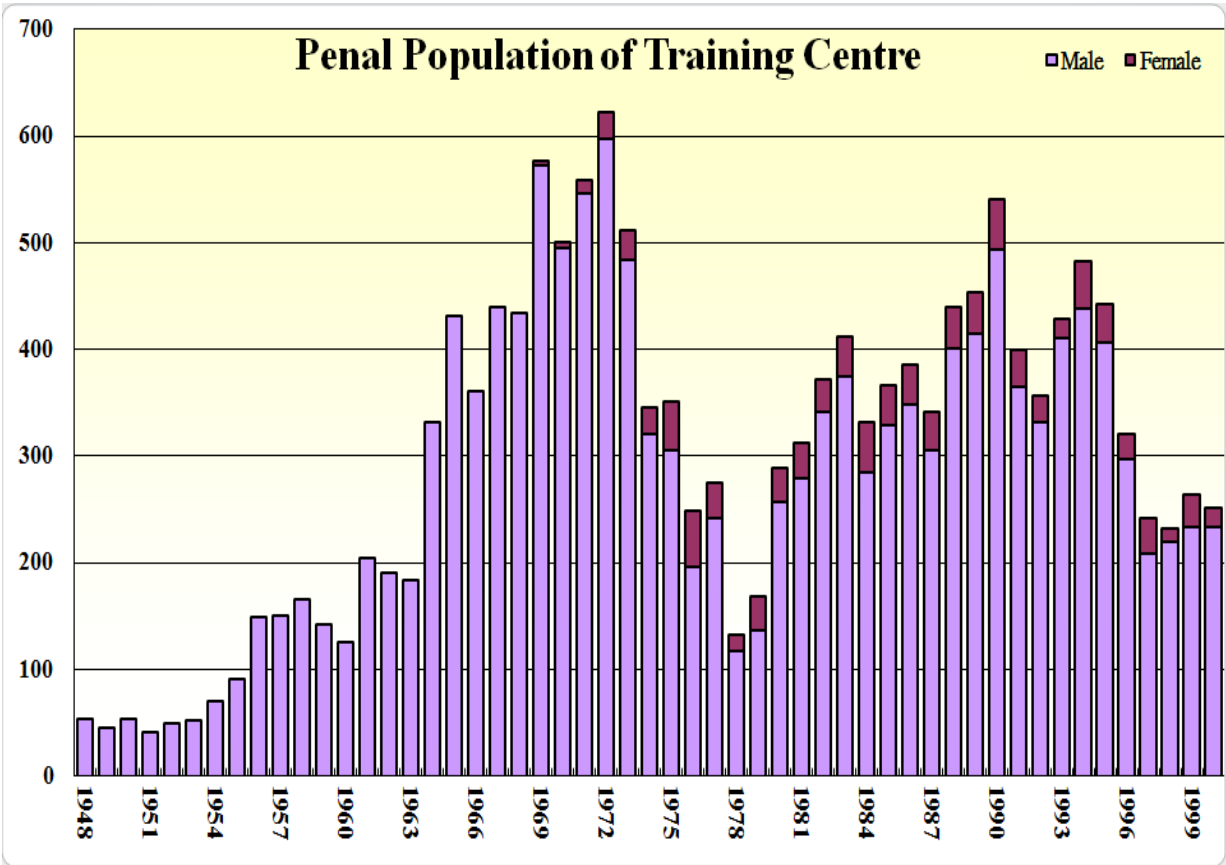
- Number of complaints regarding the treatment of detainees
- Average response time to handle written requests and complaints
- Number of incidents
- Number of acts of indiscipline

- Number of crime cases reported
- Number of escapes
- Number of absconders
- Average daily cost of maintaining a detainee

Financial Summary :

		93/94 Budget \$M
<i>Revenue :</i>		nil
<i>Costs :</i>	Management of Vietnamese Migrants detention centres	
281.1		
<i>Total :</i>		281.1

Training Centre Admissions (1948 – 2000)



Source:

Figures compiled from Prisons Department / Correctional Services Department Annual Reports, 1948 – 2000.

**Annual Success Rates for Correctional Services Department's
Young Offender Programmes (aged below 21)
(1988 – 1999)**

	Detention Centre	Training Centre	Drug Addiction Treatment Centre	Young Prisoners
1988	95.1%	72.7%	76.4%	90.5%
1989	93.7%	69.1%	70.0%	82.5%
1990	94.1%	68.4%	60.7%	79.8%
1991	94.4%	64.1%	61.4%	82.3%
1992	93.4%	72.5%	68.5%	76.8%
1993	94.1%	70.7%	49.7%	78.8%
1994	90.5%	66.5%	51.4%	78.0%
1995	93.5%	70.3%	57.7%	85.2%
1996	93.4%	67.4%	62.5%	81.9%
1997	95.5%	60.1%	68.2%	78.9%
1998	94.8%	63.4%	71.5%	80.3%
1999 (6/99)	95.3%	68.8%	73.9%	86.2%

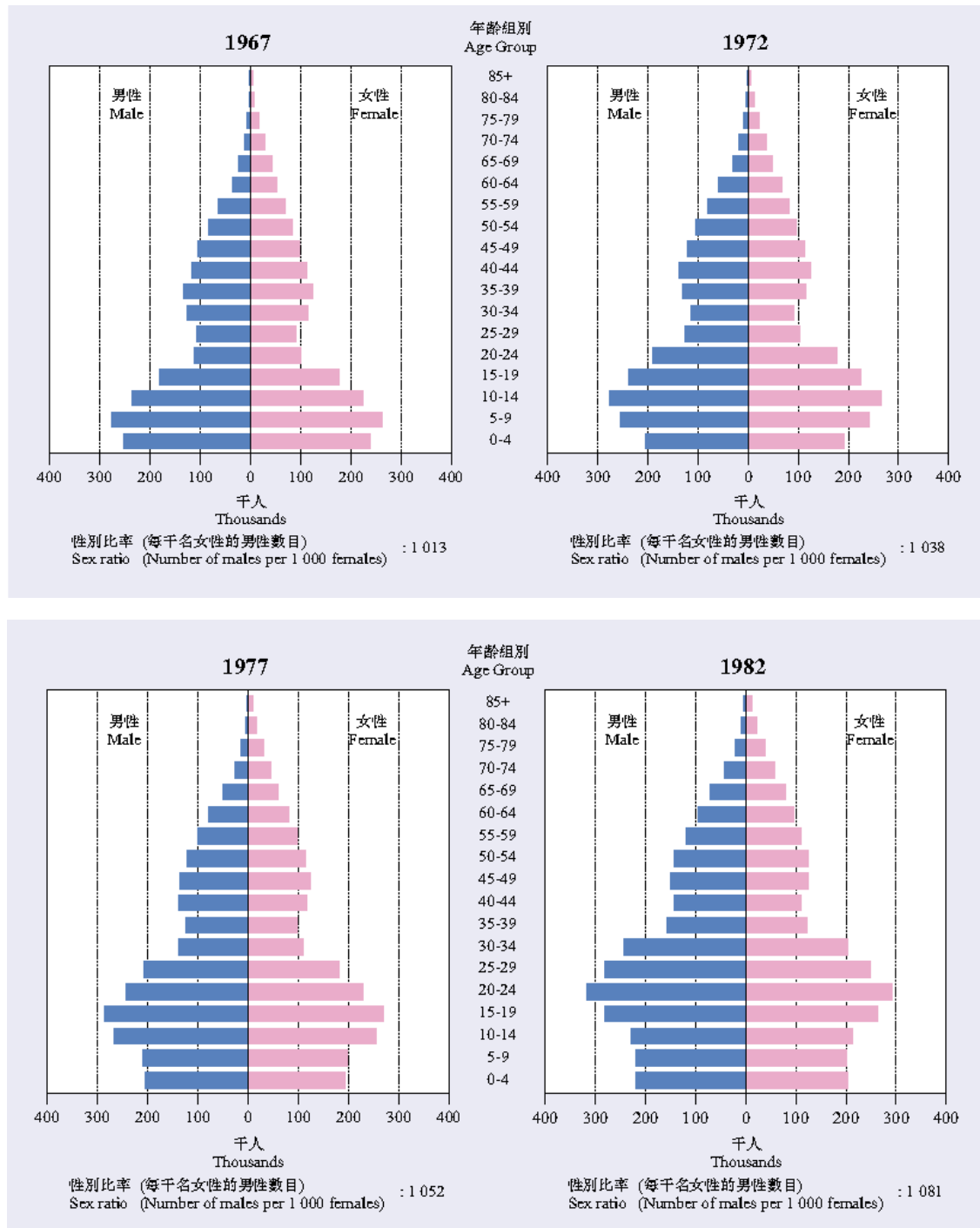
Note 1: The period of mandatory after-care supervision for the Training Centre programme is three years from date of discharge whereas supervision period for the Detention Centre, Drug Addiction Treatment Centre programmes and the young prisoners are one year from date of release from the institution.

Note 2: Success in supervision means no new conviction during the supervision period or being recalled back to institutions for breach of supervision order. Supervisees released from the Drug Addiction Treatment Centres are required to abstain from drug taking as evidenced by regular drug tests.

Source:

Conference Proceedings of the 19th Asian and Pacific Conference of Correctional Administrators, Shanghai, China (1999). Agenda Item Two – The Corrections of Young Offenders, Table 5, Annual Success Rates for CSD Young Offenders Programmes (age under 21), p. 20.

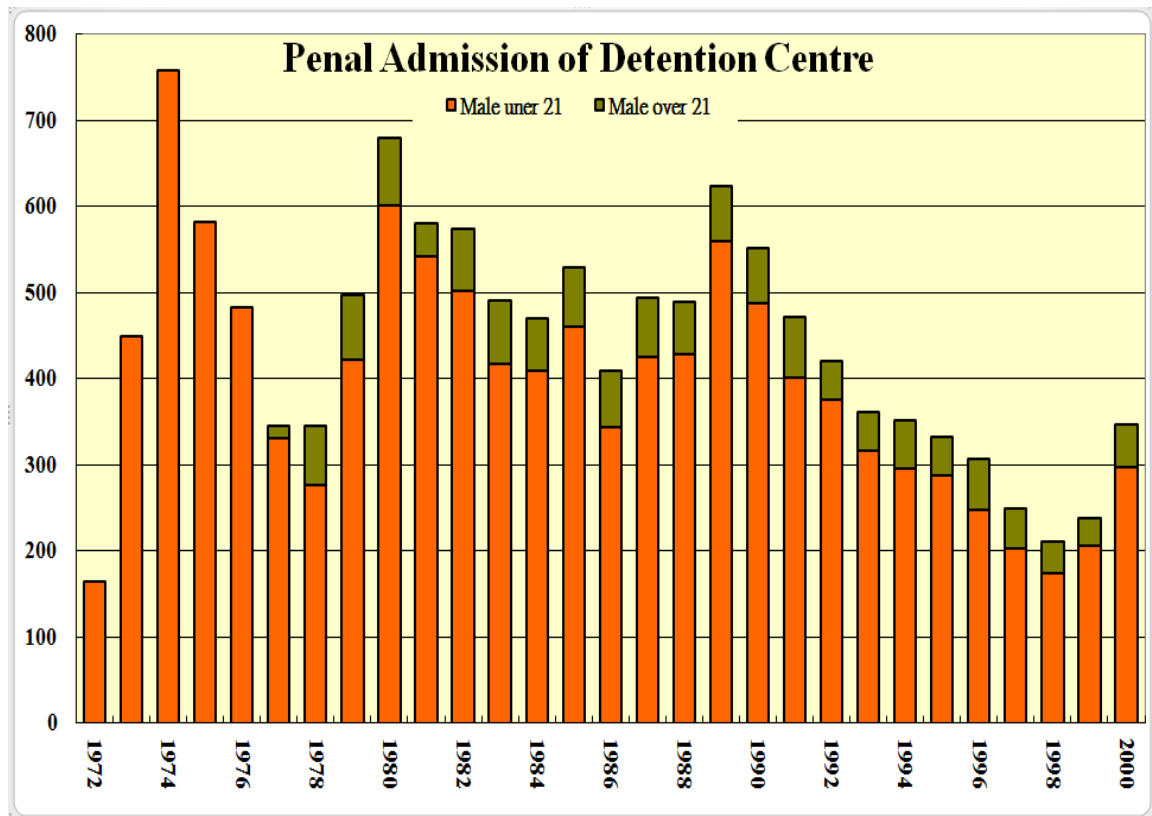
Hong Kong Population Pyramids (1967, 1972, 1977 and 1982)



Source:

http://www.statistics.gov.hk/publication/general_stat_digest/B1010005012008XXXXB1303.pdf Date accessed: 2011-10-20

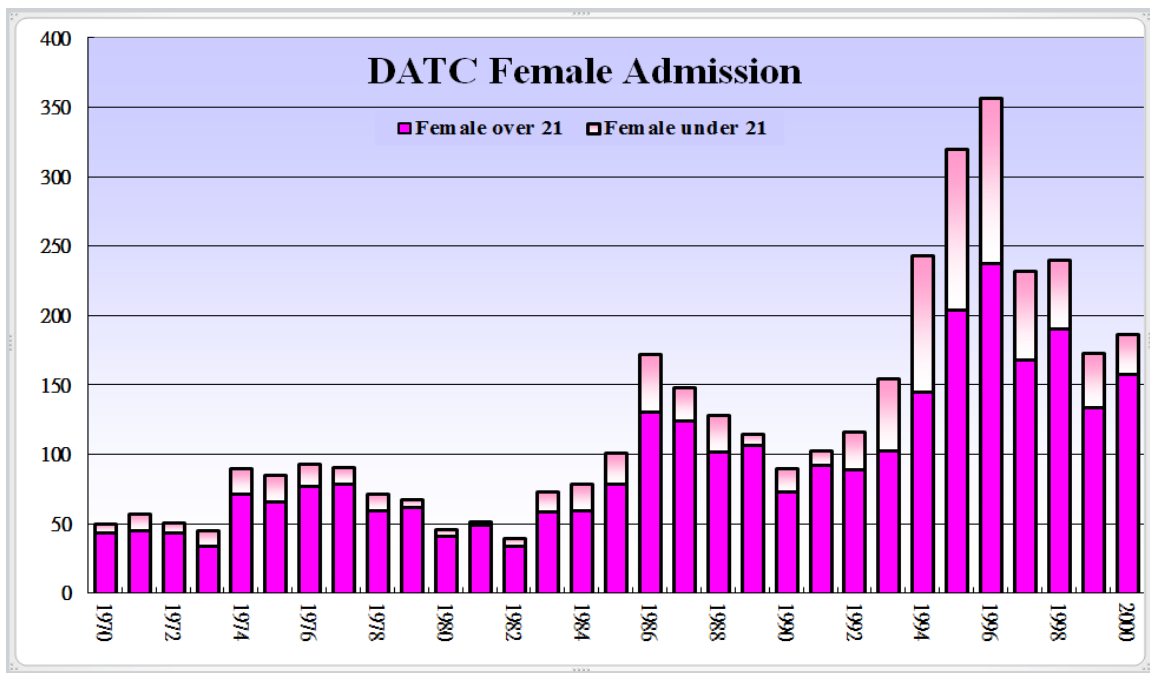
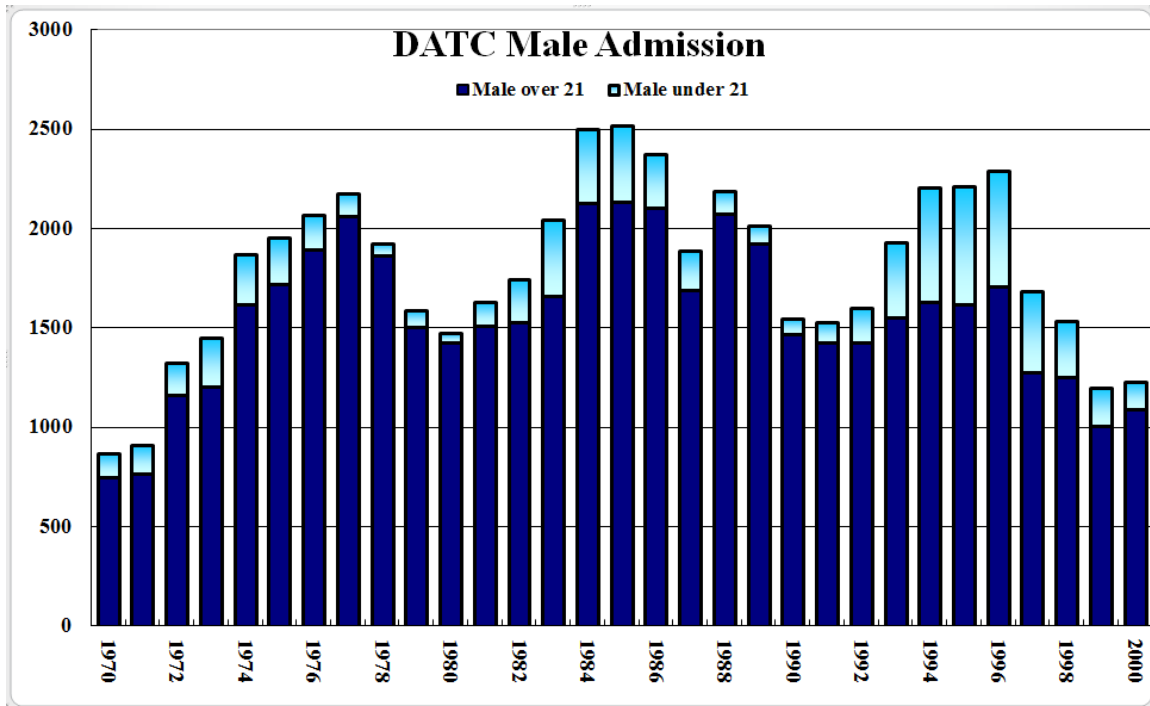
Detention Centre Admissions (1972 – 2000)



Source:

Figures compiled from Prisons Department / Correctional Services Department Annual Reports, 1972 – 2000.

Drug Addiction Treatment Centre Admissions-by Sex (1970 – 2000)



Source:

Figures compiled from Prisons Department / Correctional Services Department Annual Reports, 1972 – 2000.

**List of Prisoners Executed in Hong Kong
(1946 – 1966)¹**

<u>No</u>	<u>Date/</u>	<u>P. No.</u>	<u>Name</u>	<u>Age</u>	<u>Offence</u>	<u>Remarks</u>
1	1.4.46	1809	Lam Tim Cheung ²	27	Murder	
2	10.7.46	116	George Wong	40	High Treason	Exhumed & reburied in Urn Section
3	30.7.46		Lt Kishi Yasuo		War Crime	Buried at sea ³
4	30.7.46		Lt Matsumoto Chozaburo		War Crime	Buried at sea
5	13.8.46	19	Chan Po Kwong	36	Murder	Exhumed & reburied in Urn Section
6	13.8.46	304	Tsui Kwok Ching	32	High Treason	Exhumed & reburied in Urn Section
7	20.8.46	81	So Leung	32	High Treason	Exhumed & reburied in Urn Section
8	1.10.46		Sgt Maj Yamada Kiichiro		War Crime	Buried at sea
9	12.11.46		Sgt Miyasue Suekichi		War Crime	Buried at sea
10	12.11.46	312	Lau Tung Nuen	30		Exhumed & reburied in Urn Section
11	22.11.46		Sgt Kawamoto Kaname		War Crime	Buried at sea
12	19.5.47	515	Cheuk Chau	28	Murder	Exhumed & reburied in Urn Section

¹ Information extracted from hand written record kept by Stanley Prison – now deposited with the Correctional Services Museum and from Prisons Department records kept at the Public Records Office of Hong Kong under HKRS 125-3-145.

² Executed during the period of Military Administration.

³ Cases no. 3, 4 & 9 were not mentioned in the prison record book but the execution of cases 3 & 4 were mentioned in *Hong Kong's War Crimes Trials Collection* and the local newspaper *South China Morning Post & the Hongkong Telegraph*. Date of hanging for case 9 was recorded in the *Stanley Prison Journal*.

13	19.5.47	516	Cheung Kee Cheong	22	Murder	Exhumed & reburied in Urn Section
14	19.5.47	517	Liu Mun	22	Murder	Exhumed & reburied in Urn Section
15	20.5.47	518	Li Yau	25	Murder	Exhumed & reburied in Urn Section
16	20.5.47	519	Mak Kau	27	Murder	Exhumed & reburied in Urn Section
17	20.5.47	520	Chan Yui Shu	27	Murder	Exhumed & reburied in Urn Section
18	27.5.47		Col Noma Kennosuke		War Crime	Buried at sea
19	14.8.47	479	Chau Leung Fun	31	Murder	Exhumed & reburied in Urn Section
20	26.8.47	528	Inouye Kanau	30	War Crime > High Treason	Exhumed & reburied in Urn Section
21	9.9.47	637	Nu Wei Chun	32	Murder	Exhumed & reburied in Urn Section
22	16.9.47	J1031	Col Tamura Teuchi		War Crime	Buried at sea
23	16.9.47	J1030	Maj Hirano Noburu		War Crime	Buried at sea
24	23.9.47	J1071	Sgt Maj Ito Junichi		War Crime	Buried at sea
25	14.10.47	J1082	Sgt Maj Kamada Yasushi		War Crime	Buried at sea
26	21.10.47	J1081	Capt Ushiyama Yukio		War Crime	Buried at sea
27	28.10.47	640	Tse Kwok Wah	29	Murder	Exhumed & reburied in Urn Section
28	10.12.47	698	Yuen Chu	29	Murder	Exhumed & reburied in Urn Section
29	11.12.47	J1050	WO Takayama Masao		War Crime	Buried at sea
30	21.1.48	J1048	R Admiral Sakonju Naomasa		War Crime	Buried at sea
31	17.2.48	J1072	Col Kanazawa Asao		War Crime	Buried at sea

32	24.2.48	J1069	Maj Hirao Yoshio		War Crime	Buried at sea
33	9.3.48	J1046	Sgt Nakajima Tukuzo		War Crime	Buried at sea
34	16.3.48	J1103	Tamara Ryukichi		War Crime	Buried at sea
35	6.4.48	J1013	Maj Uete Taichi		War Crime	Buried at sea
36	6.4.48	J1014	Lt Kuruta Iwao		War Crime	Buried at sea
37	7.4.48	J1005	Lt Kawaida Susuma		War Crime	Buried at sea
38	29.6.48	J1077	Sgt Maj Yoshioka Eizo		War Crime	Buried at sea
39	27.7.48	798	Lam Kui	36	Murder	Exhumed & reburied in Urn Section
40	27.7.48	799	Chung Kai	42	Murder	Exhumed & reburied in Urn Section
41	24.8.48	J1113	Sagejima Mangan		War Crime	Buried at sea
42	7.9.48	1094	Lau Hoi	20	Murder	Exhumed & reburied in Urn Section
43	7.9.48	1095	Ho Cheuk Kui	26	Murder	Exhumed & reburied in Urn Section
44	24.9.48	J1115	Lt Col Kondo Hideo		War Crime	Buried at sea
45	1.10.48	J1119	Lt Iwasaki Yoshio		War Crime	Buried at sea
46	12.10.48	1064	Leung Ngau	24	Murder	Exhumed & reburied in Urn Section
47	12.10.48	1065	Leung Wing	24	Murder	Exhumed & reburied in Urn Section
48	22.3.49	J1121	Fukute Yoshihiko		War Crime	Buried at sea
49	31.5.49	1408	Wong Fuk Lam	23	Murder	Exhumed & reburied in Urn Section
50	6.4.50	1620	Pun To	28	Murder	Exhumed & reburied in Urn Section
51	18.4.50	1585	Wong Yui	35	Murder	Exhumed & reburied in Urn Section
52	25.4.50	1673	Chong Yin	25	Murder	Exhumed & reburied in Urn Section
53	30.11.50	1784	Ko Chan Sum	31	Murder	Exhumed & reburied in Urn Section
54	30.11.50	1785	Chau Hung Sang	29	Murder	Exhumed & reburied in Urn Section

55	7.12.50	1982	Ng Shui	26	Murder	Exhumed & reburied in Urn Section
56	7.12.50	1957	Kong Yin	29	Murder	Exhumed & reburied in Urn Section
57	23.1.51	2005	Yu Yau	40	Murder	Exhumed & reburied in Urn Section
58	23.1.51	2006	Yu Muk	29	Murder	Exhumed & reburied in Urn Section
59	23.1.51	2007	Leung Chi	40	Murder	Exhumed & reburied in Urn Section
60	14.2.51	2046	Chan Ning	38	Murder	Exhumed & reburied in Urn Section
61	14.2.51	2047	Cheung Ho	33	Murder	Exhumed & reburied in Urn Section
62	10.5.51	2106	Cheung Man	27	Murder	Exhumed & reburied in Urn Section
63	10.5.51	2107	To Nam	29	Murder	Exhumed & reburied in Urn Section
64	10.5.51	2108	Cheung Fai San	30	Murder	Exhumed & reburied in Urn Section
65	11.5.51	2127	Siu Ming	26	Murder	Exhumed & reburied in Urn Section
66	18.9.51	2279	Lau Wah	22	Murder	Exhumed & reburied in Urn Section
67	18.9.51	2280	Yuen So	27	Murder	Exhumed & reburied in Urn Section
68	11.11.51	2347	Cheung Hon	29	Murder	Exhumed & reburied in Urn Section
69	17.1.52	2366	Tsui King Cheung	29	Murder	Exhumed & reburied in Urn Section
70	23.5.52	3091	Chu Shing	34	Murder	Exhumed & reburied in Urn Section
71	12.6.52	2334	Shau Shing	41	Murder	Exhumed & reburied in Urn Section
72	12.6.52	3075	Mak Chan Yun	28	Murder	Exhumed & reburied in Urn Section
73	23.10.52	3374	Wong Tak Chuen	25	Murder	Exhumed & reburied in Urn Section

74	13.11.52	3400	Lam Yu	28	Murder	Exhumed & reburied in Urn Section
75	16.12.52	3551	Hui Shiu King	32	Murder	Exhumed & reburied in Urn Section
76	23.12.52	3552	Hung Chuen	29	Murder	Exhumed & reburied in Urn Section
77	23.12.52	3464	Lu Sing Kiu	67	Murder	Exhumed & reburied in Urn Section
78	21.7.53	3927	Hui Shek Yuen	30	Murder	Exhumed & reburied in Urn Section
79	20.10.53	3973	Wong Hung	28	Murder	Exhumed & reburied in Urn Section
80	20.10.53	3974	Ching Shui	20	Murder	Exhumed & reburied in Urn Section
81	9.3.54	4213	Tsoi Muk Li	27	Murder	Exhumed & reburied in Urn Section
82	18.3.54	4224	Ho Chung Foon	25	Murder	Exhumed & reburied in Urn Section
83	29.6.54	4475	Cheung Cho Wah	28	Murder	Exhumed & reburied in Urn Section
84	12.10.54	4434	Lung Yee Hing @ Lung Tsai	23	Murder	Exhumed & reburied in Urn Section
85	12.10.54	4433	Kam Yun Chuen	30	Murder	Exhumed & reburied in Urn Section
86	6.1.55	4829	Chau Hing	36	Murder	Exhumed & reburied in Urn Section
87	22.4.55	4992	Liu Ngai Ngok	41	Murder	Exhumed & reburied in Urn Section
88	20.9.55	5338	James Richard Becker	22	Murder	Exhumed & reburied in Urn Section
89	25.10.55	5021	Yam Kwan Pak @ Ah Kwan	20	Murder	Exhumed & reburied in Urn Section
90	29.11.55	5487	Poon Shing	46	Murder	Exhumed & reburied in Urn Section
91	21.2.56	5559	Chu Fung Lun	28	Murder	Exhumed & reburied in Urn Section
92	28.2.56	5434	Lam Man Chee	23	Murder	Exhumed & reburied in Urn Section

93	21.8.56	6050	Lai Hok Tang @ Hak Tsai	22	Murder	Exhumed & reburied in Urn Section
94	30.10.56	6177	Lee Ming @ Ah Tak @ Lee Tak	30	Murder	Exhumed & reburied in Urn Section
95	27.11.56	6248	Tang Choi	38	Murder	Exhumed & reburied in Urn Section
96	19.2.57	6228	Wong Kwan Fat	28	Murder	Exhumed & reburied in Urn Section
97	23.7.57	6608	Lee Shu Wing	29	Murder	Exhumed & reburied in Urn Section
98	23.7.57	6609	Tse Sang @ Li Fuk	28	Murder	Exhumed & reburied in Urn Section
99	23.7.57	6610	Choi Kwok Fai	27	Murder	Exhumed & reburied in Urn Section
100	23.7.57	6611	Li Chun	31	Murder	Exhumed & reburied in Urn Section
101	10.6.58	7591	Leung Kai Wing @ Hui Kin Hung	44	Murder	Exhumed & reburied in Urn Section
102	12.8.58	7967	Chan Hing	40	Murder	Exhumed & reburied in Urn Section
103	2.9.58	7836	Lam Shung Ming @ Lim Ching Mang	44	Murder	Exhumed & reburied in Urn Section
104	16.12.58	8545	Lee Lam	40	Murder	No record of exhumation
105	17.2.59	8129	Cheung Yue Wing	53	Murder	Exhumed & reburied in Urn Section
106	21.7.59	9012	Chung Kwong @ Chung Kwok Tim	34	Murder	Exhumed & reburied in Urn Section
107	11.8.59	8764	Kwan Cheung Tai	29	Murder	Exhumed & reburied in Urn Section
108	11.8.59	8765	Yu Ming Shing	30	Murder	Exhumed & reburied in Urn Section
109	8.9.59	9120	Ng Yim	40	Murder	Exhumed & reburied in Urn Section
110	15.9.59	9052	Choi To	22	Murder	Exhumed & reburied in Urn Section
111	21.10.59	8949	Lam Kwong Choi	46	Murder	No record of exhumation
112	22.3.60	9932	Wong Hon @ Wong Wai	34	Murder	Exhumed & reburied in Urn Section

113	22.3.60	9933	Szeto Hin Chiu	29	Murder	Exhumed & reburied in Urn Section
114	22.3.60	9934	Lo Kan	40	Murder	Exhumed & reburied in Urn Section
115	21.3.61	877	Kwong Kwong	34	Murder	Exhumed & reburied in Urn Section
116	21.3.61	923	Cheng Oi	48	Murder	Exhumed & reburied in Urn Section
117	4.7.61	1087	Hui Chun Wing	43	Murder	Exhumed & reburied in Urn Section
118	25.7.61	1221	Tsui Cheung Kan	22	Murder	Exhumed & reburied in Urn Section
119	15.11.61	1277	Ho Chun Yuen	36	Murder	Exhumed & reburied in Urn Section
120	8.6.62	1639	Ma Wai Fun	41	Murder	Exhumed & reburied in Urn Section
121	28.11.62	1835	Lee Wai	31	Murder	Exhumed & reburied in Urn Section
122	28.11.62	1836	Ngai Ping Kin	32	Murder	Exhumed & reburied in Urn Section
123	28.11.62	1837	Ma Kwong Tsan	35	Murder	Exhumed & reburied in Urn Section
124	15.4.66	16428	Lau Pui	35	Murder	Exhumed & reburied in Urn Section
125	16.11.66	21482	Wong Kai Kei	26	Murder	Exhumed & reburied in Urn Section

**Offenders Sentenced to Corporal Punishment in Hong Kong
(1945 – 1990) ⁴**

Year	Adult (A)	Adult (B)	Adult (C)	Young Offender	Juvenile Offender (A)	Juvenile Offender (B)	Prison Offence
1945							
1946	131 (including juveniles)	NA	188	NA	42	NA	1
1947	285	NA	291	35	0	1307	14
1948	215	NA	160	18	0	4531	25
1949	92	NA	95	10	10	3974	Nil
1950	248	NA	278	7	7	424	1
1951	122	25	130	4	0	432	2
1952	94	39	88	382	0	308	Nil
1953	104	7	117	144	0	101	Nil

⁴ There are different sets of statistics showing the number of offenders sentenced to corporal punishment in Hong Kong and the statistics varied greatly especially in the early years. These are presented together to allow a better understanding of the situation.

Figures from Adult (A) and Young Offender:- 1946-1951 data from Commissioner of Prisons JT Burdett to Hon. Colonial Secretary, Minutes dated 22 August 1951. HKRS 41-1-1425-1. The 1951 data was only up to 22 August 1951. 1952-1964 data from Colonial Secretary's Confidential Memo, Annex, dated 11 June 1965. HKRS 41-1-1425-2. 1965-1968 data from Memorandum for Executive Council, dated 14 November 1969. HKRS 41-2-32.

Figures from Adult (B) and Juvenile Offender (B): Statistics from *Hong Kong Annual Reports, Supreme Court and Magistracies*, 1946-1990.

Figures from Adult (C), Young Offender and Prison Offence: Statistics from *Annual Departmental Reports of the Prisons Department*. 1946-1981, *Annual Departmental Reports of the Correctional Services Department*. 1982-1990.

1954	241	132	227	54	0	55	Nil
1955	93	25	106	87	0	102	Nil
1956	117	25	100	144	0	172	Nil
1957	100	18	100	73	0	123	Nil
1958	80	55	76	244	0	251	Nil
1959	36	6	24	234	1	287	Nil
1960	6	1	7	267	0	165	Nil
1961	14	2	11	172	0	171	Nil
1962	3	3	9	267	0	277	Nil
1963	2	3	0	126	0	85	Nil
1964	1	10	6	119	0	141	Nil
1965	8	6	4	139	0	120	Nil
1966	0	0	0	96	0	64	Nil
1967	0	1	0	17	17	20	Nil
1968	0	0	1	0	1	0	Nil
1969	NA	0	0	NA	0	0	Nil
1970	NA	62	68	NA	0	0	Nil
1971	NA	137	162	NA	0	11	Nil
1972	NA	21	29	NA	0	9	Nil
1973	NA	142	53	NA	0	20	Nil
1974	NA	18	48	NA	0	27	TC-28 DC
1975	NA	97	113	NA	0	6	TC-89 DC

1976	NA	76	72	NA	0	6	TC- ? DC-220
1977	NA	30	36	NA	0	4	Nil
1978	NA	11	26	NA	0	10	Nil
1979	NA	3	20	NA	0	2	Nil
1980	NA	5	9	NA	0	2	Nil
1981	NA	14	14	NA	0	0	Nil ⁵
1982	NA	8	13	NA	0	3	
1983	NA	8	19	NA	0	5	
1984	NA	11	21	NA	0	1	
1985	NA	4	4	NA	0	0	
1986	NA	11	8	NA	0	0	
1987	NA	2	1	NA	0	0	
1988	NA	5	8	NA	0	2	
1989	NA	0	2	NA	0	0	
1990	NA	0	1 ⁶	NA	0	0	
Total	1992	1023	2745	2639	36	13218	43 + unknown no. in TC/DC

⁵ As corporal punishment for breach of prison offences had never been awarded since 1952, the Commissioner of Prisons had since 1977 proposed to the Administration for its deletion from the Prison Rules. The approval was granted on 10 November 1981 to remove the power to award corporal punishment for breach of prison offences. See *Annual Departmental Reports* of the Prisons Department. 1977-1981.

⁶ The Executive Council agreed in April 1989 to abolish corporal punishment in Hong Kong and the Corporal Punishment Ordinance was revoked on 1 November 1990. See *Annual Departmental Reports of the Prisons Department*. 1989-1990.

Appendix K

OFFENCES FOR WHICH CORPORAL PUNISHMENT MAY BE AWARDED	
ADULTS	YOUNG OFFENDERS
May be caned for the following offences:—	May be caned for any offence.
Stealing from woman or child;	
Piracy;	
Defilement of girls under 16 years;	
Indecent assault upon females under 16 years;	
Forcible taking or detention of any person;	
Stealing child under 14 years;	
Causing grievous bodily harm, shooting or attempting to shoot at a person with intent to maim etc. or resist apprehension;	
Suffocation or strangulation with intent to commit a felony;	
Illegal possession of arms;	
Aggravated robbery.	

Source: Report of the Committee on Corporal Punishment, Memorandum for Executive Council dated 24 June 1968, p. 19. HKRS 41-2-32.

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23 April 1975
8 October 1975
22 October 1975
6 November 1975
8 December 1976
7 October 1981
28 October 1981
25 November 1981
5 October 1983
10 Nov 1983
25 July 1984
21 November 1984
9 July 1986
26 November 1986
8 July 1987
14 October 1987
15 March 1989
17 March 1989
6 June 1990
11 July 1990
26 June 1991
23 October 1991
31 October 1991
7 October 1992
11 November 1992
21 April 1993
19 January 1994

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HKRS 41-1-1425 -1
HKRS 41-1-1425-2
HKRS 41-1-1427
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HKRS 41-1-2916
HKRS 41-1-5179
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HKRS 41-2-1-56
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HKRS 41-2-740
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