

IMPRISONMENT AND THE LAW

A REPORT ON THE PROCEEDINGS

The Context:

The Commonwealth Human Rights Initiative is an organisation working for the practical realisation of human rights in the commonwealth. CHRI believes that the promotion and protection of human rights is the responsibility of governments but that the active participation of civil society acting in concert is vital to ensuring rule of law and the realisation of human rights. In addition to the broad human rights advocacy programme, CHRI advocates access to justice and access to information. As part of its access to justice programme, the prison reforms programme focuses on increasing transparency of a traditionally closed system and exposing malpractice. A major area of focus is on highlighting the failures of the legal system that result in overcrowding, long pre-trial detention and prison overstay, and engaging in interventions to ease this.

In line with this, the members of the prison reforms programme organised a consultation - 'Imprisonment and the law' - in collaboration with the West Bengal Correctional Services department on 22 August 2009. The aim was to discuss the various facets of the law governing incarceration. The prime areas of discussion were the important legal provisions pertaining to prisoners' rights, bail, women prisoners and the duties of prison officers.

The Design:

The consultation brought together correctional services staff i.e. senior correctional services officers, superintendents, medical officers and welfare officers from all the correctional homes in the state. The consultation was designed as a dialogue among equals and sought to identify areas which require special attention and action and formulate recommendations to support the correctional home administration. All the sessions were designed to be an amalgamation of short presentations, interactive discussions and informed interventions.

Session I explored the rights of prisoners, as enshrined under the Constitution of India, Supreme Court judgments and the West Bengal Correctional Services Act 1992. **Session II** focussed on the various legal provisions as given under the Code of Criminal Procedure 1973, which prohibit unnecessary detention of under-trial prisoners and sought to bring out ways to implement them. **Session III** shifted the focus towards women prisoners and the standards to be maintained whilst administering women correctional homes. After these informative sessions the **last session** was interactive and sought to discuss the problems and challenges that the delegates face in day-to-day administration of their correctional homes.

The Proceedings:

The welcome address was delivered by Justice Ruma Pal, former judge, Supreme Court of India who is also on the Executive Committee of the Commonwealth Human Rights Initiative. She welcomed all the delegates on behalf of CHRI and spelt out the mandate of the organisation. She informed the delegates about the various

areas of reform that CHRI presently works on. She also shared some of her experiences in the field of human rights and imprisonment.

Mr BD Sharma, Inspector General of Correctional Services gave the inaugural address. He expressed his gratitude to CHRI for having organised the consultation in West Bengal. He informed that the Correctional Services department has not had many GO-NGO partnerships and the present consultation would be beneficial for all DIGs, AIGs, superintendents, welfare officers and medical officers who have been asked to participate in it. He further stated that though the state enacted the West Bengal Correctional Services Act 1992, which came operational from the year 2000, the implementation has been slow. The existing jail manual needs to be amended to bring it in conformity with the new act. A massive exercise was undertaken to reframe the rules under the new act. Best practices from all states have been taken into account while framing the rules, which are yet to be submitted to the government.

He further stated that the new Act endows a number of rights on all inmates of correctional homes. Proper living conditions, access to law, communication with family and lawyers & protection against unlawful labour are some of them as enlisted under Chapter XXV of the Act. Furthermore the Act states that all fundamental rights as mentioned under Chapter III of the Indian Constitution accrue to all inmates in so far as they do not become incapable of enjoyment as an incident of confinement. The Act also renders the right to vote to inmates, which unfortunately can not be implemented as the Representation of Peoples Act still forbids it. It is an irony that an under-trial prisoner can stand elections but can not vote in this country. In his opinion, under-trial prisoners must not be denied this right.

Concluding his address he stated that though there has traditionally been neglect of prisons, the fund for modernisation is now flowing. What is now required is a change in the mindset of prison staff as the current practice is to do little for the welfare of prisons. One must always remember that "it is not a favour to help prisoners, but it is only their right that we protect. Thus, one must not go home and boast about their sympathetic favours on prisoners, but should think of protection and assurance of prisoners' rights as part of their official duty."

After these enlightening words Ms. Maja Daruwala, Director, Commonwealth Human Right Initiative intervened and enquired as to 'why we are not proactive? Does the current system encourage or discourage one from being proactive? Going further she then postulated as to 'why we talk only of GO-NGO partnerships? With regard to the prison setup it should be a good idea to advocate for a prisoner-prison staff partnership as well. Having said that, she completed the round of introductions and called upon Mr Dibyendu Sarkar, Officer on Special Duty & the ex-officio Deputy Secretary, Department of Jails to give a brief introduction on the prison/correctional home setup in the state of West Bengal.

Mr Sarkar briefly described the departmental setup in the state of West Bengal. There is a Department of Jails, a Directorate of Jails and an Inspectorate of Correctional Services. He informed about the change of nomenclature adopted in the state wherein, jails are now termed as 'correctional homes' and prisoners as 'inmates'. Stating about the different types of correctional homes, he informed that the state has at present 6 central correctional homes, 12 district correctional homes,

1 open air correctional homes, 30 sub-correctional homes and there are 3 more new correctional homes in the offering. All the 6 central correctional homes also function as 'circle' correctional homes, i.e. they oversee the workings of the district, sub, and any other correctional home in their circle. Regarding overcrowding, he informed that against a capacity of 20474 inmates, the actual number of inmates as of June 2009 was 18899. However, this does not mean that there is no overcrowding. Overcrowding is there at individual levels, for instance in some sub-jails the available capacity is 150, but inmate population is 500. Thus, steps have to be taken to reduce this. Regarding inmate profiles, he informed that the ratio of convicts to under-trials varies from between 40:60 to 30:70 respectively.

He further expressed his views on the issue of imprisonment and law. He rightly mentioned that the criminal justice system is a tri-pod comprising the police, judiciary and correctional services. Though the correctional services are at present weakest of the rest, at least we are now visible. He suggested that in future there should be more consultations with all the three groups and not only the members of correctional homes. He asserted the importance of coordination between the three legs of the tripod. He quoted Bangladesh's motto "will keep them safe and show them light" as the guiding beacon for correctional services. Reaffirming prisoners' rights he stated that inmates should have proper medical facilities, clean potable water, appropriate living space, hygienic toilet facilities and adequate opportunities to maintain contact with family and friends.

He informed the participants on the developments that are taking place in the state of West Bengal. The department will soon be extending calling facilities to all inmates. They shall be allowed calls for 40 minute duration on pre-specified three numbers. The cost incurred towards same would be nominal. He further dwelled on some other areas which need to be improvised upon such as the provisions of parole & furlough, wages of inmates and availability of work. The department is also trying to involve in cultural therapy of inmates.

Mr. Sarkar raised an interesting issue i.e. the complex situation of inmates sentenced to simple imprisonment. Under the present setup, inmates sentenced to rigorous imprisonment must work and are paid wages accordingly. However, this is unfair for inmates sentenced to simple imprisonment as they do not have the opportunity to earn while in a correctional home. Such inmates are more desirable to be given earning opportunities. A solution to this problem is to have self-help groups and outsource earning opportunities. In this manner, they get an opportunity to earn wages to send to their families.

After the enlightening morning session, the formal session started with Ms. Madhurima, Programme Officer, Prison Reforms Programme, CHRI discussing the rights of prisoners as endowed by the Constitution of India. She started her session with a discussion on the foundation of advocating prisoners' rights. The answer can be found in the following sentences, "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"¹ and "Are prisoners' persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanisation..."² She then discussed the international and

¹ Article 10(1), International Covenant on Civil and Political Rights 1966.

² Sunil Batra v Delhi Administration AIR 1978 SC 1675.

national documents and legislations which govern a prison setup. Internationally, the key instrument on prisons and prisoners' rights is the United Nations Standard Minimum Rules for the Treatment of Prisoners 1955. It sets out the generally accepted principles and good practices for treatment of prisoners. It is divided into two parts viz. general management of institutions and guiding rules for special categories like convicted prisoners, untried prisoners, mentally ill prisoners, civil prisoners and detainees. Under national sources, the primary source is the Constitution of India, the Prisons Act 1894, judicial pronouncements of the Supreme Court and the High Courts.³ As prisons are a state subject, thus every state has a prison manual which governs the administration of prisons in each particular state. Accordingly for West Bengal, the West Bengal Correctional Services Act 1992 is the primary source, and then the West Bengal Jail Code.

The basic minimum standards that all prisoners are entitled to irrespective of the crime they have committed, or are accused of committing are right to live with human dignity; right to basic minimum needs; right against unnecessary restraint i.e. bar against use of fetters & handcuffs & bar against arbitrary additive prison punishments; right of access to law; right of communication with family, friends & lawyers; right to ventilate their grievances; right to speedy trial; right to legal aid; right to parole and furlough; right of press to interview in certain cases; right to work for proper wages; right of freedom of expression within prisons; right to reading material within prisons and the right to be released on due date. All these rights emanate from the Constitution of India and the Supreme Court Judgments. These rights also find mention under the West Bengal Correctional Services Act 1992.

The role of correctional home officers and staff is important in this respect. As they are the primary guardians who come in direct contact with the inmates, it is important that they provide these basic rights available to prisoners. Grievance redressal boxes are one mechanism to ensure that prisoners' rights are being observed in a particular correctional home. In addition, an active prison visiting system can also be a useful oversight mechanism for ensuring that prisoners' rights are protecting within the four walls of a correctional home.

This session was followed by Session II, which focused on issues pertaining to under-trial prisoners. The presentation was given by Ms. Priti Bharadwaj, Project Officer, Prison Reforms Programme, CHRI. She stated that India ranks 14th amongst 195 countries in terms of under-trial population, however India faces as high as 141% overcrowding in prisons. Lack of liberalised bail provisions is certainly one of the major reasons for prolonged and undue detention. Even though the Supreme Court has affirmed on many occasions that speedy trial is an essential element of the criminal justice system and it is the state's duty to provide it⁴, yet the pendency of court cases and subsequent pre-trial detention is distressing. The discriminatory nature of the bail system is another factor leading towards it. Majority of under-trials belong to a low socio-economic background. The present system demands high surety amounts which are not in correlation to their economic well-being; this has led to the detention of those who cannot afford to pay the price of liberty.

³ The National Human Rights Commissions Guidelines, are also a valuable source for prisoners' rights & prison administration. However, they have only persuasive value.

⁴ Hussainara Khatoon (II) v Home Secretary, State of Bihar AIR 1979 SC 1369.

A solution to this is the implementation of amended provisions of the Code of Criminal Procedure 1973. Section 436A CrPC proscribes the detention of under-trial prisoners beyond the maximum period of punishment prescribed for the offence that s/he is accused of. It also says that an under-trial prisoner can be considered for release under this provision, if he has completed one-half the maximum period of imprisonment prescribed for the offence he is accused of. Section 436 was also discussed, which proscribes the detention of persons, who are accused of committing bailable offences, beyond 7 days from the date of arrest.

A demonstration was given for the new software that has been developed by CHRI i.e. EPoD which evaluates the period of detention for under-trial prisoners. Some general information viz. name of correctional home, name of prisoners, father's name, date of admission and offences charged with are required to be entered into the database/excel-sheet. Once this is done, the software analyses the half & maximum period of imprisonment, and also the period of detention already undergone by each under-trial prisoner. The software is a useful tool that can be used in the implementation of these amended provisions of the CrPC.

This session was followed by Session III which focussed on the specific needs and rights of women prisoners. Ms Alka Bhatnagar, Additional Government Advocate, High Court of Rajasthan started the session with a discussion on the reasons for special care and attention for women prisoners. She said that majority women prisoners are destitute and illiterate and come from poor backgrounds. They have no inklings about their rights. She then outlined the key problems faced by female prisoners. Majority of prisons do not have proper provisions to house women prisoners, therefore they remain confined to one corner of the prison. There are no female warders, thus the women prisoner is ignored with someone sliding the food from beneath the door, thus resulting in an apparent 'solitary confinement' of the women prisoner. Moreover, due to her unawareness she almost has never heard of legal aid and in most cases her family does not want her back. She quoted an incident in Ajmer, wherein two females were picked up by constables and locked up without a female warder/charge. Due to this they were beaten up.

Another problem faced by female under-trial prisoners is lack of female escorts to take them to prison. On this, the delegates informed that this problem is of much lesser magnitude in West Bengal. In majority of cases, escorts are available, and when they are unavailable, the jail authorities provide women guards as escorts. Moreover, where that is not possible, the jail authorities inform the concerned court, the warrant is sent and stamped by the Magistrate. However, Ms Bhatnagar intervened in this and stated that the practice of routine extension of production date is not a healthy practice. She stated that it has become routine that the dates are extended for minimum 15 days, which is not what the CrPC mandates. Mr Saxena, Former Inspector General of Prisons, Rajasthan, also supported this argument and elaborated stating that section 167 CrPC merely states 'minimum of 15 days', which does not mean that it has to be at least 15 days. This practice needs to be checked for the benefit of the under-trial prisoner.

This session was followed by the last session which was solely interactive. Each delegate was requested to share one problem that they face in practice whilst administering their correctional homes. To resolve these problems a panel was created

consisting of Mr BD Sharma, Mr Dibyendyu Sarkar, Mr RK Saxena & Ms Maja Daruwala. They heard the problems and came up with solutions/resolutions for remedying the problems faced by the delegates. The problems and solutions as discussed are given in the next section.

The Problems & their Solutions:

Young Offenders/Juveniles

- Problem 1.** In Alipore CCH there is a kid who is actually aged 10 years, but the police documents state 18 years. He has been charged u/s 302 IPC along with his mother. The superintendent has already written to the concerned court and inquiry is ongoing with the Medical Board.
Solution: These cases must be taken up at the earliest and pursued till the outcome is attained. Also a letter must be written to the Superintendent of Police, detailing the incident. A provision could be made wherein superintendents could refuse admission of such persons who appear underage.
- Problem 2.** In Midnapore DCH, there are 2-3 persons who appear under-age, they have been kept in a separate enclosure.
Solution: The Chief Judicial Magistrate should be informed immediately
- Problem 3.** In Purulia DCH there are a few persons who appear underage. Though a complaint has been made, no action has yet been taken.
Solution: Write to the Child Protection Commissioner and the Chief Justice stating the details of the case.
- Example:** In Raiganj DCH a child was admitted who appeared to be 13-14 years old. The superintendent complained to District Judge. The matter was taken up with the District Judge. Further an ossification test was conducted which proved his age to be 13 +/-2 years. Thereafter he was sent to a juvenile home.

Health Services

- Problem 4.** (i) Shortage of doctors for emergency services in Dum Dum CCH - only 3 doctors for 2000 inmates.
(ii) Presidency CCH has a 100 bed hospital, yet no operation theatre.
(iii) Suri DCH has only 1 medical officer. There is no provision of substitute thus he finds himself overworked and cannot avail any leave.
Solution: The department will look into the matter.

Bangladeshi Nationals

- Problem 5.** In Presidency CCH, there are a number of Bangladeshi nationals. They are mostly illegal immigrants and thus incarcerated under the Foreigners Act. They are accompanied by children, who are then sent to children homes. Unfortunately, even when the parents are released, the children are not and thus they are left behind.
Solution: Assign the responsibility to one department. Also lobby the government to issue a GO for the release of such children the moment the parent is released from the correctional homes.

- Problem 6.** In Krishnanagar DCH, there are a number of released Bangladeshi nationals who have no place to go, as they were illegal immigrants to India.
Solution: Coordinate with an agency in Bangladesh who is willing to help.

Legal Aid

- Problem 7.** (i) In Suri DCH there are no DLSA female counsellors.
(ii) In Presidency CCH, the copy of judgments are not being provided by the concerned courts thus appeals cannot be filed in time
(iii) In Dum Dum CCH, the DLSA used to send different people on different days. When a complaint was made, they stopped coming all together. Thus, there is no legal aid lawyer visiting the correctional home at present.
Solution: The Supreme Court in *MH Hoskot v State of Maharashtra* [(1978) 2 SCC 544] has directed that all courts shall furnish a free transcript of the judgment when sentencing a person to prison term. The court also stated that where a prisoner is disabled from engaging a lawyer, the court shall, assign a competent counsel for the prisoners' defence. In *Hussainara Khatoon & ors v Home Secy, Bihar* (AIR 1979 SC 1369) the court further directed that the state government shall provide under-trial prisoners a lawyer at its own cost for the purpose of making an application for bail. The Legal Services Authorities Act 1987 also mandates all legal services authorities to render free legal aid to those who are in custody (section 12(g)).

General

- Problem 8.** No provision of work & payment of wages to under-trial prisoners.
Solution: Advised to plan ahead, and create avenues of work which can be paid from fund for petty offences.
- Problem 9.** Lack of women superintendents. There are 2 women correctional homes; however they have only 1 female superintendent.
Solution: The practice in Rajasthan can be adopted. Rajasthan has enforced women reservation for the post, which ensures that there are women superintendent available.
- Problem 10.** In Bakhura, Siliguri, courts have been vacant for months, complaints have been made, to no avail. The posts are still vacant, thus trials are not being conducted.
Solution: The Department will take up the issue with the Judiciary and government.
- Problem 11.** Loan facilities to tribal prisoners is not available. No one volunteers to stand guarantee.
Solution: The department agreed to take up the issue.
- Problem 12.** There is a lack of NGOs who promote rehabilitation of prisoners' families. There is much support required for education of children of prisoners and upkeep of their wives and other dependants.
Solution: The department is aware of the situation, and is constantly trying to get in touch with such NGOs.

- Problem 13.** Lack of training for human rights for warders and lower level prison staff
Solution: The government is providing 6 months basic training in human rights to all staff
- Problem 14.** Bakhura DCH has no welfare officer. A female officer would be preferred as they are more sensitive towards prisoners.
Solution: The Department is considering the request.
- Problem 15.** In Purulia DCH, NGOs are not keen to work as it is a distant district. Thus, no opportunity for vocational trainings & rehabilitation are available to inmates.
Solution: No concrete solution was chalked out.
- Problem 16.** In Alipore CCH, there is lack of manpower. Also with NGO support short duration courses should be facilitated for under-trial prisoners as well.
Solution: No concrete solution was chalked out.
- Problem 17.** Ineffective/non-existent system of premature release. The process needs to be streamlined to make it effective.
Solution: The department is trying to restart the procedure. The process is on-going.

Conclusion:

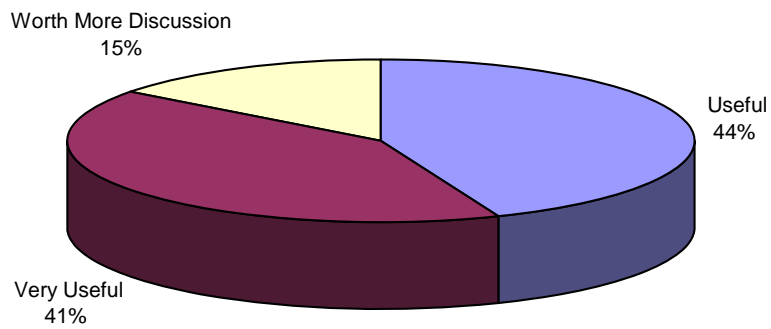
West Bengal is considered one of the most progressive states in India with regard to prison administration and setup. This is evidenced by their enactment of the 'West Bengal Correctional Services Act 1992' which came into force on 14th April 2000. Their effort towards changing the nomenclature of penal institutions from 'prisons' to 'correctional homes' and including prisoners' rights within the Act is commendable.

A lot still needs to be done for the proper implementation and protection of human rights of prisoners in West Bengal. Compared to other states one feels that a lot of it is already in force, however problems and hindrances in work are always present. Discussions such as these and a forum for airing of views goes a long way in resolving problems and formulating solutions which in return assist in the proper administration of correctional homes. The consultation was very valuable in this regard. CHRI looks forth to holding more such informative consultations in the future.

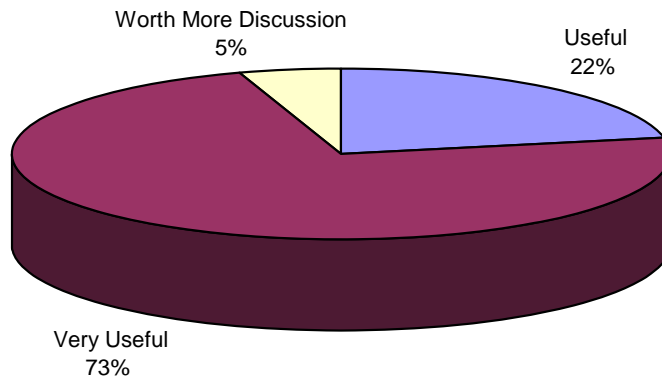
EVALUATION OF FEEDBACK FORMS

Given below are the compiled results of the feedback forms that were circulated at the end of consultation. A total of 41 responses were received.

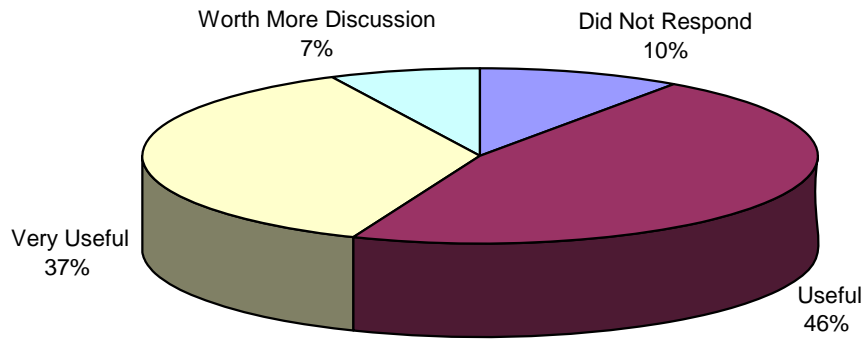
1. Were the presentations useful?
 - a. Constitutional Rights of Prisoners



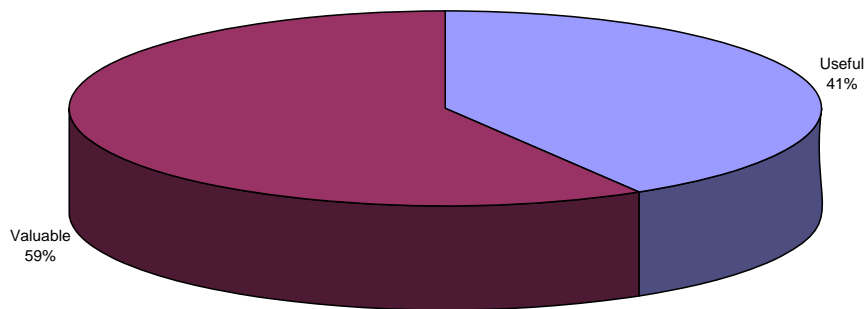
- b. Under-trial Prisoners: Decongesting Prisons & CrPC Amendments



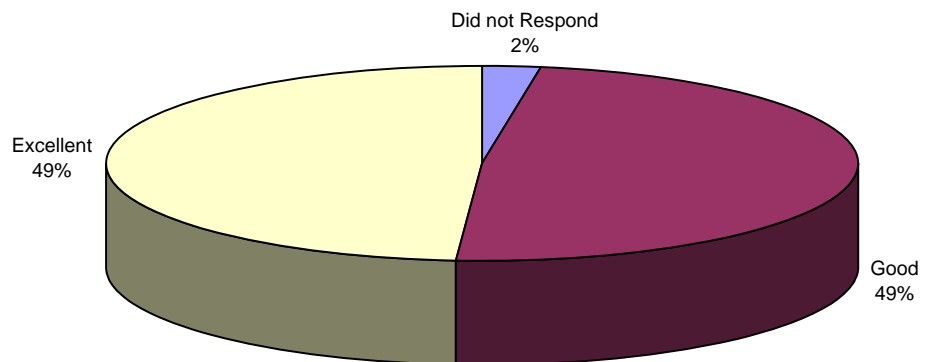
c. Women Prisoners



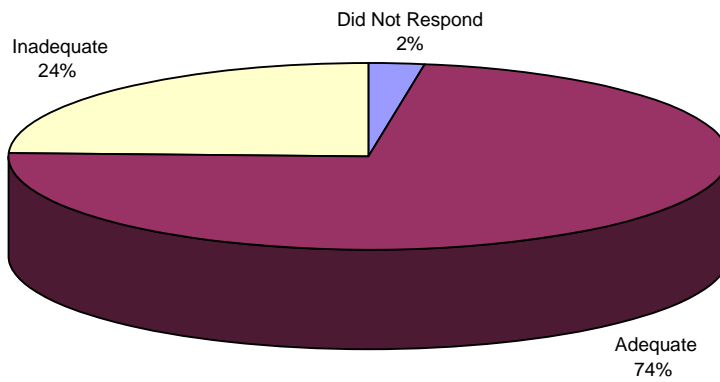
2. Were the background materials useful?



3. Rate the conference venue



4. Was the time for each discussion adequate/inadequate?



5. Did you feel that your point of view was considered and taken into account during the conduct of the sessions?

