

THE LAW REFORM COMMISSION OF HONG KONG

REPORT

COMMUNITY SERVICE ORDERS

(TOPIC 7)

TERMS OF REFERENCE

WHEREAS :

On 15 January 1980 His Excellency the Governor of Hong Kong Sir Murray MacLehose, GBE, KCMG, KCVO in Council directed the establishment of the Law Reform Commission of Hong Kong and appointed it to report on such of the laws of Hong Kong as might be referred to it for consideration by the Attorney General and the Chief Justice;

On 13 November 1981 the Honourable the Attorney General and the Honourable the Chief Justice referred to this Commission for consideration a topic in the following terms :

"Community service Orders

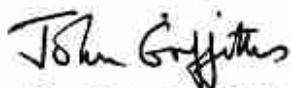
1. *Should Community Service orders be introduced as a form of sentence in Hong Kong?*
2. *If so, to whom should a Community Service Order apply?*
3. *What kind of obligations should be imposed by a Community Service Order?*
4. *How should such orders be imposed and supervised?"*;

At its Seventh Meeting on 13 November 1981 the Commission appointed a sub-committee with the Hon. F.K. Hu, J.P. as Chairman to research, consider and advise on these matters;

On 12 April 1983 the sub-committee signed its report and delivered it to the Commission, and the Commission considered the topic at its meeting of 15 April 1983;

We have made in our report recommendations which we consider will meet the problems described therein;

NOW DO WE THEREFORE THE UNDERSIGNED MEMBERS
OF THE LAW REFORM COMMISSION OF HONG KONG PRESENT THE
REPORT OF THE LAW REFORM COMMISSION OF HONG KONG ON
COMMUNITY SERVICE ORDERS:



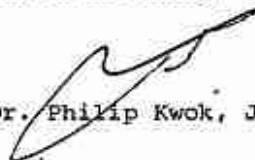
Hon John Griffiths Q.C.
(Attorney General)



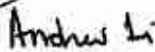
Hon G.P. Nazareth, OBE, Q.C.
(Law Draftsman)



Hon HU Fa-kuang, JP



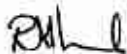
Dr. Philip Kwok, JP



Andrew Li, Esq.



Brian McElney, Esq., JP



Robert Allcock, Esq.




Hon Sir Denys Roberts, KBE
(Chief Justice)



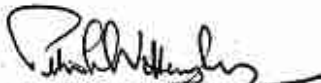
Hon T.S. Lo, CBE, JP



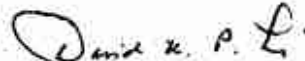
Hon Mrs. Selina Chow, JP



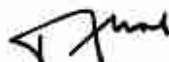
Dr. Ambrose King



Professor Peter Willoughby



David K.P. Li, Esq.



Hon Mr. Justice Fuad
(Justice of Appeal)

Dated this 15th day of April, 1983

THE LAW REFORM COMMISSION OF HONG KONG

REPORT ON

COMMUNITY SERVICE ORDERS

INDEX

<i>Chapter</i>	<i>Page</i>
Terms of Reference	(iii)
Signature Page	(iv)
Index	(v) – (vi)
I. Introduction	1
II. Summary of Work	4
III. Community Service Orders in other jurisdictions	5
IV. Present sentencing practice in Hong Kong	7
V. The efficacy of the Community Service Order	11
VI. Role of and counselling by probation officers	13
VII. Pilot scheme and monitoring the pilot scheme	15
VIII. Resource implication of the pilot scheme	19
IX. Features of the Community Service Order : the proposed legislation	22
X. Summary of Recommendations	26
XI. Acknowledgement	29

Annexures

- 1. Membership of Sub-committee**
- 2. List of bodies and government departments consulted**
- 3. Bibliography of materials**
- 4. Analysis of questionnaires**
- 5. Summary of public reaction through mass media**
- 6. Memorandum of open Forum on 4th October, 1982**
- 7. Summary of work provided by voluntary agencies**
- 8. Community service orders in other countries**
- 9. Form of questionnaire to government departments**
- 10. Form of questionnaire to voluntary agencies**
- 11. Form of letter to local organizations**

I. Introduction

1.1 It has become common to divide philosophical discussions of punishment into three main questions: Why punish? Who should be punished? How much punishment should be inflicted? An answer to the first question will be offered in this introductory chapter. It is dogmatic and brief because it is not intended to provide anything more than a basis for the ensuing discussion of some sentencing practices.

Why punish?

1.2 When a sentence is to be imposed, the first consideration to be entertained should be what is the result to be achieved by it. Is the aim simply to mete out an appropriate punishment to a wrongdoer? Or is it to deter the wrongdoer and others from committing such offences in the future? Or to protect the public by shutting the offender away? Or is it the reform of the offender?

1.3 A leading feature in the development of judicial sentencing policy in recent years has been the growing recognition by the courts of the principle of individualization of sentence. The courts have increasingly come to consider the offender as an individual, whose need for assistance, deterrence and punishment, collectively, rather than whose guilt, simpliciter, forms the basis of the sentence passed. The acceptance of individualization did not mean, the disappearance of the tariff. The older order, based primarily on the concepts of retribution and general deterrence continues to exist in the newer pattern of individualized measures. The result, however, has been the development a dual system of sentencing.

Community service orders

1.4 Some countries have developed a community service order scheme which provides the court with the power to order an offender to carry out a task within the community for a specified number of hours. An order is usually made following consideration of a report by an appropriately qualified person as to the offender's suitability to be made the subject of such an order, his willingness to carry out a community task and the availability of work. Should an offender fail to carry out his work commitment under an order, he is liable to be brought back to the court for being in breach of the order and may be dealt with in any other way open to the court when the original order was made.

Penalty or rehabilitation?

1.5 One of the unique features of the community service order is its provision of both punishment and rehabilitation. However commentators disagree on the balance between these two aspects. After the introduction of the scheme on an experimental basis in England many magistrates saw the sentence in purely or largely punitive terms. Most writers, however, stress the rehabilitative benefits of the sentence and do not regard it as "sewing mail bags outside prison". Eric Knapman, a probation officer who was involved in one of the pilot schemes in the Inner London Area concluded in his article, "Community Service Orders : A Rationale", (the Justice of the Peace, 23 March 1974) that rehabilitation of the offender is the major contribution of community service. He refers to four "areas of justification" which were set out in the Wootton Report (i.e. the Penal Advisory Council's Report on Non-custodial and Semi-custodial Penalties in 1970). These four areas are-

- (a) the benefit for the offender and the community;
- (b) the ability to make the punishment fit the crime;
- (c) a way of exacting reparation from the offender by the community;
and
- (d) the fact that the cost to Government for such a sentence would be less than for a sentence of imprisonment.

1.6 Alec Samuels in an article published in the Solicitors' Journal on 21 March 1975 described the order in these terms "A community service order is intended to be rehabilitative and reformatory, constructive and positive, therapeutic, and if not punitive at least containing a strong element of discipline and personal rigour and effort."

1.7 The community service order has also been described as filling the vacuum between a custodial sentence and a probation order ("Community Service - Impact for Change" by David Matheson published in the Justice of the Peace of 10 December 1977). It is said that the community is satisfied since the offender is seen to be punished and also the offender himself benefits, or should benefit, from the community service which he performs. Further, the community service order has been seen as a form of "controlled rehabilitation in the community." This involvement in the community "should be beneficial and open opportunities for constructive living."

Type of offenders

1.8 The scheme of these orders is that an offender over a specified age who is convicted of an offence rendering him liable to imprisonment may be made subject of a community service order. The relationship between a custodial sentence and a community service order will be discussed later.

1.9 What type of offender is a likely candidate for a community service order? Alec Samuels in the article referred to in paragraph 1.6 considered that the suitable candidate would be drawn from the age group 17

to 30, have a settled address, stable background, and employment. He would have a fair amount of free time, be fit and able but be lacking self-discipline and social responsibility. He would not be a sophisticated offender nor a person who was mentally ill, of very low intelligence, or with a very low threshold of control. Nor would he be addicted to drugs or alcohol. This picture seems consistent within the English experience.

Types of offences

1.10 Considering the matter from the point of view of the offence of which the offender had been convicted the most likely offences are those which are neither very serious nor very minor. Manslaughter, rape, arson, serious woundings and major drug offences are unlikely to result in a community service order. Particularly suitable are those offences which involve some element of anti-social behaviour such as criminal damage and less serious assaults.

1.11 Among the offences for which community service orders were made during the pilot scheme in England were theft, burglary, assault, criminal damage, receiving or handling stolen goods, drug offences, taking vehicles without the owner's consent, driving whilst disqualified and other traffic offences.

The task

1.12 The type of work envisaged involves either direct contact with individuals, such as decoration of old peoples' homes, or assistance to the community, for example, the construction of a community centre, the clearing of debris from towpaths or, the building of an adventure playground. The work is essentially of a kind which is normally undertaken by voluntary services, and it is hoped that, in some instances, the orders may have the effect of reclaiming offenders by enabling them to put something back into the community which they have injured, or at least by giving them a new interest in life. Hence it has been suggested that the work done under a community service order should be dignified and useful and not purposeless or menial.

II. Summary of work

2.1 The sub-committee (details of membership are contained at Annexure 1) held seven meetings of the full sub-committee. A number of additional meetings within the sub-committee to deal with various aspects of the topic were also held.

2.2 As the sub-committee was concerned about the views of the public on the introduction of community service orders in Hong Kong, in January 1982 it invited the public to make submissions on the topic. The press release generated considerable publicity and the reaction has been favourable.

2.3 In order to carry out a feasibility study on whether community service orders could be introduced in Hong Kong, the sub-committee sent out letters and questionnaires to government departments, voluntary agencies in social work and various organizations within the community to seek their opinion as to whether they would accept a community service order scheme in Hong Kong. It also collected information on possible job placements for the offenders. A list of local bodies and government departments which have been consulted can be found in Annexure 2.

2.4 There were 74 replies. 8 replies were received from the government departments. From the voluntary agencies and local bodies 66 replies were also received (33 questionnaires completed and returned by voluntary agencies and 33 submissions). These replies varied in length and depth but were generally favourable to the introduction of community service orders.

2.5 In October 1982 an Open Forum was organised and the Chairman of the sub-committee invited representatives from the voluntary agencies and government departments which had expressed willingness to participate in the proposed scheme to attend. The purpose of the forum was to collect further opinion on the idea of a pilot scheme. 55 representatives attended. Many practical ideas were put forward by them and their views have been taken into account.

2.6 The legal aspects of implementing a community service order scheme in Hong Kong were also considered. The sub-committee studied the operation of such schemes in overseas countries and collected and reviewed statutes, books, reports and statistics from major Commonwealth countries. A list of materials may be found at Annexure 3.

III. Community service orders in other jurisdictions

England and Wales

3.1 Community service orders were introduced in England by the Criminal Justice Act 1972 and were later re-enacted in the Powers of Criminal Courts Act 1973 with subsequent minor amendments. Originally the scheme was introduced in six areas on an experimental basis. It was extended to the whole of England and Wales in April 1975. The origin of community service orders can be traced back to the Report on Non-custodial and Semi-custodial Penalties produced by the Penal Advisory Council in 1970. The object of the legislation was to produce a form of sentence which would be totally new in concept from any other form of sentence then available to the criminal law courts.

3.2 The English legislation provides that a community service order can be made in respect of an offender who is over 16 years of age, who has been convicted of an offence punishable with imprisonment, who has been found suitable for such an order following a report by a probation officer and who consents to the order being made. An order is then made requiring the convicted person to perform unpaid work for a specified number of hours being in aggregate not less than 40 nor more than 240 hours. Unless the court, on a later application, extends the period of time the number of hours of community service must be performed within a period of 12 months beginning from the date of the order.

3.3 The scheme under the English legislation provides for the offender to be brought back before the court if he fails to comply with the terms of the order. In dealing with a defaulter the court may impose a fine not exceeding h50 and may allow the order to continue, or may revoke the order and sentence the offender for the offence in respect of which the community service order was made. There are also provisions allowing a court, on application, to revoke an order where circumstances require it.

3.4 Under the English scheme the probation service is responsible for administering community service orders. It is a probation officer who organizes, in broad terms but not in detail, the work which the offender will carry out under the order and the offender is responsible to that probation officer. Should an offender breach the requirements of the community service order it is the probation officer who refers the matter back to court.

Other Jurisdictions

3.5 We have also consulted similar legislation in Northern Ireland, New Zealand and 6 separate jurisdictions in Australia, namely, New South Wales, Victoria, Queensland, South Australia, Northern Territory and Tasmania. A table showing the main provisions of the legislation in these jurisdictions can be found in Annexure 8.

IV. The present sentencing practice in Hong Kong

Introduction

4.1 This chapter contains a summary of the sentencing options at present available to the courts in Hong Kong.

4.2 The non-custodial sentence discussed are probation orders conditional and absolute discharges, fines and suspended sentences.

Probation

4.3 Probation as an alternative sentence to incarceration applies to all offenders of all ages. It permits offenders to remain in the community under the guidance and supervision of a probation officer for a period of one to three years. Probation orders are usually made after the court has fully considered the circumstances leading to the offence, the nature of the offence, the character and the family background of the offender and has found that the offender is suitable for probation.

4.4 Where the probationers fail to comply with the requirements of the probation order they are brought back to court for re-sentencing. Frequently the probation order is then discharged and the offender dealt with in respect of the original offence.

Conditional and absolute discharge

4.5 Under the provisions of section 36 of the Magistrates Ordinance (Cap. 227) a magistrate may discharge an offender absolutely or conditionally if he is of the opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged or to the trivial nature of the offence or the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment. The conditional discharge may be for a period up to 3 years. An offender who is in breach of a condition of the order may be brought back to court and convicted and sentenced on the original charge.

Fines

4.6 A fine may be imposed on conviction for any offence in addition to or in lieu of any other sentence, except when the sentence is fixed by law

or the court exercises a power which precludes it from sentencing the offender. Usually a maximum fine is fixed by statute for any particular offence.

4.7 The magistrates' courts and the District Court may make an order fixing a term of imprisonment not exceeding 12 months to be served in default of payment of a fine. (See section 68 of the Magistrates Ordinance Cap. 227 and section 82 of the District Court Ordinance Cap. 336).

Suspended sentence

4.8 The suspended sentence was introduced in 1971 by section 109B of the Criminal Procedure Ordinance (Cap. 221). This section empowers a court which passes a sentence of imprisonment of not more than 2 years to order that the sentence shall not take effect unless during a specified period of between 1 year and 3 years the offender commits another offence punishable with imprisonment and a court orders the original sentence to take effect.

Young offenders

4.9 Young offenders can be divided into two main groups - those aged 14 and under 21, and those between 21 and 25.

4.10 For the 14 to 21 group, the law provides two special custodial sentences, namely, detention in a detention centre, and detention in a training centre and restricts the use of imprisonment in certain ways.

4.11 Section 109A of the Criminal Procedure Ordinance provides that "No court shall sentence a person of or over 16 and under 21 years of age to imprisonment unless the court is of opinion that no other method of dealing with such person is appropriate. For the purpose of determining whether any other method of dealing with any such person is appropriate the court shall obtain and consider information about the circumstances and shall take into account any information before the court which is relevant to his character and his physical and mental conditions." This restriction does not apply to a person who has been convicted of any of the offences in the schedule to the Ordinance, for example, possession of an offensive weapon in a public place.

4.12 Statutory after-care supervision for a period of 12 months is provided for every young prisoner who is sentenced to imprisonment for 3 months or more if on the date of his release he is under 25.

Detention centres

4.13 Detention centres were first introduced in 1972. The strenuous programme and strict discipline of detention centres are designed to achieve reformation of young persons from 14 to 21 and young adults aged 21 to 25.

4.14 For young persons the detention period laid down in the law is not less than one month and not more than 6 months, whereas for young adults, the period is not less than 3 months and not more than 12 months. A statutory supervision for a period of 12 months is imposed on all detainees on discharge. After-care officers visit supervisees at least twice a month and supervisees who fail to comply with conditions of supervision are recalled for further training.

Training centres

4.15 Training centres which cater for correctional training of young offenders from 14 to 21 years of age provide a useful alternative to imprisonment. Young persons are admitted to a training centre for a minimum period of 6 months to a maximum of 3 years, to be followed by 3 year after-care supervision from the date of release with the sanction of recall. The training centre programme places much emphasis on self-discipline and achievement.

4.16 Inmates of training centres are taught a basic vocational skill. They are subject to half-day compulsory educational classes. Within the centres, release must be earned and is dependent on progress, which is assessed by a Board of Review. Arrangements are then made by officers of the after-care unit for a school place or a job to be available for an inmate upon release.

Drug Addiction Treatment Centres

4.17 Treatment of drug-dependent persons is provided by a compulsory placement programme in Drug Addiction Treatment Centres for a minimum of 4 to a maximum of 12 months followed by statutory supervision of 12 months.

Residential training

4.18 The Social Welfare Department operates 5 residential institutions which have been established under different ordinances. These institutions provide academic, pre-vocational and social training for juvenile offenders. The object of the training is to bring about character reform and social readjustment for young persons in need of protection.

4.19 Under the provisions of the Reformatory School Ordinance (Cap. 225) young offenders may be released on a licence from a reformatory school when they are considered fit for discharge subject to the supervision by an after-care officer for the remaining period of the school order or until the boy reaches the age of 18. If the licensee cannot be properly controlled during the supervision period, he may be recalled to the home for further training.

Special powers over persons under sixteen

4.20 Section 96 of the Magistrates Ordinance provides that where a person apparently under the age of 16 is convicted of any offence, a magistrate may, in addition to or in lieu of any other punishment for such offence, order the offender to be discharged after due admonition or to be delivered to his parent or guardian or the like upon the latter's executing a bond that he will be responsible for the good behaviour of the offender for any period not exceeding 12 months.

Ancillary orders

4.21 In addition to any sentence a person may be ordered to pay the costs of the prosecution, to pay compensation to an aggrieved person, to return property to other persons or may be disqualified from driving in respect of the same conviction.

4.22 We do not include a discussion of the cases of mentally disordered offenders. For where the offender can be shown to be in need of psychiatric treatment, and the necessary treatment is available in an appropriate setting, the court will make an appropriate order without regard to considerations of deterrence or retribution.

4.23 The courts may also make orders placing an offender in the care or under the supervision of the Director of Social Welfare. These are specialised orders tailored to fit the exceptional case and do not form a major part of the sentencing role in the circumstances where it is envisaged that community service orders might be used.

V. The efficacy of the community service order

Benefits of community-based correction

5.1 A number of advantages have been cited, for example, see J.G. Mackay and M.K. Rook, "The Work Order Scheme - An Evaluation of Tasmania's Work Order Scheme", P.22, favouring the community service order concept -

- it is less costly than semi-custodial or custodial measures
- the family unit is not unnecessarily disrupted
- employment may be retained
- schooling need not be interrupted
- dependants will not be forced to resort to welfare benefits
- less damage to self-esteem will accrue
- the alternative high risks of exposure to undesirable elements will be avoided
- the offender will be making a contribution to the community
- the offender is likely to derive an increased sense of personal achievement.

5.2 One of the major impetuses behind the introduction of the community service order scheme in most jurisdictions has been that of cost. It has been contended that community service orders are less costly than most other forms of sentence - at least those involving imprisonment or other types of supervision. The typical offender who would be the subject of a community service order would normally be sent to a minimum security institution. The average cost of keeping a prisoner in a minimum security institution is approximately \$110 per day.

5.3 However, there will not necessarily always be a saving calculable by multiplying the number of days of imprisonment saved by the average cost of keeping prisoners per day. There will be a cost factor involved in the overall supervision of the scheme. This factor is unknown but could be expected to be less than the savings.

5.4 In our view, although saving of cost may be one of the advantages of the scheme, there are other major benefits.

5.5 It is our opinion that a significant benefit of the community service order scheme is that it broadens the range of options for sentencers. Where, for example, imprisonment is seen as detrimental to most offenders as well as being excessively costly and where a fine as being little more than a "licence", a community service order may be a useful option.

5.6 We also agree with the Wootton Committee when it said in the Report of the Advisory Council on the Penal System : Non-custodial and Semi-custodial Penalties, supporting the introduction of the measure :

"What attracts us is the opportunity which the community service order would give for constructive activity in the form of personal service to the community, and the possibility of a changed outlook on the part of the offender."

5.7 By providing a very real possibility of rehabilitating the offender and thus lowering the recidivist rate, we believe that the community service order scheme can offer substantial benefits to the community. This we regard as probably the major attraction of community service orders.

5.8 **We therefore recommend** that the community service order as an additional means of dealing with offenders should be introduced in Hong Kong.

5.9 **We further recommend** that in operating such a scheme the work should be matched with the offender.

VI. Role of and counselling by probation officers

Introduction

6.1 There are two fundamental objectives inherent in the community service order. The first is to punish the anti-social behaviour and the other to prevent further delinquency. The first objective is to be achieved by denial of personal freedom of the offender by way of sentencing him to render a specified number of hours of service at his leisure time. The other objective is to educate and to rehabilitate the wayward person. The rendering of service alone, however useful it may be, by the offender may not result in the desired reform of the offender. Proper and periodical counselling and guidance is essential to instil a set of proper moral values and social attitudes in the offender during the period of the community service order. In certain service agencies or government departments, the supervising staff may have the skill and professional training to provide the needed counselling; but in other organizations, such staff may not be available. It is therefore suggested that at the beginning of the service placement, an unequivocal understanding must be reached as to the appropriate person who is to undertake the counselling and guidance of the offender.

6.2 **We recommend** that periodic counselling provided for the offender should be an integral component of the community service order so as to achieve re-education and rehabilitation of the offender as the ultimate purpose of the order.

The role of probation officers in the implementation of the community service order scheme

6.3 We have considered whether the supervision of offenders should be undertaken by the probation service of the Social Welfare Department or by the Correctional Services Department. **We** have concluded that the appropriate supervisory authority is the Social Welfare Department and accordingly **recommend** that probation officers should be assigned for this task.

6.4 There are three basic roles for the probation officers. First, to make recommendation to the court as to the suitability of the offender for a community service order: this will involve the preparation of a social enquiry report for the court's consideration. It is envisaged that during the investigation period, the probation officers would start exploring possible placements should the offender be found suitable for such an order. As to the criteria for recommending the community service order, the legislation should define the age, types of offence and any other essential matters. The factors

to be considered may include his address, family background, employment, free time available and health. However the delinquent should not be a sophisticated offender nor a mentally-ill person, or of very low intelligence or with a very low threshold of control. Nor would he be addicted to drugs or alcohol but he may be lacking in self-discipline and social responsibility. It is believed that the experience accumulated in time will help to modify the criteria to be adopted.

6.5 Secondly, to supervise the offender who is serving a community service order: this will include finding a suitable placement for him and ensuring that he attends regularly and works satisfactorily. In the event of unsatisfactory performance, the probation officer should take appropriate action such as arranging for the offender to be brought back before the court where necessary. It is not thought necessary or even desirable that the order should specify in detail the types of work to be undertaken. This is more a matter for the probation officer to work out.

6.6 The third role will be administration including regular liaison with voluntary agencies or government departments to review existing placements, to compile statistics for research and evaluation of the scheme, and to assist in the education of the public through talks, seminars and other means.

6.7 The successful establishment of a community service order scheme depends very much upon a high level of co-operation and mutual confidence between the probation service, the courts and the voluntary agencies or government departments that provide the task and on-the-spot supervision. In addition, the acceptance of the scheme by offenders themselves and by the community as a whole are equally important.

VII. Pilot scheme and monitoring the pilot scheme

Introduction

7.1 An initial outlay in the setting up of the community service order scheme and the employment of sufficient staff to act in supervisory capacities are prerequisites if the community service order as an option for sentencers is to fulfil its promise.

7.2 In order to assess the suitability of the community service order to Hong Kong, **we recommend** the introduction of a pilot scheme.

Definition

7.3 The term "pilot scheme" requires definition, otherwise there is a danger that it will mean different things to different people. Whatever precise form the pilot scheme takes, legislation will be required to create community service orders in Hong Kong. It would be possible to create a limited community service order scheme (limited by time and jurisdiction), but this would not seem to be appropriate. In England, the community service order was introduced initially in 6 separate areas on an experimental basis. The enacting legislation created the full form of the sentence making it theoretically available to any court in the country; but the restriction to the 6 areas was achieved by administrative means. Only in those 6 areas were the facilities set up to administer the scheme. Subsequently, no additional legislation was needed when other probation services throughout the country provided their own facilities to operate the scheme.

7.4 Similarly in Hong Kong, legislation could be enacted to institute the community service order scheme, but the initial availability of the sentence to the courts would be limited by practical and administrative restraints. To be effective, a pilot scheme must be a scaled down version of the full deployment of the sentence.

7.5 **We recommend** that legislation should create the community service order in its full form while enabling the initial restriction to a pilot scheme to be effected by statutory or non-statutory, administrative means as appropriate.

Limitation by geography and jurisdiction

7.6 One of the advantages which Hong Kong will have over England in implementing the community service order scheme is that the probation

service of Hong Kong's Social Welfare Department operates throughout the whole of the territory, whereas in England individual probation services under the control of a total of 56 separate local authorities were charged with running the scheme. The Hong Kong conditions are therefore more favourable for a consistent and cohesive policy. The development, if it takes place, from the pilot scheme will be a process of expansion of an existing organization rather than an implementation *de novo* in a different administrative area.

7.7 In England, the pilot scheme areas provided for the community service order to be imposed on offenders convicted in both magistrates' courts and the Crown Court. In Hong Kong, we consider that the scheme should be available in a limited number of courts. The question arises which type of court should be selected for the pilot scheme. The High Court would seem unsuitable in view of the serious nature of the majority of cases heard there and consequently the comparatively few such orders one can expect to be made in that court.

7.8 That leaves the District Courts and the magistrates' courts. It is important to bear in mind the difference of powers of magistrates' courts in England and of those in Hong Kong. The basic power of sentencing in magistrates' courts in England is restricted to 6 months' imprisonment whereas the maximum (subject to certain exceptions) which a Hong Kong magistrate can impose is 2 years' imprisonment. Similarly, the range of offences which a Hong Kong magistrate can deal with is considerably wider than those within the jurisdiction of his English counterpart. Statistics from England show that far more community service orders were made in the magistrates' courts than were made in the Crown Court.

7.9 As a venue for the community service order experiment in Hong Kong, the magistracy would appear to be the answer. It would seem to be desirable to have as wide a spread as possible throughout the territory which could be provided by one magistracy from each of Hong Kong Island, Kowloon and the New Territories, the magistracy in question providing, so far as possible, a representative case-load. Magistracies which would seem to be appropriate are Causeway Bay for Hong Kong Island, San Po Kong or South Kowloon for Kowloon Peninsula and Tsuen Wan for the New Territories.

7.10 **We recommend** that the community service order pilot scheme should be introduced in Causeway Bay, San Po Kong and Tsuen Wan Magistracies.

Limitation by time

7.11 The pilot scheme should run long enough to enable it to be properly assessed. The type of monitoring assessment required will be discussed later but at the end of the period fixed for the pilot scheme a decision will have to be taken, based on experience, whether to continue and expand the community service order scheme or whether to abandon it. In

England, the decision was made to extend the scheme nationwide after the experimental areas had been operating the community service order scheme for 18 months. This would appear to be a suitable period for Hong Kong.

7.12 **We recommend** that the pilot scheme should run for a period of 18 months by which time it will have been assessed and a decision made whether to extend the scheme to the other courts of Hong Kong (all together or stage by stage), or, to bring the scheme to an end.

Monitoring the pilot scheme

7.13 There are 2 reasons for monitoring the scheme. One is to evaluate its effectiveness and the suitability of the sentence to Hong Kong. The other is to observe the way in which the scheme is carried out, with a view to improving the existing system. There are limits to the first evaluation, for example, trends of recidivism can only be demonstrated with any accuracy after the scheme has been running for several years. However, those administering the scheme can obtain some measure of the effectiveness of the sentence.

7.14 The second aspect of the monitoring exercise would be undertaken in an effort to remove the teething problems of the scheme in its day-to-day running, to increase its efficiency and to make recommendations as to any amendments which may be thought to be required. Such amendments might, for example, involve a change in age limits of offenders, times within which an order must be completed, minimum and maximum hours of an order and so on.

7.15 The question arises who should monitor the scheme? In England, the Home Office Research Unit produced a report on the 6 experimental areas' experiences in the first 18 months (published February 1975) and a second assessment was made in March 1977. There is no comparable body in Hong Kong.

7.16 The answer to us is seen in establishing a small standing committee comprising members or appointees of the Law Reform Commission, a representative from the Social Welfare Department, a member of the judiciary and a representative from the voluntary agencies participating in the scheme. This committee could monitor the working of the pilot scheme during its continuance with periodic meetings throughout the period of 18 months. They would be aware of any serious problem which might arise during the running of the pilot scheme. At the end of the 18 months, the standing committee would evaluate the statistics and other information gleaned up to that date and prepare a report for the Administration.

7.17 It would also be appropriate, because of the role of the probation service, for both the Director of Social Welfare and the Secretary for Health and Welfare to receive the report as well. On the basis of the report

Government could the make a firm decision on the future of the community service order scheme.

7.18 **We recommend** that a standing committee should be set up to monitor the running of a pilot scheme and, at the appropriate time to report to the Administration on the effectiveness and suitability of community service orders.

VIII. Resource implication of the pilot scheme

8.1 The day-to-day running of the community service order scheme will be in the hands of the probation service, the voluntary agencies and the government departments. It is envisaged that the voluntary agencies and government departments will provide the tasks to be carried out and will liaise closely with the probation service so that the probation officers are kept aware of the availability of places for offenders. The voluntary agencies and government departments will control and supervise community service order offenders working for them in the same way as they supervise their regular employees or voluntary workers. This would be in line with the manner in which the community service order scheme is run in England.

8.2 3 basic roles are envisaged for the probation officers who administer the community service order scheme, namely :-

- (a) Initial contact with the offender, and preparing for the court a social enquiry report which would include a recommendation on the suitability of the offender for a community service order;
- (b) Supervision of the offender, including assessment for particular placement with a voluntary agency, ensuring that the offender is attending regularly and working satisfactorily, taking appropriate action if his performance is not satisfactory including, where necessary, arranging for him to be brought back before the court. This supervision would also include after-care by way of voluntary supervision where required;
- (c) Administration, including liaison with the voluntary agencies and government departments to increase their number participating in the scheme, the compilation of statistics and so on.

8.3 It is anticipated that a centralised community service order unit would be set up to service all 3 courts. This would be under the control of a supervisor with 3 probation officers to assist him.

8.4 The present workload of probation officers for the preparation of social enquiry reports in Hong Kong is 25 offenders per probation officer per month. In view of the additional information that would be required in a report for the community service order, the precise dimensions of which cannot be foreseen, it is thought that a ratio of 1:20 would be more realistic, at least at first. The current manning standard in force for supervision of an offender on probation is 1:50. However, the ratio in England is 1:80 at any one time, and it is felt that this latter figure would be realistic given the amount of actual supervision by the probation officer should be considerably less than that required under a probation order. Thus if 3 probation officers were to divide their time roughly equally between their enquiry and their supervision work,

they should be able to handle approximately 120 cases at any one time and complete up to 30 social enquiry reports per month. Further if one were to assume the average community service order to be of 140 hour duration completed within 6 months, the unit should be able to handle up to 300 cases within the 18 month trial period.

8.5 **We recommend** that the community service order pilot scheme and the subsequent substantive operation should be administered by a unit set up within the Social Welfare Department, initially headed by one supervisor assisted by 3 probation officers.

8.6 It is too early at this stage to predict accurately the cost of running the probation service community service order unit; however, the following staff will be required, and their approximate monthly salary (as at 31st March 1983) is recorded against each one :-

1	Social Work Officer	\$11,530
3	Assistant Social Work Officer	\$ 7,205 x 3
1	Typist	\$ 2,490
1	Clerk	\$ 3,150
1	Labourer	\$ 1,755

8.7 Office accommodation in the region of 100 square metres would be required initially. Further it is not possible yet to assess additional costs such as meal allowance and reimbursement of travel expenses to offenders. Brief details are given in Annexure 4 of the agencies who have offered to collaborate without reservation.

8.8 **We recommend** that a cost analysis should be made before the introduction of the pilot scheme. Adequate funds and adequate staff to run the scheme should be provided from the outset.

8.9 A considerable amount of preparation will have to be done by the probation service before the scheme can become operational. This will include obtaining office accommodation, the preparation of all standard forms to be used, producing a staff manual for the use and guidance of probation officers running the community service order unit, liaison with voluntary agencies and government departments to set up work schemes for the first community service order offenders. The probation service should therefore be given at least 3 to 4 months' warning before the scheme commences. This might be done by deferring the requisite legislation or by enacting that the legislation come into force on an appointed date.

8.10 **We recommend** that the Social Welfare Department should be given ample time to prepare for the community service order scheme before its implementation.

8.11 Another important facet of preparation is the training of the officers who will run the community service order unit. It is considered desirable that at least the supervisor of the unit should be sent to England for

attachment to one or more of the community service order units there, possibly in local authorities that administered the pilot scheme. Obviously this should be done before the Hong Kong scheme becomes operational, but the sooner such an attachment takes place the better.

8.12 **We recommend** that provision should be made for the training of probation officers who will administer the community service order scheme.

8.13 As the community service order scheme will be an innovation in Hong Kong, it is necessary to make all persons involved in the scheme understand the objectives, the rationale as well as the operational details of the scheme before it is brought into practice. We therefore propose that orientation programmes should be organized for both probation officers and social workers.

8.14 We suggest that prior to the commencement of the scheme, there should be orientation programmes composed of lectures and field visits for the probation officers and social workers concerned for an appropriate period during which time they will be briefed as much as possible about every topic relating to the scheme.

8.15 We would stress that whether the community service order scheme can be carried out successfully depends on the support of the public. It is therefore of the utmost importance that the Government should make every effort to inform the public of the scheme, its objectives, the details of its operation and the need for public cooperation. The publicity could be in the following forms: pamphlets, booklets and posters, films, television and radio programme, newspapers, public forums and seminars and visits by the probation officers to public agencies in order to introduce the community service order scheme.

8.16 It is hoped that through publicity, the public will have an accurate concept of the community service order scheme and consequently will more readily accept it.

IX. Features of the community service order: the proposed legislation

Introduction

9.1 We were asked to consider what matters should be included in the legislation for community service orders in Hong Kong, and what matters should be left as underlying principles for guidance of sentencers.

9.2 We have given careful consideration to the types of offences for which a community service order should be available. It is necessary to say again why we consider it desirable to introduce community service orders into Hong Kong. We have said earlier that they should not be used as an alternative to imprisonment simply in order to reduce the prison population. In fact, the order should be regarded as an additional sentence in the range available to the judiciary. We do not think that the community service order would be appropriate in the case of offences for which the only penalty is a fine.

9.3 **We therefore recommend** that the order should be available for offences for which the offender is liable to punishment by imprisonment and note that the introduction of the community service order as another sentencing option may, subject to the Administration's views, necessitate amendment of certain legislation e.g. section 33(2) of the Public Order Ordinance (Cap. 245).

9.4 We believe that the legislation should otherwise be left silent on the degree of gravity of criminal conduct which warrants a community service order. It is hoped that, once introduced, the court will by precedent indicate the types of offences and offenders who should be subject to such an order. Inappropriate use of a community service order can be corrected by an appeal court.

9.5 The community service order legislation in some countries have specific provisions as to whether a court may impose other forms of sentence in addition to ordering a community service order. For example, the Tasmanian legislation enables a court to impose a probation order in addition to a community service order. The legislation in Victoria prohibits the imposition of such an order while an offender is serving a sentence of imprisonment or is in custody awaiting trial whereas the legislation in the Northern Territory is silent on this point. **We believe and recommend** that the legislation in Hong Kong should stipulate that the order is a penalty on its own, but that it may be combined with appropriate orders for costs, disqualification from driving or any order that the court thinks fit.

9.6 We have considered whether the court should obtain the offender's consent before imposing a community service order. We believe this to be desirable and the legislation in the countries which we have enquired in fact all require such consent. **We therefore recommend** that the consent of the offender to the imposition of a community service order be made a statutory requirement.

9.7 It is clearly desirable that a community service order should not conflict with the offender's religious beliefs or interfere with his school or work commitments. **We recommend** that provision be made in the legislation that the sentencer should give due consideration for any such potential conflicts.

9.8 We do not consider it necessary to stipulate in the legislation that an offender must understand the purpose and effect of the order before a court will impose a community service order. It is better to leave this to the commonsense of the sentencer who will explain to the offender in simple language the meaning of the order and to ensure that the offender understands it before he imposes such an order.

9.9 We envisage that difficulties would arise if a court made a community service order without first referring the case to the probation service. It might happen, for example, that the offender was unsuited to any of the available projects, and in such a case the probation officer would be placed in an awkward position of having either to try to accommodate the offender in an inappropriate placement or else to bring him back before the court for the community service order to be discharged and a fresh sentence imposed. For this reason it is considered imperative that the legislation enacting the community service order should stipulate that a court may not make a community service order until a social enquiry report has been prepared. The report should indicate the area where work is available, whether the offender is suitable for such an order on health and other grounds and that provision can be made for him to work under such an order. At present a social enquiry report normally requires a court adjournment of 2 weeks for preparation but it is believed that 3 weeks would be required for the preparation of a report relating to the community service order; the extra week being needed as there are more matters for consideration than in the normal report.

9.10 **We recommend** that the legislation should provide that a social enquiry report in the specific context of a community service order be presented to the court before a community service order is made.

9.11 We have carefully considered the age of offenders below which a court should not impose a community service order. It has been suggested that the order should be available in respect of offenders of 14 years of age or above. A minority of the subcommittee, however, think that children of 14 or 15 might be too young to perform any constructive work under the order. It might also give an impression of 'child slavery' to the public. The majority of the subcommittee think that the juvenile court which deals with offenders who are children (under 14 years of age) or young persons (between 14 and 16

years of age) would welcome the addition of another weapon in the armoury of alternative forms of sentencing. In fact, the Employment Ordinance only prohibits employment of children under the age of 13 years. **We** accordingly **recommend** that the community service order should be made available for offenders of 14 years of age or above with the caveat that work for very young offenders should be carefully matched to their abilities.

9.12 We now turn to the length of sentence of community service orders. **We** think and **recommend** that a community service order should be for any number of hours up to a maximum of 240. We also think that an offender should not be required to perform work under an order for more than 8 hours on any single day. The court should be given power to determine the hours of work to be carried out per week and to impose any condition on the manner of carrying out the order.

9.13 Next, we have considered the question of consecutive and concurrent orders. **We** are of the view and so **recommend** that a court may make a community service order in respect of 2 or more offences of which an offender has been convicted. Such orders may be concurrent with or additional to any existing orders so that the total number of hours to be served shall not exceed 240.

9.14 The question of remission for satisfactory performance of a community service order has been considered. We agree that a remission sentence could act as an inducement to encourage regular attendance and good behaviour by the offenders while those who do not perform their duties in accordance with the spirit of the system would be obliged to serve the full term of the order. **We** believe and **recommend** that the legislation should provide that probation officers be empowered to apply to court to reduce the number of hours to be served in appropriate circumstances.

9.15 **We** think it desirable and **recommend** that the order should be completed within 12 months from the date of the order although this period may be extended by the court.

9.16 We envisage that circumstances may change after the making of an order. **We** therefore **recommend** that a provision should be included in the legislation to provide for the court, either on its own initiative, or on application by the Crown or by the offender, to amend or revoke the orders in circumstances clearly specified in the legislation.

9.17 **We recommend** that the community service order should be subject to appeal to the High Court, or in the case of a community service order imposed by the District Court or the High Court, to the Court of Appeal.

9.18 **We recommend** that the legislation should clearly set out the types of activity or acts that will render the offender in breach of the order.

9.19 We have given careful consideration to procedures for dealing with breaches of the order. We are of the opinion that supervising officers

should not be given administrative power to deal with breaches. All breaches should be referred back to the sentencing court.

9.20 **We recommend** that the legislation should provide that the court to which a report of a breach of an order by an offender has been made may -

- (a) impose a fine not exceeding \$1,000;
- (b) increase the number of hours specified in the order but that the aggregate will not exceed 240 at any time; or
- (c) impose a term of imprisonment not exceeding the sentence that could have been originally passed.

9.21 However, we think that a conviction during the currency of a community service order should be distinguished from any failure to comply with the requirements of the order. In the former case, the court is to revoke the order and to sentence the offender for the original offence in any manner in which he could have been dealt with by the court which made the original order.

9.22 **We consider** that an offender subject to a community service order should be deemed to be a government employee for the purposes of employees' compensation and accordingly **we recommend** that a necessary amendment be made to the Employees' Compensation Ordinance.

9.23 Finally, we have considered whether the legislation for community service orders should be enacted by way of amendments to existing ordinances, the Criminal Procedure Ordinance or the Probation of Offenders Ordinance or be introduced by means of a new ordinance. In view of the complexity of the legislation and its novel nature, we recommend its introduction by means of a separate Ordinance.

9.24 **We recommend** that a separate Ordinance providing for the introduction of community service orders should be drafted to include provisions outlined in this report.

X. Summary of recommendations

10.1 The community service order as an additional means of dealing with offenders should be introduced in Hong Kong (paragraph 5.8).

10.2 In operating the community service order scheme the work should be matched with the offender (paragraph 5.9).

10.3 Periodic counselling provided for the offender should be an integral component of the community service order so as to achieve re-education and rehabilitation of the offender as the ultimate purpose of the order (paragraph 6.2).

10.4 Probation officers should be assigned to administer the community service order scheme (paragraph 6.3).

10.5 Sentencing by community service order should be introduced initially by way of a pilot scheme (paragraph 7.2).

10.6 Legislation should create the community service order in its full form while enabling the initial restriction to a pilot scheme to be effected by statutory or non-statutory, administrative means as appropriate (paragraph 7.5).

10.7 The community service order pilot scheme should be introduced in Causeway Bay, San Po Kong and Tsuen Wan Magistracies (paragraph 7.10).

10.8 The pilot scheme should run for a period of 18 months by which time it will have been assessed and a decision made whether to extend the scheme to the other courts of Hong Kong (all together or stage by stage), or, to bring the scheme to an end (paragraph 7.12).

10.9 A standing committee should be set up to monitor the running of the pilot scheme and, at the appropriate time to report to the Administration on the effectiveness and suitability of community service orders (paragraph 7.18).

10.10 The community service order pilot scheme and the subsequent substantive operation should be administered by a unit set up within the Social Welfare Department, initially headed by one supervisor assisted by 3 probation officers (paragraph 8.5).

10.11 A cost analysis should be made before the introduction of the pilot scheme. Adequate funds and adequate staff to run the scheme should be provided from the outset (paragraph 8.8).

10.12 Social Welfare Department should be given ample time to prepare for the community service order scheme before its implementation (paragraph 8.10).

10.13 Provision should be made for the training of probation officers who will administer the community service order scheme (paragraph 8.12).

10.14 The community service order should be available for offences for which the offender is liable to punishment by imprisonment (paragraph 9.3).

10.15 The legislation introducing community service orders should stipulate that the order is a penalty in its own right, but that it may be combined with any order that the court thinks fit (paragraph 9.5).

10.16 The offender's consent to a community service order should be made a statutory requirement (paragraph 9.6).

10.17 The legislation should provide that before making a community service order a sentencer should give due consideration that the order will not conflict with the person's religious beliefs or interfere with the person's school or work commitments (paragraph 9.7).

10.18 The legislation should provide that a social enquiry report in the specific context of a community service order be presented to the court before a community service order is made (paragraph 9.10).

10.19 The legislation should stipulate that community service orders should be available in respect of all offenders of 14 years of age or above (paragraph 9.11).

10.20 The maximum number of hours to be worked on any community service order or on cumulative orders should not exceed 240 (paragraphs 9.12 and 9.13).

10.21 Probation officers should be empowered to apply to the court for reduction of the number of hours to be served in appropriate circumstances (paragraph 9.14).

10.22 An order should be completed within 12 months from the date of the order and the court should have power to extend the period (paragraph 9.15).

10.23 A provision should be included in the legislation to provide for the court, either on its own initiative, or on application by the Crown or by the offender, to amend or revoke the orders in circumstances clearly specified in the legislation (paragraph 9.16).

10.24 A community service order should be classed as a penalty and be subject to an appeal in the same way as any other sentence or penalty (paragraph 9.17).

10.25 Legislation should clearly set out the types of activity or acts that will render the offender in breach of the order (paragraph 9.18).

10.26 The legislation should provide that the court to which a report of a breach of an order by an offender has been made may -

- (a) impose a fine not exceeding \$1,000;
- (b) increase the number of hours specified in the order but that the aggregate will not exceed 240 at any time; or
- (c) impose a term of imprisonment not exceeding the sentence that could have been originally passed. (paragraph 9.20).

10.27 The Employees' Compensation Ordinance should be amended so that an offender serving under a community service order will be treated as a government employee for the purposes of employees' compensation (paragraph 9.22).

10.28 A separate ordinance providing for the introduction of community service orders should be drafted to include provisions outlined in this report (paragraph 9.24).

XI. Acknowledgement

11.1 We wish to place on record our gratitude to all those individuals and organizations who have assisted the Commission with views, opinions, advice and information; in particular the respondents to our questionnaires and requests for opinions; Chief Probation Officers of the areas in England where community service orders were initially introduced; and those who supplied information and details of legislation relating to community service orders in other jurisdictions.

Annexure 1

Sub-committee on Community Service Order

Membership

(Chairman)	The Hon. F.K. Hu, J.P. **	Ryoden Electric Engineering Co. Ltd.
	Mr. P.M. Corfe, O.B.E.	Principal Magistrate
	Mr. R.W.B. Higginbottom	Assistant Commissioner of Correctional Services
	Dr. The Hon. Ho Kam-fai, OBE, J.P.	Member of the Legislative Council
	Mr. Carlos Leung	Social Welfare Department
	Mr. Andrew K. N. Li **	Barrister-at-law
	Mr. J.W. Miller	Legal Advice and Duty Lawyers Schemes
	Mr. P.T. Morrow	School of Law, University of Hong Kong
	The Hon. Maria Tam	Barrister-at-law
	Mr. Augustine K. Chui, J.P.	Urban Services Department
(Secretary)	Mr. R.S. Maxwell	Attorney General's Chambers
(Secretary)	Miss Amelia Luk	Attorney General's Chambers

** Commission member

COMMUNITY SERVICE ORDERS

MATERIALS

- I. GENERAL
- II. ENGLAND : — LEGISLATION
 - ARTICLES AND COMMENTS
 - DECIDED CASES
 - REPORTS AND STATISTICS
- III. IRELAND
- IV. AUSTRALIA
- V. NEW ZEALAND
- VI. HONG KONG

COMMUNITY SERVICE ORDERS

I. GENERAL

1. Halsbury's Laws of England (4th, edition) Vol. 11, paragraphs 482, 483, 486 - 488, 491, 539 - 543, & 677 - 680
2. Halsbury's Laws of England 1981 Supplement; Part 7, paragraphs 539, 540 & 543
3. Cross, "The English Sentencing System" (2nd edition) p.28
4. Fallon, "Crown Court Practice" pp. 18 – 21, 231 - 2
5. Thomas, "Principles in Sentencing" p.236
6. Warren Young, "Community Service Orders", Cambridge Studies in Criminology
7. "Community Service by offenders-year one in Kent" published by Barry Rose Publishers

II. **ENGLAND**

LEGISLATION

1. Powers of Criminal Courts Act 1973
2. Criminal Law Act 1977

ARTICLES AND COMMENTS

1. Alec Samuels, "Criminal Justice Act 1972 - II" (1972) 116 Solicitors' Journal 953
2. Barbara Wootton, "Community Service" (1973) Crim. L.R. 16
3. "The Week in Parliament" (1973) J.P.* 126
4. Eric Knapman, "Community Service Orders : A Rationale" (1974) J.P.162
5. "Miscellaneous Information" (1974) J.P. 482
6. Editorial comment (1974) J.P. 600
7. Hugh J. Klare, "As I see it" (1974) J.P. 639
8. Correspondence (1974) J.P. 654
9. Hugh J. Klare, "As I see it" (1975) J.P. 228
10. "Notes of the week" (1975) J.P. 252, 323, 350, 478, 538
11. Peter Morrish, "Community Service Orders" (1975) J.P. 269
12. Correspondence (1975) J.P. 317
13. "The Week in Parliament" (1975) J.P. 691
14. "Notes of the Week" (1976) J.P. 82, 175
15. Correspondence (1976) J.P. 126, 168, 223
16. "Practical Points" (1976) J.P. 201, 687
17. "The Week in Parliament" (1976) J.P. 631

* J.P. = Justice of the Peace

18. "Practical Points" (1977) J.P. 119, 589
19. Kenneth Howe, "As I see it" (1977) J.P. 243
20. Correspondence (1977) J.P. 271, 312, 375
21. "Breach of Community Service Order" (1977) J.P. 298
22. "Notes of the week" (1977) J.P. 305, 380
23. Weekly notes of cases (1977) J.P. 493
24. David Matheison, "Community Service - Impact for Change" (1977) J.P. 730
25. Ken Pease, "Community Service and the Tariff" (1978) Crim. L.R. 269
26. Andrew Willis, "Community Service and the Tariff – A Critical Comment" (1978) Crime L.R. 540
27. Robin Trewartha, "A Further Comment" (1978) Crim. L.R. 54.4
28. Ken Pease, "A Reply" (1978) Crime L.R. 546
29. Editorial Comment (1980) Crim. L.R. 753
30. "Notes of the Week" (1981) J.P. 109, 125, 197
31. "The Week in Parliament" (1981) J.P. 180
32. "Practical Points" (1981) J.P. 356, 370, 446

DECIDED CASES

1. R.v. Evans [1977] 1 W.L.R. 27
[1977] 1 All E.R. 228
[1977] Crime L.R. 230
2. R.v. Bethune [1976] Crim L.R. 316
3. R.v. Howard and Wade [1977] Crim. L.R. 68
4. R.v. Corbett [1978] Crim. L.R. 51
5. R.v. Carnwell [1978] Crim. L.R. 59
6. R.v. Adair [1979] Crime L.R. 322

7. R.v. Williams [1979] Crim. L.R. 535
[1979] Cr. App. Rep. 78
8. R.v. Starie [1979] Crim. L.R. 731 (Commentary)
[1979] Cr. App. Rep. 172, 239
9. R.v. Garland [1979] 1 Cr. App. Rep. 62
10. R.v. Paisley [1979] 1 Cr. App. Rep. 196
11. R.v. Peterborough Justices, ex. p. Casey [1979] 1 Cr. App. Rep. 268
12. R.v. McDiarmid [1980] 2 Cr. App. Rep. 130
13. R.v. Dudgdale [1981] 3 C.L. # 43
14. R.v. Goscombe [1981] J.P. 145

REPORTS AND STATISTICS

1. "Community Service Orders" - Report on the Nottinghamshire (31st March, 1975) Experimental Scheme published by Nottinghamshire Probation & After-care Service
2. "Community Service - Consumer Survey 1973 - 1976" published by Nottinghamshire Probation and After-care Service
3. "Community Service Orders - Statistical Information 1st January, 1977 to 31st December, 1977" published by Merseyside Probation and After-care Service
4. "Community Service - The first 5 years. An appraisal" by Mr. S. Brereton, February, 1978
5. "Community Service by Offenders - a progress report on the first two years' operation of the scheme in Inner London"
6. "Community Service Orders : Final Report by Senior Probation Officer" - an evaluation report of two years of community service by offenders in Durham City published by Durham County Probation and After-care Service
7. "Probation and after-care statistics : England and Wales 1978" published by Home Office, London
8. "Probation and after-care statistics : England and Wales 1979," published by Home Office, London

9. "Probation and after-care statistics : England and Wales 1980" published by Home Office, London
10. Report of the Advisory Council on the Penal System on Non-custodial and Semi-custodial Sentences pp. 12-21
11. Report of the Working Group on Community Service by Offenders
12. "Community Service assessed in 1976" - Home Office Research Study No. 39
13. "Community Service Orders by K. Pease and D. Payne" - Home Office Research Unit Report No. 29
14. Home Office Statistical Bulletin Issue 3/80

III IRELAND

1. "The treatment of offenders (Northern Ireland) Order 1976 - community service orders" - Information for Probation Officers published by Northern Ireland Probation and After-care Service
2. "1980 Annual Report of the Northern Ireland Community Service Committee"

IV. AUSTRALIA

1. "Sentencing : Reform Options", The Law Reform Commission of Australia Discussion Paper No. 10
2. "Sentencing of Federal Offenders", The Law Reform Commission of Australia Report No. 15 (Interim)
3. "Sentencing (Research Paper No. 4) Community work Orders as an option for sentencing" by Australian Law Reform Commission

NEW SOUTH WALES

4. Community Service Orders : Briefing Paper published by Correctional Services Department Probation and Parol Service of New South Wales
5. "Community Service Orders - Report of Progress"
6. "Community Service Orders - An alternative to prisons" by John McAvoy, current affairs Bulletin (1st April 1982)
7. Community Service Orders Act, 1979, No. 192

8. Community Service Orders Act Regulations 1980

SOUTH AUSTRALIA

9. "Community Service for adult offenders - A non-custodial penalty", published by Department of Correctional Services, South Australia
10. Offenders Probation Act 1913 - 1981

TASMANIA

11. Probation of Offenders Act 1973
12. Probation of Offenders Amendment Act 1980
13. Probation of Offenders Regulations 1974
14. Probation of Offenders (Summary Jurisdiction) Rules 1974
15. Probation of Offenders (Supreme Court) Rules 1974
16. Probation of Offenders Amendment Regulations 1974
17. Probation of Offenders Amendment Regulations 1976
18. Probation of Offenders Amendment Regulations 1977
19. Probation of Offenders Amendment Regulations 1980
20. "Tasmania's Work Order Scheme: A Brief Description" published by the Attorney General's Department
21. "The Work Order Scheme, an evaluation of Tasmania's Scheme"

VICTORIA

22. Penalties and Sentences Act 1981.
23. Attorney General's speech upon introduction of the Penalties and Sentences Bill to Parliament.

NORTHERN TERRITORY

24. Criminal Law (Conditional Release of Offenders) Act

25. Criminal Law (Conditional Release of Offenders) (Community Service Orders) Regulations 1979

QUEENSLAND

26. Offenders Probation and Parole Act 1980
27. Offenders Probation and Parole Regulations 1980
28. "Community Service Orders" published by Probation and Parole Service of Queensland.

V. NEW ZEALAND

1. Criminal Justice Amendment Act 1980 (Community Service Provisions)
2. Paper on "Periodic Detention"
3. 'Opportunities for Service' - A guide to groups sponsoring offenders sentenced to community service (Probation Series No. 5)
4. "Penal Policy Review : Community Service Orders", by Angela Lee, Paper No. 12 (Background paper for terms of reference (a))
5. "Penal Policy Review : Community Service Orders" by Angela Lee, Paper No. 40 (Background paper for terms of reference (a))
6. Report of the Penal Policy Committee 1981
7. "Giving service" – A guide for those sentenced to community service (Probation Series No. 4)
8. 'Information Pack' on community service order

VI. HONG KONG

1. The Hong Kong Discharged Prisoners' Aid Society Annual Report 1980/1981
2. Annual Report of the Social Welfare Department 1982
3. Annual Report of the Prisons Department 1981.

Annexure 3

List of local and Government departments consulted

- *1. Agriculture and Fisheries Department
- *2. City and New Territories Administration
- 3. Correctional Services Department
- 4. Environmental Protection Agency
- *5. Housing Department
- *6. Medical and Department
- *7. Education Department
- 8. Radio Television Hong Kong
- 9. Royal Hong Kong Police Force
- *10. Social Welfare Department
- *11. Urban Services Department
- 12. Home Affairs Branch of Government Secretariat
- *13. Asbury Village Community Centre of the Methodist Church
- 14. Baptist Assembly
- *15. Agency for Volunteer Service
- *16. The Boys & Girls Clubs Association
- *17. Pente costal Holiness Church C.N. Bostic Centre for the Blind
- 18. Canossian Mission (Welfare Services)
- 19. Caritas - Hong Kong
- *20. The Chinese Y.M.C.A.
- 21. Community Service Committee of the Evangelical Lutheran Church of H.K.
- 22. Convent of Good Shepherd

- *23. Ebenezer School & Home for the Blind
- 24. Evangel Children's Home
- *25. Heep Hong Club
- 26. Holy Carpenter Church & Community Centre
- *27. Hong Kong Association for the Mentally Handicapped
- 28. Hong Kong Catholic Youth Council
- 29. Hong Kong Children & Youth Services
- *30. Hong Kong Discharged Prisoners' Aid Society
- *31. Hong Kong Family Welfare Society
- *32. Hong Kong Federation of Youth Groups
- *33. Hong Kong Housing Society
- *34. Hong Kong Federation of Handicapped Youth
- 35. Hong Kong Federation of the Blind
- 36. Hong Kong PHAB Association
- *37. Hong Kong Playground Association
- *38. Hong Kong Recreation Club of the Deaf
- *39. Hong Kong Red Cross
- *40. Hong Kong School for the Deaf
- *41. Hong Kong Society for the Aged
- *42. Hong Kong Society for the Blind
- 43. Hong Kong Society for the Deaf
- *44. International Rescue Committee Inc.
- *45. Junk Bay Medical Relief Council
- *46. The Salvation Army
- *47. Hong Kong Society for the Rehabilitation

- *48. Methodist Epworth Village Community Centre
- 49. Neighbourhood Advice-Action Council
- *50. S.K.H. Lady MacLehose Centre
- *51. S.K.H. St. Christopher's Home
- *52. Society for the Relief of Disabled Children
- *53. The Society of Homes for the Handicapped
- *54. The Spastics Association of Hong Kong
- 55. Sports Association for the Physically Handicapped
- *56. St. James' Settlement
- 57. O.M.S. St. Simon Home for Fishermen's & Workmen's Church
- *58. Tung Lum Buddhist Aged Home
- *59. Tung Wah Group of Hospitals
- 60. United Christian Medical Service
- *61. Victoria park School for the Deaf
- 62. Wai Ji Training Centre
- *63. Y.M.C.A.
- *64. Y.W.C.A.
- 65. Wong Tai Sin District Federation of Welfare Services for the Aged
- 66. Yan Chai Hospital
- 67. Yang Memorial Social Service Centre
- 68. Zion Youth Service Centre
- *69. Hong Kong Youth Hostels Association
- *70. Home of Loving Faithfulness
- *71. Little Sisters of the Poor
- 72. Hong Kong Cheshire Home

- *73. Hong Kong Association of the Blind
- *74. Employment Service
- 75. Aberdeen Kaifong Welfare Association Community Centre
- 76. Action Group for Aid to the Mentally Retarded
- 77. Action Against Child Abuse
- 78. American Women's Association of Hong Kong Ltd.
- 79. The Birthright Society Ltd.
- 80. Board of Studies in Social Work
- 81. Breakthrough Counselling Centre
- 82. Catholic Women's League
- 83. Causeway Bay Kaifong Welfare Advancement Association
- 84. Chai Wan Kaifong Welfare Advancement Association (H.K.) Ltd.
- 85. Christian Family Service Centre
- 86. Finnish Missionary Society
- 87. H.K. Federation of Youth Groups
- 88. Five District Business Welfare Association
- 89. Hans Andersen Club
- 90. Hong Kong Baptist College, Social Work Division
- *91. The Hong Kong Chinese Women's Club
- *92. Hong Kong Christian Service
- 93. Hong Kong Christian Mutual Improvement Society
- 94. Hong Kong Council of the Boys' Brigade
- 95. The Hong Kong Council of Women
- 96. Hong Kong Emotion & Health Association
- 97. Hong Kong Lutheran Social Service, Lutheran Church - Hong Kong Synod

98. Health & Temperance Department, Hong Kong Macau Conference of Seventh-Day Adventists
99. Hong Kong Recreation & Sports Association
100. Hong Kong Red Swastika Society
101. Hong Kong Social Workers Association Ltd.
102. Hong Kong Society for the Protection of Children
103. Hong Kong Student Aid Society
104. Hong Kong Youth Club
105. Industrial Evangelistic Fellowship
106. International Social Service
107. Kwun Tong Methodist Centre
108. Marriage Guidance & Family Counselling Service
109. Mary Stanton Centre for Girls
110. Maryknoll Sisters Regional Office
111. Mary Rose School
112. Mental Health Association of Hong Kong
113. New Life Psychiatric Rehabilitation Association
114. New Territories Women & Juvenile Welfare Association Ltd
115. North Point Kaifong Welfare Advancement Association
116. Norwegian Lutheran Mission
117. Norwegian Missionary Society
- *118. Po Leung Kuk
- *119. Samaritan Befrienders Hong Kong
- *120. School of Social Work, Hong Kong Polytechnic
121. S.K.H. Diocesan Welfare Council
122. S.K.H. Kei Oi Social Service Centre

- 123. Social Service Group, Hong Kong University Students' Union
- *124. Society of Boys' Centres,
- 125. Society of St. Vincent de Paul
- 126. St. John Ambulance Association & Brigade
- 127. Tsuen Wan Ecumenical Social Service Centre
- 128. Tsung Tsin Mission, Social Service Division
- 129. World Vision of Hong Kong
- 130. The Y's Mien's Club of Victoria
- 131. Yau Tong Po Yin Social Centre
- *132. Society for the Aid and Rehabilitation of Drug Abusers
- 133. Rennie's Mill Student Aid Project
- 134. The Church of Christ in China, Hong Kong Council
- 135. Community Advice Bureau
- 136. Department of Social Work, University of Hong Kong
- 137. Duke of Edinburgh's Award Scheme
- 138. The Ecumenical Institute of Hong Kong
- 139. Hong Kong Social Workers' General Union
- 140. Hong Kong Christian Industrial Committee
- 141. Young Workers' Confederation
- *142. Educators' Social Action Council, c/o Dr. A.R.B. Ethertoy, Hong Kong Chinese University
- 143. The Hong Kong Observers
- *144. Hong Kong Law Society
- *145. Hong Kong Bar Association
- 146. Society for Community Organization
- 147. Hong Kong & Kowloon Kaifong Association

- *148. Hong Kong & Kowloon Joint Kaifong Research Council
- 149. Heung Yee Kuk
- *150. Po Leung Kuk
- 151. Chung Sing Benevolent Society
- 152. Lok Sin Tong Benevolent Society
- 153. RHKPF Superintendents' Association
- 154. RHKPF Local Inspectors' Association
- *155. RHKPF Expatriate Inspectors' Association
- 156. RHKPF Junior Police Officers' Association
- *157. Hong Kong Council of Social Service
- 158. Sai Kung District Board

* Bodies who have responded.

Annexure 4

Analysis of questionnaires

- I. On the question of the voluntary agencies the following table gives some indication of the response. Thirty-eight voluntary agencies returned the questionnaire and of those six were unwilling to participate

	<u>Nature of Response of Voluntary agencies</u>	<u>Number of Voluntary agencies</u>	<u>Number of Placements offered to offenders</u>
A.	No reservations or requests at all	6	10
B.	Only reservations about supervision etc. but no requests for staff	6	21
C.	Require only materials or tools, or finance for such	4	9
D.	Require only more staff	7	35
E.	Require materials and staff	6	22
F.	Require Finance for unspecified general expenses	1	2
		<hr/> 30 =====	<hr/> 99 =====

- N.B. 1. Where a voluntary agency has offered a range of say 6-12 places for offenders the lower end of the range has been taken in the figures in the above table.
2. Some voluntary agencies have not proposed any number for community service order offenders they can handle.
3. Reservations on supervision range from vague concern to the proposal that "offenders be accompanied by supervisors from the Government". Some apparent reservations about supervision may in fact be nothing more than the opinion that the overall control of the scheme should be in the hands of the Probation Service.

II. The response from Government department is set out below :-

<u>Department</u>	<u>Number of places offered in a group</u>	<u>Reservations expressed</u>
Medical & Health	10	None
Social Welfare	2	None
Agriculture & Fisheries	6-10	Requires direct supervision by probation officers
Urban Services	Unspecified	Close supervision by Probation Service or Correctional Services Department
Housing	2	Request for assistance with supervision

Summary of public reaction through mass media, television and radio

1. At press release on Community Service Orders Sub-committee inviting the public to make submission to the Sub-committee was issued to the media in early January. It received Good press coverage and drew follow-up reports as well as editorial comments.
2. A total of nine Chinese newspapers and two English newspapers published the press release on January 4, 1982. Namely, Wah Kiu Yat Po, Oriental Daily News, Ming Pao, Hong Kong Daily News, Ching Po, Sing Po, Wen Wei Po, The Express, Tai Kung Pao, South China Morning Post and the Star.
3. The response of the Chinese press has been particularly favourable. Follow up reports were published by 5 Chinese newspapers from January 4 to 6. These papers mainly gave details on the meaning of community service order and the views of sub-committee members - the Hon. Maria Tam and Dr. the Hon. Ho Kam-kai O.B.E. as well as opinions expressed by other community leaders.
4. Editorials were published by three Chinese newspapers. The general reaction of the community leaders was in favour of introducing community service orders in Hong Kong. One or two commented that this type of penalty might lessen the deterrent effect that penalty should have.
5. In January 1982, there was a panel discussion on the feasibility of community service order in Hong Kong on television (RTHK production) Hon. Maria. Tam was one of the panelists. Representatives of Voluntary agencies present welcomed the idea of community service order.
6. Dr. the Hon. Ho Kam-fai gave a talk to the Kowloon Rotary Club in early March, 1982 which was well covered in the press. His speech had consisted of factual description of the scheme and the philosophy underlying it, the intention being to arouse interest.
7. The Hon. M. Tam gave a talk on 25th March, 1982 to a group of probation officers. She spoke about community service orders in United Kingdom, Tasmania and New Zealand. The response was that probation officers were interested but they wanted to know if the Correctional Services Department or probation service would be involved, what training sessions would be provided and had expressed doubt about private individuals allowing offenders into their homes.

8. In a TVB 'Insight' programme in February/March 1982, seven people were interviewed and were asked if they agreed to community service orders. Six had answered in the affirmative and one had said that it was too lenient. The question put to the interviewees had been "Do you think people should be given a chance to be rehabilitated?"
9. There had been two radio programmes including one telephone "Call in" programme on Radio Hong Kong and queries had been raised about having offenders in private homes, the types of offences and the type of offenders.
10. At a seminar of the Outstanding Young Persons Association, Hon, Maria, Tam gave a talk on community service order. All members of the association supported the idea of introducing such sentence in Hong Kong.

Memorandum of Open Forum on 4 October 1982

An open forum was held in the Urban Council Chamber, Urban Council Chambers, Edinburgh Place, Hong Kong on Monday, 4th October, 1982 from 4:45 p.m. to 7:00 p.m. The panelists consisted of the Chairman, the Hon. F.K. Hu and four other members of the Sub-Committee. Over 50 representatives from voluntary agencies and Government departments attended the meeting.

All panelists made speeches carefully outlining the details for the introduction of the community service order in Hong Kong. A number of delegates at the meeting asked some pertinent and interesting questions and to these members of the panel replied in detail. The points raised included the supervision of offenders while serving out their orders; the counselling and possible after-care supervision of offenders and the types of work to be undertaken.

ANNEXURE 7

Summary of work provided by voluntary agencies and Government department:

- Repairing
- Cleaning
- Gardening, watering plants, grass-cutting
- Painting
- Decoration
- Clerical work
- Kitchen work
- Off-set printing
- Ad hoc assistance in programmes in voluntary agencies
- Preparing teaching aids
- Path maintenance and construction
- Providing service to mentally handicapped adults
- Escorting elderly people
- Providing personal service to physically handicapped people
- Serving as office attendant
- Serving as special interest group instructor for the elderly

Community Service Orders in Other Countries

A. Statutes

(1) U.K.

Powers of Criminal Courts Act 1973 (SS. 14-18)

(2) New Zealand

Criminal Justice Amendment Act 1980

(3) Australia

a) South Australia : Offenders Probation Act 1913-1981

b) Northern Territory : Criminal Law (Conditional Release of Offenders) Act 1980

c) New South Wales : Community Service Orders Act 1979

d) Tasmania : Probation of Offenders Act 1973 and (Amendment) Act 1980

e) Victoria : Penalties and Sentences Act 1981

f) Queensland : Offenders Probation and Parole Act 1980

(4) Northern Ireland

The Treatment of Offenders (Northern Ireland) Order 1976

B. Special Features

1. South Australia

During period of C.S.O., offenders must attend an approved educational activity for a further two hours per week.

2. New South Wales

It is stipulated that where the law provides, for an offence, a maximum term of imprisonment of 6 months or less, the maximum hours should not exceed 100 hours, where the maximum term of imprisonment

provided is over 6 months but under 1 year, the maximum is 200 hours, where over the year, 300 hours.

3. Victoria

Officer to determine whether credit given: Section 29 of Penalties and Sentences Act 1981 provides: "Where the officer has directed an offender in respect of whom a community service order is in force on any day to perform work for a specified number of hours and the offender fails to perform such work for the number of hours specified, or to perform that work in a satisfactory manner, the officer shall determine whether the offender shall be given credit under the order for any of the hours so specified and if so, the number of such hours for which the offender shall be given credit".

4. Tasmania

An offender is sentenced to so many work order days (not exceeding a maximum of 25) which he must work one day per week community projects. He is called "an employee" although he does not get any pay for his work.

Community Service Orders

	New South Wales	Queensland	Northern Ireland								
<u>Types of Offences</u>	An offence punishable with imprisonment.	An offence punishable by a term of imprisonment otherwise than for default of payment of a fine	“Offences punishable by imprisonment”.								
<u>Length of Sentence</u>	Maximum : 300 hours <table><tr><td>Maximum term of Imprisonment</td><td>Maximum No. of Hours</td></tr><tr><td>Less than 6 months</td><td>100</td></tr><tr><td>6 months to 1 year</td><td>200</td></tr><tr><td>More than 1 year</td><td>300</td></tr></table>	Maximum term of Imprisonment	Maximum No. of Hours	Less than 6 months	100	6 months to 1 year	200	More than 1 year	300	40 to 240 hours	40 to 240 hours
Maximum term of Imprisonment	Maximum No. of Hours										
Less than 6 months	100										
6 months to 1 year	200										
More than 1 year	300										
<u>Time to Complete the Order</u>	1 year	12 months	“Within a reasonable period”								
<u>Age of Offender</u>	18 or over	17 or over	17 or over								
<u>C.S.O. in Conjunction with Other Orders</u>	Any other order except imprisonment or release on recognizance.	In conjunction with probation order; may order for compensation or restitution of property/disqualification, etc.									
<u>Breach Procedure</u>	1) Fine \$250 Plus continue order. 2) Revoke C.S.O. and substitute new sentence.	1) Fine \$500 and continue order. 2) increase no. of hours, aggregate not exceeding 240. 3) Sentence for original offence.	1) Fine £50 and continue order. 2) Revoke order and sentenced afresh								
<u>If Consent of Offender Required</u>	Yes	Yes	Yes								

Community Service Orders

	Northern Territory`	Tasmania	Victoria
<u>Types of Offences</u>	Any offence (other than in default of payment of a-fine) against the law	Any offence	Punishable by imprisonment-other than treason or murder
<u>Length of Sentence</u>	Less than 240 hours (less than 8 hours a day).	Any number of days not exceeding 25 (one day per week). (less than 8 hours a day)	20 to 360 hours (If offender-fails to perform work satisfactorily, supervisor to determine the credit of his Work).
<u>Time to Complete the Order</u>	No express provision	No express provision	12 months
<u>Age of Offender</u>	Any age	16 or over	Any age
<u>C.S.O. in Conjunction with other Orders</u>	Any other order (no express provision)	Probation order in addition To C.S.O.	No express -provision but not with imprisonment or detention
<u>Breach Procedure</u>	1) Fine \$200 plus continue order. 2) Sentenced afresh. 3) Increase number of hours.	1) Fine COO and continue 2) Increase number of days of order. 3) Imprisonment less than 3 months.	1) Fine \$200 <u>or</u> 2) Increase not more than 50 hours of C.S. work
<u>If Consent- of Offender Required</u>	Yes	Yes	Yes

Community Service Orders

	New South Wales	Queensland	Northern Ireland
<u>Types-of Offences</u>	An offence punishable with imprisonment.	An offence punishable by a term of imprisonment	"Offences punishable by imprisonment"
<u>Length of Sentence</u>	<div> <div>Maximum : 300 hours</div> <div> <div>Maximum term of Imprisonment</div> <div>Maximum No. of Hours</div> </div> </div> <div> <div>Less than 6 months</div> <div>100</div> </div> <div> <div>6 months to 1 year</div> <div>200</div> </div> <div> <div>More than 1 year</div> <div>300</div> </div>	40 to 240 hours	40 to 240 hours
<u>Time to Complete the Order</u>	1 year	12 months	"Within a reasonable period"
<u>Age of Offender</u>	18 or over	17 or over	17 or over
<u>C.S.O. in Conjunction with other Order</u>	Any other order except imprisonment or release on recognizance.	In conjunction with probation order; may order for compensation or restitution of property/disqualification, etc.	
<u>Breach Procedure</u>	1) Fine \$250 Plus continue order. 2) Revoke C.S.O. and substitute new sentence.	1) Fine and continue order. 2) Increase no. of hours, aggregate no exceeding 240. 3) Sentenced for original offence.	1) Fine £150 and continue order. 2) Revoke order and sentence afresh
<u>Consent of Offender Required</u>	Yes	Yes	Yes

THE LAW REFORM COMMISSION OF
HONG KONG

法律改革委員會



ATTORNEY GENERAL'S CHAMBERS

23rd Floor,
United Centre,
Queensway,
Hong Kong.

QUESTIONNAIRE FOR GOVERNMENT DEPARTMENTS

Name of Department : _____

- 1) What kind(s) of work would be available in your Department for the C.S.O. offenders?

- ☐ repairing
☐ cleaning
☐ gardening
☐ painting
☐ decorating
☐ others (pleasing specify) _____

- 2) What hours of work could you offer to the C.S.O. offenders?

- | | |
|-----------------------------------|--|
| <input type="checkbox"/> Weekdays | <input type="checkbox"/> Morning
<input type="checkbox"/> Afternoon
<input type="checkbox"/> Evening |
| <input type="checkbox"/> Weekends | <input type="checkbox"/> Morning
<input type="checkbox"/> Afternoon
<input type="checkbox"/> Evening |

- 3) How many supervisors would be available for supervising the C.S.O. offenders?

- | | | |
|-----------------------------------|-----------------------------------|-----------------------------------|
| <input type="checkbox"/> Below 50 | <input type="checkbox"/> 50 -100 | <input type="checkbox"/> 100 -150 |
| <input type="checkbox"/> 150 -200 | <input type="checkbox"/> over 200 | |

- 4) Would you be able to supervise C.S.O. offenders in groups or individually?

—

- 5) If in groups, how many C.S.O. offenders would you be able to supervise in one group?



- 6) If you were to provide work for C.S.O. offenders, would you require assistance with

☐transport

☐materials

☐equipment

☐others? _____

- 7) What contact with members of the public would C.S.O. offenders have while carrying out work for your department?

- 8) Do you have any comments or advice on implementing the community service order scheme?

- 9) What financial implication do you think would be involved?

Annexure 10

THE LAW REFORM COMMISSION OF
HONG KONG

法律改革委員會



ATTORNEY GENERAL'S CHAMBERS

23rd Floor,
United Centre,
Queensway,
Hong Kong.

QUESTIONNAIRE FOR VOLUNTARY ORGANISATIONS

- 1) Name of organisation:

- 2) Object of your work:
☐ Youth ☐ old people ☐ Rehabilitation
☐ Others _____
- 3) Do you do case work? ☐ Yes ☐ No
- 4) How many centres do you have?
☐ 1 - 5 ☐ 6 - 10 ☐ 11 - 15 ☐ 16 - 20 ☐ over 20
- 5) Where are the location of these centres?

Area	Number of centres
Hong Kong Area:	
Kowloon Area:	
New Territories Area:	



- 6) What kind(s) of work would be available in your organisation for the C.S.O. offenders?

☐repairing
☐cleaning
☐gardening
☐painting
☐decorating
☐others (please specify)_____

- 7) Can you supply necessary tools or equipments?

☐Yes ☐No

- 8) What hours or work per month can you offer to the C.S.O. offenders?

☐1 - 5 ☐6 -10 ☐11 -15 ☐16 -20 ☐over 20
☐none

- 9) What time of the day would such work be available?

- 10) What day of the week would such work be available?

- 11) How do you support your organisation's expenses?

☐by donations ☐by Government subsidies
☐others

- 12) How many C.S.O. offenders do you think your organisation can supervise at any one time?

- 13) Are you prepared to participate in this scheme by providing

☐work ☐supervision ☐tool ☐material

- 14) What would you require in order to participate in this scheme?

Staff: How many_____

Finance: For what_____

Any other: _____



- 15) Have you any experience in dealing with delinquent and/or offenders?

- 16) Do you think your client or staff will accept the services a C.S.O. offender?

- 17) Have you any comment or advice on the implementation of the community service order scheme?

- 18) Suggestions: including any condition you wish to lay down for participating in this scheme.

Annexure 11

THE LAW REFORM COMMISSION OF
HONG KONG

法 律 改 革 委 員 會



ATTORNEY GENERAL'S CHAMBERS

23rd Floor,
United Centre,
Queensway,
Hong Kong.

Ref.: LRC/7/CSO/OP

February, 1982

Dear Sir/Madam,

Community Service Order

The Law Reform Commission is looking into the feasibility of introducing a new form of penalty for young offenders in Hong Kong. This is known as a Community Service Order. It is both a punishment and rehabilitation of offenders of comparatively young age, of say between 16-30, who are convicted of an offence punishable by imprisonment. A community service order is intended to be constructive and positive, and benefit both the offender and the community. An introductory note is enclosed with this letter to explain the meaning and the mechanism of this type of sentencing.

The scheme of community service order in the U.K. depends upon the assistance of both the probation service and voluntary organisations to provide the work and the day to day control of the offenders under a community service order. It is considered likely that the same will apply in Hong Kong with the additional assistance of the Correctional Services Department (formerly Prisons Department) and public support.

As this is a new concept of sentencing we are keen to know the attitude and reaction the public may have towards it. I should be grateful if you could comment on this issue and its acceptability in Hong Kong. If you have any queries or comments please write to me at the above address preferably within 6 weeks.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'R.S. Maxwell'.

R.S. Maxwell
(Secretary, C.S.O. Sub-Committee)



Community Service Order

Community Service order is a form of sentence on offenders of comparatively young age. In the United Kingdom, where an offender of age 16 or over is convicted of an offence which is punishable by imprisonment, the court can make an order requiring him to perform unpaid work for a number of hours as may be specified in the order (being an aggregate of not less than 40 nor more than 240 hours) such as painting, decorating and gardening for old and disabled people, footpath clearance and building adventure playgrounds through the supervision of a probation officer. The order must be made under the consent of the offender. The court must be informed of what kind of arrangements of work is available and having considered a social inquiry report by a probation officer be satisfied that the offender is suitable for such treatment. Where the offender has been convicted of 2 or more offences, and the court is making C.S.O. in respect of all these offences the court can specify that the hours of work is concurrent or additional to those specified in any of those orders.

Before a community service order is made, the court has to explain in ordinary language the purpose and effect of the order to the offender. An offender subject to community service order shall report to a probation officer from time to time, perform work as instructed and notify the officer his change of address. Instructions will be given to the offender by the probation officer, but such instructions should avoid any conflicts with the offender's religious beliefs and with the time at which the offender is attending a school or other educational establishment and/or working. The order must be fulfilled within 12 months, though this period may be extended by a period of another 12 months on application to the court.

Where the offender fails to comply with any requirements in the order the court may issue a summons requiring him to appear at court or issue a warrant for his arrest. If it is proved that the offender has done so without reasonable excuse, a fine would be imposed on him, or the court may even revoke the order and deal with him in respect of the offence of which the order was made.

In United Kingdom, the link of the C.S.O. scheme with voluntary social work organisations and probation service is crucial because one of the intentions of the scheme is to promote a sense of social responsibility in the offenders, and it is anticipated that it will be so in Hong Kong.

The Law Reform Subcommittee believes that implementation of C.S.O. in Hong Kong may be formulated as follows:-



age of offender	over 16 and first offenders with no mental or drug problems
type of offence	punishable by fine or imprisonment, no excessive violence involved (or no violence at all)
background of offender	with settled address, with or without steady employment.

We are seeking public reaction, comments and suggestion on what the public feel about introducing C.S.O. in Hong Kong and under what criteria they think it should be carried out. Their cooperation in this matter is much appreciated.



服務社會令

什麼是服務社會令？

服務社會令是為較年輕的罪犯而設的處分。根據英國的法例，凡年齡由十六歲以上而曾犯可被監禁或罰款的罪行的罪犯，可被法庭判去做某種特別的工作，稱為服務社會令。在英國大部份被判者年齡是在十七至三十歲之間。

如何執行服務社會令？

服務令之執行方法是判處罪犯去做一個規定數目的時間的義務工作。在英國這些罪犯的工作時間，是在判刑之十二個月內做四十至二百四十個鐘頭的工作。通常他的工作均由一位感化官作監督，而工作之範圍可包括油漆，裝修，為老人及殘廢者做園藝，清理行人小徑及建造遊樂場等。工作的地點和服務對象亦由感化官及法官指定。

判處的方法

要判這種「刑罰」，法官須先審閱一份由感化官所寫有關該名罪犯之背景調查報告



書以確定該名罪犯是否適合服服務社會令。法官亦須得到有關工作安排方面的資料及感化官的推薦，然後才問罪犯是否同意接受這個判處的方法，罪犯如願意接受此令，才可判刑。如有罪犯犯了兩項或以上的罪行，而法官又打算用服務社會令來處理該名罪犯的話，法官可增加工作之時間。

服務社會令是否過輕的處罰方法？

在宣判服務社會令之前，法官必須用淺白的語句向犯人解釋服務令之目的及影響，而犯人必須在服令期間經常的向感化官報告及做感化官所指定的工作。如有更改地址或職業亦須通知感化官。感化官亦會指導犯人如何工作，但該等工作時間及性質不應與犯人之宗教信仰，職業或學業有衝突。犯人必須在判處之十二個月內完成該服務令之工作，但在例外之情形下亦可延期多一年。

服務社會令並非使犯人能避免應得的刑罰，而是選擇適合康復的人，給他一個自新的機會。若犯人不能遵依服務令之規限，法官可傳令該犯人出庭，或甚至發出逮捕令將其逮捕。凡在庭上不能給予法官合理之解釋者，將會被判罰款或被撤消服務令，將他再判，以給予合適的處分。



徵求香港市民和團體的意見

在英國，服務社會令與志願團體組成之社會服務機構及感化工作的聯繫是非常重要的，因為服務社會令之其中一個目的是使犯人對社會及市民產生一種責任感，我們希望香港也能有這種處理罪犯的方法。

服務社會令研究小組委員會認為在香港可能青少年之初犯而其罪並無使用強暴之武力行為者較為適合接受此種刑罰。我們希望得到閣下對在香港執行服務社會令之意見。假如閣下是一個社會服務機構，請你將附上之問卷填好，在六個星期內寄回我們的秘書處。假如閣下只願意提供意見，我們也一樣歡迎。