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CONTENTS

PART TWO

WORK PRODUCT OF THE 20TH UNAFEI UNCAC TRAINING PROGRAMME

EFFECTIVE MEASURES TO INVESTIGATE THE PROCEEDS OF CORRUPTION CRIMES

INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 104.

Before introducing the contents of this issue, I would like to draw your attention to a number of enhancements to the Resource Material Series that have been made over the last few issues. In RMS No. 102, we introduced a new section entitled "Supplemental Material". This new section will include experts' papers, presentations and other reports produced by, or in connection with, UNAFEI's activities. In RMS No. 103, we introduced a redesigned cover to give the journal a new look and to provide readers with quicker access to information about the contents covered in each issue. In this issue, RMS No. 104, we have expanded the content of the appendix to include additional presentation materials related to certain courses, and we have created an index of the entire Resource Material Series in order to help our readers search for and locate relevant papers published in prior issues. We hope that you find these changes beneficial and that they enhance the value of the Series as a whole.

Part One of this volume contains the work product of the 167th International Training Course, conducted from 23 August to 21 September 2017. The main theme of the 167th Course was *Rehabilitation and Social Reintegration of Organized Crime Members and Terrorists*. Part Two contains the work product of the 20th UNAFEI UNCAC Training Programme, conducted from 1 November to 7 December 2017. The main theme of the 20th UNCAC Programme was *Effective Measures to Investigate the Proceeds of Corruption Crimes*.

The 167th Course offered participants an opportunity to deepen their understanding of relevant theories and practices to facilitate the reintegration of former organized crime members and terrorists into society. The rise of violent extremism and terrorism throughout the world presents criminal justice systems with the unique challenge of balancing the interests of public security with the well-established principles of human rights. This challenge is compounded by the growing links between terrorism and organized crime, and the ongoing threat of the radicalization of prisoners and detainees in custodial settings. While evidence-based practices and research are still in the early stages of development, there is global recognition of the need to identify effective measures that support offenders in the process of disengagement or deradicalization from violent extremism. Using the UNODC's "Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons" as a guide, as well as other global initiatives, criminal justice practitioners can begin the process of implementing strategies and practices that may lead to the rehabilitation and social reintegration of terrorists and members of organized crime groups.

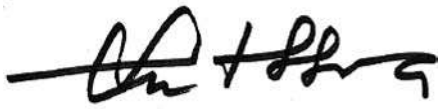
The 20th UNCAC Programme addressed challenges facing anti-corruption officials in investigating, tracing, freezing and confiscating the proceeds of corruption crimes. To successfully prove corruption offences, establishing the flow of the proceeds of corruption is a crucial element. However, the nature of corruption makes it very difficult for criminal justice authorities to obtain effective leads and to fully develop and investigate them. This is because corruption is ordinarily committed in secret among a very limited number of parties. Moreover, laundering of proceeds of corruption frequently involves various methods to disguise illegal transactions, and, in our globalized society, the proceeds can be easily and quickly transferred across national borders and investigative jurisdictions. Thus, accurate and speedy identification and tracing of illicit proceeds of corruption are some of the most important elements to a successful investigation. These steps are prerequisites for freezing, seizing and, ultimately, confiscating the proceeds of corruption from offenders in order to deprive them of their ill-gotten gains, prevent their ability to commit further crime and deter them from attempting to do so.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held these training programmes to offer participants opportunities to share experiences, gain knowledge, and examine crime prevention measures in their related fields, as well as to build a human network of counterparts to further international cooperation, which is vital to addressing these issues.

In this issue, in regard to both the 167th International Training Course and the 20th UNAFEI UNCAC Training Programme, papers contributed by visiting experts, selected individual presentation papers from among the participants, and the reports of each programme are published. I regret that not all the papers submitted by the participants of each programme could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI's international training programmes. Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

March 2018



Keisuke SENTA
Director of UNAFEI

PART ONE

RESOURCE MATERIAL SERIES

No. 104

Work Product of the 167th International Training Course

Rehabilitation and Social Reintegration of Organized Crime Members and Terrorists

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UNAFEI

VISITING EXPERTS' PAPERS

THE UNITED NATIONS ACTION TO COUNTER TERRORISM AND AN INTRODUCTION TO UNICRI INITIATIVES

*Chiara Bologna**

I. INTRODUCTION

The scope of this paper is to provide a brief introduction to the mechanisms behind the United Nations (UN) global strategy to combat terrorism in all its forms with the aim of presenting a holistic view of the work carried out. What follows comprises a short summary of the UN action in the field of terrorism prevention, including a mention of some key resolutions and instruments, its strategy in broad terms, and information on some of the different UN entities working in this field. This will lead to the section describing the work of the United Nations Interregional Crime and Justice Institute (UNICRI) and its programmes relevant to advancing the aims of the UN in this area, where the Institute has more than ten years of experience. In the final part of the document, an introduction will be provided on the theoretical and practical foundation used by UNICRI for one of its projects on Counter-terrorism, namely the project on rehabilitation and reintegration of violent extremists in prisons.

II. THE UNITED NATIONS COUNTER TERRORISM STRATEGY

The United Nations Global Counter-Terrorism Strategy is a unique instrument designed to foster and enhance national, regional and international efforts to counter terrorism globally. It was adopted by consensus on 8 September 2006 by the UN General Assembly during which all Member States agreed to a common strategic and operational approach to fight terrorism. Through this action, states have sent a clear message that condemns terrorism in all its forms whilst also resolving to take practical steps both individually and collectively in order to prevent and combat this global threat.[1]

The Strategy, with its relevant resolution and Plan of Action, is composed of four key pillars,[2] namely:

- Addressing the conditions conducive to the spread of terrorism.
- Measures to prevent and combat terrorism.
- Measures to build states' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in that regard.
- Measures to ensure respect for human rights for all and the rule of law as the fundamental basis for the fight against terrorism.

In response to the reality of a constantly evolving terrorism landscape, the Strategy is revised every two years by the General Assembly, making it into a constantly updated and hence living document. The revisions respond to new challenges and threats as well as recommendations to address them.

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[1] United Nations General Assembly Resolution (A/RES/60/288) (2006) *The United Nations Global Counter-Terrorism Strategy*.

[2] For more information see United Nations Global Counter-Terrorism Strategy: <https://www.un.org/counterterrorism/ctitf/en/un-global-counter-terrorism-strategy>.

III. OVERVIEW OF THE UNITED NATIONS COUNTER-TERRORISM ARCHITECTURE

For decades the issue of terrorism has been on the agenda of the United Nations. Within the UN system, there are specific entities and programmes that are mandated to carry out and monitor mechanisms to more effectively implement and assess the components of the aforementioned Strategy. The current section comprises a summary of the activities that the different UN entities on counter-terrorism carry out.[3]

Since 1963, the international community has promulgated 19 international legal instruments to address terrorism. One landmark Security Council Resolution (1373) was adopted in 2001 and urged Member States to become part of the international instruments. Resolution 1373 called on States to implement measures related to combating the financing of terrorism and law and justice related to this matter.[4] The Resolution led to the establishment of the United Nations Security Council Counter-Terrorism Committee (CTC). The CTC[5] is guided by the Security Council resolutions 1373 (2001) and 1624 (2005)[6] and is mandated to support Member States in their prevention efforts both within their borders and across regions. Due to the complex nature of the activities carried out, the CTC is assisted by the Counter-Terrorism Committee Executive Directorate (CTED), which was established in 2004. The Security Council knows different bodies to enhance the capacity of Member States in terrorism including the CTC, the 1267/1989/2253 ISIL (Da'esh) and Al-Qaida Sanctions Committee, as well as the 1540 Committee on the non-proliferation of nuclear, chemical, and biological weapons. The Counter-Terrorism Committee has its Executive Directorate (CTED) to conduct expert assessments of Member States and to implement its policy decision whereas the 1267 Committee works with a Monitoring Team.[7]

A central component of the UN architecture is the Counter-Terrorism Implementation Task Force (CTITF), which was established by the UN Secretary-General and endorsed by the General Assembly in line with the requirements and recommendations set out by the aforementioned Counter-Terrorism Strategy.[8] The CTITF consists of 38 international entities and INTERPOL,[9] each with individual mandates, which are assigned to carry out efforts to maintain consistency across the UN system whilst aiming to strengthen the coordination, given the multilateral nature of terrorism and the systematic response to counter the series of phenomena that it entails. Although the Task Force's major responsibility is to observe, implement and improve the series of recommendations that the Strategy comprises, its mandate relies on working to ensure that the UN system is adaptable to the evolving needs of Member States whilst countering terrorist activities. Moreover, this mandate refers to offering policy support, improving in-depth knowledge of the Strategy, and where necessary, expediting the delivery of technical assistance.[10]

Another entity that supports the Strategy is the United Nations Counter-Terrorism Centre (UNCCT). The Centre was established within the CTITF Office in 2011 with the aim to promote international cooperation and support Member States in the implementation of the Strategy.[11]

On 15 June 2017 the UN Office of Counter Terrorism was established through the adoption of General Assembly Resolution 71/291.[12] The new UN Office for Counter Terrorism incorporates the CTITF and the UN Counter-Terrorism Centre (CTC) which were moved out of the Department of Political Affairs. The office is headed by an Under-Secretary-General and has close relationships with the Security Council bodies

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[3] The information in the following section has been complied from the United Nations (2017) Counter-Terrorism Implementation Task Force, available at: https://www.un.org/counterterrorism/ctitf/en/about-task-force.
[4] United Nations Security Council Resolution (S/RES/1373) (2001) *Threats to international peace and security caused by terrorist acts*.
[5] For more information of the Counter-Terrorism Committee, see: <https://www.un.org/sc/ctc/>.
[6] United Nations Security Council Resolution (S/RES/1624) (2005) *Prohibition of incitement to commit terrorist acts*.
[7] For more information see the UN Office of Counter-Terrorism <http://www.un.org/en/counterterrorism/overview.shtml>.
[8] United Nations (2017) Counter-Terrorism Implementation Task Force. Available at: <https://www.un.org/counterterrorism/ctitf/en/about-task-force>.
[9] To learn more about the structure of the CTITF, see: <https://www.un.org/counterterrorism/ctitf/en/structure>.
[10] Ibid.
[11] To learn more about the CTITF, see <https://www.un.org/counterterrorism/ctitf/en/about-task-force>.
[12] United Nations General Assembly Resolution (A/RES/71/291) (2017) *Strengthening the capability of the United Nations system to assist Member States in implementing the United Nations Global Counter-Terrorism Strategy*.

and Member States, and aims to strengthen existing and developing new partnerships.

Numerous agencies, offices and programmes throughout the United Nations system are assisting Member States in their counter-terrorism efforts. The diversification and multiplicity of the efforts undertaken by UN system reflect the fact that terrorism involves a multitude of issues and must be addressed comprehensively. The combined endeavours of all these entities make for a multi-disciplinary and tailored approach to counter-terrorism.

IV. THE UNITED NATIONS INTERREGIONAL CRIME AND JUSTICE RESEARCH INSTITUTE

The United Nations Interregional Crime and Justice Research Institute (UNICRI) is part of the CTITF. The Institute is one of six training and research Institutes of the United Nations. It was established by the United Nations Economic and Social Council in 1965 following Resolution 1086[13], which urged an expansion of the UN activities in crime prevention and criminal justice. Its mission is to advance security, serve justice and build peace in support of the rule of law and sustainable development.

The Institute works in specialized niches and selected fields of crime prevention, justice, security governance, counter-terrorism and social cohesion.

UNICRI's goals are:

- To advance understanding of crime-related problems;
- To foster just and efficient criminal justice systems;
- To support respect for international instruments and other standards;
- To facilitate international law enforcement cooperation and judicial assistance.

The Institute's programmes (divided into thematic areas) aim to create and test new and holistic approaches in preventing crime and promoting justice and development.

The Institute supports the designing and implementation of holistic and innovative modalities to confront traditional and emerging threats, at both national and cross-border levels. In particular, the Institute:

-Assesses countries' threats and needs.
-Develops and shares knowledge.
-Acts as a worldwide training and capacity-building centre.
-Acts as a worldwide forum to identify, tailor and test strategies and practical models.
-Assists countries in strengthening national and international law enforcement cooperation and judicial assistance.
-Establishes platforms for consultation and cooperation.
-Provides advisory services.

Using research as a foundation for projects, the Institute builds from this by offering training and technical cooperation programmes to requesting Member States. The Institute organises specialised trainings and workshops as a direct way to disseminate knowledge and build capacity with a range of targeted actors, including policymakers, practitioners (i.e. law enforcement officers, prosecutors and judges) and international experts. UNICRI promotes the exchange of expertise and fruitful discussion among representatives from different sectors that lead to concrete recommendations and identification of areas in need of more understanding and cooperation.

UNICRI serves as a platform for consultation and cooperation acting as an honest broker in bringing together different partners such as Member States, local governments, research institutions, international organizations, private entities and the civil society at large, in forging a common approach to addressing

[13] United Nations Economic and Social Council Resolution 1086 (1965) *Statute of the United Nations Interregional Crime and Justice Research Institute*.

common challenges.

Establishing and promoting partnerships are central components of UNICRI's work, and events like these represent important opportunities to share experiences and knowledge.

V. UNICRI AND COUNTER-TERRORISM

UNICRI contributes to the implementation of coordinated and coherent efforts across the United Nations system to prevent and counter violent extremism as part of the Counter-Terrorism Implementation Task Force. In this framework, the Institute supports Member States in preventing and countering terrorism's appeal and recruitment into violent extremism by strengthening national and regional capacities.

UNICRI plays a leading role in a number of initiatives. Within the Counter-terrorism (CT) field, the Institute works on numerous projects which together cover a vast array of topics. For the scope of this paper, some of the main UNICRI projects which are cross cutting in the field of CT are listed as follows:[14] the initiative on chemical, biological, radiological and nuclear risks mitigation; cyber-crime; addressing hate speech and hate crimes; returning foreign terrorist fighters; rehabilitation and reintegration of violent extremists in prison settings; juvenile justice and diversion or alternatives to incarceration, and; the nexus between transnational organized crime and terrorism. Exploring these intersections in greater depth makes UNICRI's work multi-dimensional and builds a more detailed picture of the areas of need in the field of crime and justice.

UNICRI has conducted several initiatives to support Member States in fulfilling their international commitments (starting from UNSCR 2178) to address the threats posed by foreign terrorist fighters (FTF) by increasing awareness, understanding and capacities of national and international stakeholders. Moreover, activities are aimed to provide technical assistance in the identification of risks to be addressed, capabilities to be strengthened and actions to be undertaken for developing and implementing a comprehensive and holistic strategy to counter the FTF's phenomenon.

UNICRI liaised with other international organizations to ensure that various and separate efforts are incorporated into one coherent approach in order to build up and strengthen capacities for addressing the threat posed by returning FTFs.

UNICRI is working in close cooperation with selected target countries to collect relevant data and promoting the implementation of a tested method based on real case scenarios. Such activities facilitate the preparation of action plans addressing the issue of rehabilitation and reintegration of returning FTFs, under the different stakeholders' perspective.

UNICRI has conducted a research project to assess the pre-conditions for developing a juvenile diversion pilot programme for potential foreign terrorist fighters and others at risk. A preliminary analysis of the juvenile justice systems and alternative measures/diversion programmes enforced in Bosnia and Herzegovina, Morocco, Nigeria, Kenya and Tunisia was conducted.

Furthermore, UNICRI is conducting a pilot project to counter radicalization and violent extremism in the Sahel-Maghreb region. The initiative integrates international, regional and local resources to support the countries of the region in countering the growing threat of violent extremism. The initiative promotes inclusive activities through the development of more responsive and inclusive societies. The project is based on the assumption that civil society actors enjoy a genuine grassroots support and could offer key assets in the implementation of actions to limit the influence of violent extremist ideology and challenge the narratives of extremists by offering positive alternatives to violence.

While being context-specific and people centred, the project facilitates the sharing of experiences, guidelines and good practices in the region and among the different stakeholders. It supports cross-border

[14] For more information of other important initiatives that UNICRI works on in the field of Counter-terrorism, please consult the UNICRI website at: <www.unicri.it>.

cooperation and the establishment of synergies and mutual understanding between civil society groups and institutions.

A key topic of concern for many Member States is the financing of terrorism. Organised crime (often transnational) has been identified as one of the sources of terrorism financing, thus leading to a nexus between organised crime and terrorism. The nexus can go further than simply the financing of terrorism, however, particularly if we consider the entire continuum of alliance and convergence.[15]

Security Council Resolution 2195 (2014), on *Threats to international peace and security*,[16] called upon Member States to better understand and address the nexus between organised crime and terrorism as a threat to security and development. In line with this Resolution, UNICRI has undertaken a number of initiatives on this topic. In May 2016, UNICRI organised a meeting in Bangkok, in partnership with the Thailand Institute of Justice (TIJ), to examine the nexus and the threat that it poses to security and development.[17] Representatives of 15 Member States and prominent international experts in the field were invited to discuss the issue in depth. During the meeting, participants reviewed the current evidence basis and conceptual theories around the nexus, drawing from their knowledge of lessons learned and good practices, all with a view to defining better policy and programmatic responses.

Moreover, UNICRI worked in close partnership with the TIJ to carry out a research project concerning transnational organised crime in Thailand as a result of the Association of Southeast Asia Nations (ASEAN) Economic Integration. Besides looking at forms and trends of current and emerging transnational organised crime, criminal groups operating in Thailand and illicit transit routes for trafficked goods, the question of the nexus between transnational organised crime and terrorism (both at local and international level) was explored.[18]

UNICRI implements a variety of methods in the area of rehabilitation and reintegration of violent extremist offenders, and the Institute plays a key role in supporting Member States in translating the generalised good practices identified in the Global Counter-Terrorism Forum (GCTF) Rome Memorandum[19], which specifically addresses the rehabilitation needs of incarcerated violent extremists, into national policies.

In the field of rehabilitation and reintegration programmes of violent extremist offenders (VEOs) in prison settings, UNICRI has enhanced its cooperation with a number of countries (Jordan, Kenya, Mali, Morocco, the Philippines, and Thailand) to support them in the design and implementation of tailored programmes.

Prisons are a priority for this area of research. It is important to address the possible risks in prison environments where convicted terrorists can network, compare and exchange tactics, radicalize and recruit new members, and command and control operations beyond the prison and in the community, whilst at the same time realising that imprisoned or detained extremists will eventually be released. Thus, in order to reduce risk upon release, there is a universal need to find mechanisms to stimulate disengagement and/or de-radicalisation.[20] An initial step to tackle the issues mentioned above is to ground research in a sound theoretical framework.

VI. THEORY OF CHANGE: THE CONCENTRIC CIRCLE MODEL

The theoretical basis for UNICRI's work on rehabilitation and reintegration is derived from broader theories of behavioural change. Psychology focuses on the individual and individual agency in this process,

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[15] Makarenko, T. "The Crime-Terror Continuum: Tracing the Interplay between Transnational Organised Crime and Terrorism", *Global Crime*, 6(2) (2004).
[16] United Nations Security Council Resolution 2195 (S/RES/2195) (2014) *Threats to international peace and security*.
[17] *Breaking the Organized Crime and Counter-Terrorism Nexus: Identifying Programmatic Approaches, Meeting report*. The United Nations Interregional Crime and Justice Research Institute (UNICRI) and the Thailand Institute of Justice (TIJ).
[18] For further information on this research, please ask UNICRI and/or TIJ for more information on the soon-to-be published comprehensive report.
[19] GCTF, *The Rome Memorandum on Good Practices for the Good Practices of Rehabilitation and Reintegration of Violent Extremist Offenders*, available at: <https: //www. thegctf. org/Portals/1/Documents/Framework%20Documents/A/GCTF-Rome-Memorandum-ENG.pdf>.
[20] Deradicalization and disengagement are tackled in more depth later in the document.

while social sciences incorporate various social environments.[21] The concentric circles model in *Figure 1* shows the layers of social environments (family, friends, institutions, communities and beyond) that place the individual in their wider social context.[22] The theory of change that UNICRI applies is that all of these circles matter when it comes to individual behavioural change.[23]

In the PVE context, the aim is to change the behaviour of a radical individual through rehabilitation and reintegration efforts. These will only be effective and sustainable as long as the different layers (each concentric circle) are involved in the process. For instance, if the individual changes but does not have support from their family, they will probably revert back to their previous behaviour (green circle — red circle relationship). The theory posits that the same dependent relationships occur between all adjacent layers, which will eventually affect the individual's likelihood of maintaining his or her changed behaviour. Consequently, social environments at all levels need to ensure continuous support in the process, which will allow radical individuals a greater chance of succeeding in changing their behaviour.

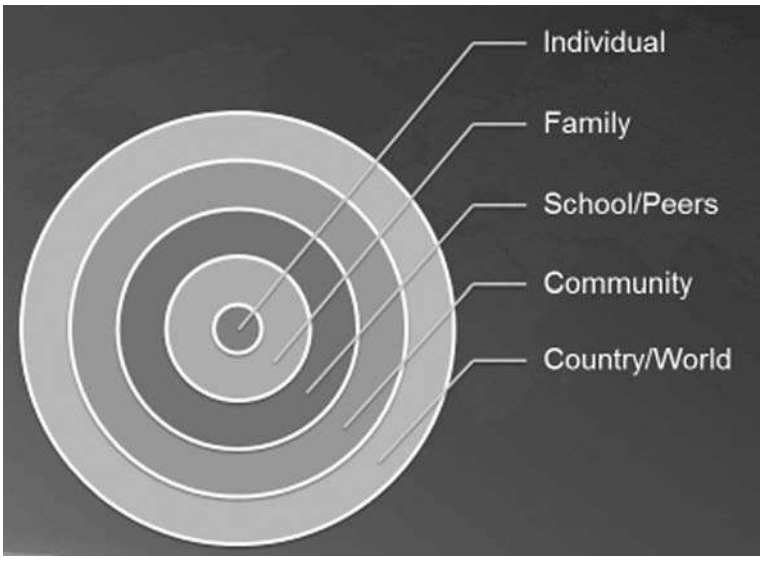

Figure 1: UNICRI's concentric circles model in rehabilitation and reintegration[24]

Therefore, following UNICRI's theory of change, it can be said that the behaviour of an individual can most probably be changed when the family, peers, institutions such as schools, the community, local and national institutions and international organisations are jointly and actively involved in a coordinated process. Rehabilitation and reintegration are ways to facilitate this change, but these concepts need to be

[21] See Durkheim, E. (1966). *The Rules of the Sociological Method*. New York: Free Press; McKay, C. & Shaw, H. (1969). *Juvenile Delinquency and Urban Areas*. Chicago: The University of Chicago Press; Crenshaw, M. (1981). *The Causes of Terrorism*, Comparative Politics, vol. 13, pp. 379-399; Turner, J. (1984): '*Social identification and psychological group formation*' in H. Tajfel (Ed.) The social dimension: European developments in social psychology, Cambridge: Cambridge University Press, pp. 518-538; Bronfenbrenner, U. (1989). '*Ecological systems theory*' in Vasta, R. Annals of Child Development, vol. 6. London, UK: Jessica Kingsley Publishers. pp. 187-249; Damon, W. & Eisenberg, N. (1998): *Handbook of child psychology*, vol. 3. Social, emotional, and personality development (5th ed.). New York: Wiley; Neff, J. A. & Macmaster, S. A., *Applying Behavior Change Models to Understand Spiritual Mechanisms Underlying Change in Substance Abuse Treatment*, The American Journal of Drug and Alcohol Abuse, no. 31, 2005, pp. 669-684; Veldhuis, T.& Staun, J. (2009), *Islamist Radicalisation. A Root Cause Model*, Netherlands Institute of International Relations Clingendael, 2009, p. 24-26; Chan, W. Y., Espelage, D. L., Hollingsworth, M. A. & Mitchell, K. J. (2016), *Preventing violence in context: The importance of Culture for implementing systemic change*, Psychology of Violence, vol. 6, no. 1, pp. 22-26; Datchi, C., Barrenti, L., Thompson, C. M. (2016), *Family Services in Adult Detention Centers: Systemic Principles for Prisoner Reentry*, Couple and Family psychology : Research and Practice, vol. 5, no. 2, pp. 89-104.

[22] Developed by Smith, C. J. UNICRI, see Klima, N. (forthcoming). '*Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building*'. UNICRI, Turin.

[23] Klima, N. (forthcoming). *'Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building'*. UNICRI, Turin.

[24] Developed by Smith, C.J.UNICRI, see Klima, N. (forthcoming). '*Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building*'. UNICRI, Turin.

deconstructed in order to understand how they can be integrated into counter-terrorism strategies.

VII. REHABILITATION AND REINTEGRATION

Rehabilitation and reintegration are broad terms that encompass a variety of practices as well as different expected outcomes. Efforts can focus on the prevention of violent behaviour and enable inclusion and participation in society. Two concepts that underpin rehabilitation are de-radicalization and disengagement, which have generated debate as to their respective definitions and utility for rehabilitation programmes[25]. Two commonly used definitions are as follows[26]:

A) *De-radicalization*: the social and psychological process whereby an individual's commitment to, and involvement in, violent radicalization is reduced to the extent that they are no longer at risk of involvement and engagement in violent activity. De-radicalization may also refer to any initiative that tries to achieve a reduction of risk of reoffending through addressing the specific and relevant disengagement issues.

B) *Disengagement*: the process whereby an individual experiences a change in role or function that is usually associated with a reduction of violent participation. It may not necessarily involve leaving the movement, but is most frequently associated with significant temporary or permanent role change. Additionally, while disengagement may stem from role change, that role change may be influenced by psychological factors such as disillusionment, burnout or the failure to reach the expectations that influenced initial involvement. This can lead to a member seeking out a different role within the movement.

In other words, de-radicalisation represents an attitudinal change resulting from a psychological process. Typically, the de-radicalized individual adopts more moderate views and renounces violence. Disengagement refers to behavioural change whereby a person lessens their engagement in violent activities. Indeed, it is important to keep in mind that many Member States opt for disengagement as an outcome for their rehabilitation and reintegration programmes, since it is very difficult to really know if an individual is de-radicalized, whereas disengagement is possible to verify.

However, rather than being two clear-cut processes, de-radicalisation and disengagement interact, making it difficult to focus explicitly on one or the other in a rehabilitation programme. For instance, radical ideas are not dangerous in themselves, even though they may remain a risk factor for violent behaviour in some circumstances. While there is general consensus on the broad definitions A) and B), the nuances of these phenomena are not taken as given but continue to be disputed.

Rehabilitation and reintegration efforts need to be considered long-term (before detention, during detention and after release) and should be embedded in the general CT/CVE policy and practice structure. To design successful rehabilitation and reintegration programmes, expertise from different agencies (multi-agency) and disciplines (multi-disciplinary) are highly beneficial.

Furthermore, as the theoretical model demonstrates, families and communities play a crucial role in this process as well as other civil society actors. It may be the case that state actors are not used to working with civil society actors or do not maintain a mutual trust relationship that enables fruitful cooperation (civil society actor involvement), which is why UNICRI assists in the development of platforms for this cooperation to be strengthened and has an initiative based on this which will be discussed further in the following paper.

The UNICRI programme on Rehabilitation and Reintegration of Violent Extremist Offenders, developed within the framework of the UN Counter-Terrorism Implementation Task Force and supported by the United States of America's Department of State, is aimed at supporting Member States in their efforts to design, develop and implement effective rehabilitation and reintegration programmes for violent extremist

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[25] See Horgan, J. *Walking Away From Terrorism: Accounts of Disengagement from Radical and Extremist Movements*. (London: Routledge, 2009); Bjørgo T. & J. Horgan, eds. *Leaving Terrorism Behind: Individual and Collective Disengagement*. (Oxon and New York: Routledge, 2009); Rabasa, A., S. Pettyjohn, J. Ghez, & C. Boucek. *Deradicalizing Islamist Extremists*. (Santa Monica, CA; Arlington, VA; Pittsburgh, PA: RAND Corporation, 2010); Mullins, S. "Rehabilitation of Islamist terrorists: Lessons from criminology." *Dynamics of Asymmetric Conflict* 3, no. 3 (2010);

[26] From Horgan, J. *Walking Away From Terrorism*. pp. 152-153.

offenders and foreign terrorist fighters, and to address the broad range of issues related to radicalisation in prison settings and beyond, thus enabling inclusion and participation within societies.

VIII. PROGRAMME DEVELOPMENT PATHWAYS

UNICRI works on developing comprehensive, end-to-end and long-term rehabilitation and reintegration programmes with Member states. When offering technical assistance, the approach is tailored to the cultural, national and regional contexts as well as the present needs while always involving the programme's actors and stakeholders. There are several pathways that the programme development can take; these include but are not limited to the following:

Pathway 1: The "traditional approach"

This approach is a linear consecutive process towards a comprehensive rehabilitation and reintegration programme. A multi-disciplinary team is central in developing the programmes.

Pathway 2: Towards changing attitudes by experiencing results

This approach is a rather adaptive and non-linear process towards a comprehensive rehabilitation and reintegration programme based on scientific research results. Scientific research is an important accompanying and informing element to the continual development of programmes.

Pathway 3: From framework to programme approach

This is a consecutive pathway where framework and programme development are strictly separated. The first focus lies in the development of a comprehensive and detailed framework, and the second one lies in the implementation of the framework towards a comprehensive rehabilitation and reintegration programme.

Pathway 4: Targeted approach

Based on needs assessments and gap analysis in several countries, a targeted approach is applied. This approach is an adaptive way of dedicating support to specific gaps to complement already existing rehabilitation and reintegration programmes. This approach is non-linear, starting with identified gaps instead of a general situation assessment. This approach is applied by member states with a relatively advanced level of maturity in rehabilitation and reintegration work and/or interest in specific support instead of a total systemic revision of programmes in place.

Which pathway is most suitable in any given situation depends on many factors. The point to note is that approaches to the development of programmes on rehabilitation and reintegration of violent extremist offenders need to be adaptive to the specific context.

IX. CONCLUSION

Action-oriented research combines research on issues of counter-terrorism with ways to put the results of the research into action. In the case of rehabilitation and reintegration of violent extremist offenders, research and the programmes developed from research are key components of a counter-terrorism strategy. This is in part because many of these individuals will re-enter society at some point, but it is a complex process that involves all the social layers surrounding each individual offender. With this in mind, the development of a comprehensive rehabilitation and reintegration programme is a step to encourage the individual behavioural change and, in some aspects of its programme, reach out to families and communities as well. With the action UNICRI is taking in the field of CT and P/CVE, the aims of the CTITF and more generally, of the UN goals are being advanced.

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UNICRI INITIATIVES: REHABILITATION AND REINTEGRATION OF VIOLENT EXTREMIST OFFENDERS AND COMMUNITY-BASED PROJECTS

*Chiara Bologna**

I. INTRODUCTION

This paper will illustrate, based on the Settings and Community-Based Initiatives, the Rehabilitation and Reintegration of Violent Extremist Offenders platforms put forward by the United Nations in accordance with the United Nations Counter-Terrorism Strategy.

The notion of counter-terrorism has been materialised in a whole series of organisational mechanisms, processes and entities within the United Nations system that aim to tackle the issues of violent extremism and terrorism from all different angles so as to provide a more comprehensive approach to this multifaceted threat. Taking such a comprehensive approach and making provisions for the coordination of all these efforts is considered part of an effective Counter-Terrorism Strategy.[1]

Within the Counter-Terrorism Strategy, there are the two branches of countering violent extremism (CVE) and the preventing of violent extremism (PVE). Both are essential to reducing the risk posed by those who are currently engaged in violent extremism and those who are vulnerable and on the way to becoming engaged. In the case of the latter, it is challenging to identify which individuals would be vulnerable to becoming involved in violent extremism. As for the former, the violent extremist offender (VEO) is a high priority due to their history of engagement and the possibility that they would re-engage after entering and exiting the criminal justice system.

Many VEOs held in custody will one day be released from prison[2] and dealing with this imminent reality requires its own strategic response. Their successful rehabilitation can make the difference between a continued terrorist threat and a reformed person returning to society – and in some cases, even an individual ready to aid in the rehabilitation of future persons at risk of radicalization, by providing counter narratives. Rehabilitation and reintegration are therefore the combined stages to help an individual with their transition away from violent extremism.

The process of rehabilitation and reintegration is a personal one since every VEO has their own beliefs and experiences and will respond to rehabilitative efforts in different ways and at different times in the process. There is nevertheless space for a common conception of the scope and shape of VEO rehabilitation and reintegration efforts that gathers them into one joint process.

II. CYCLE OF PREVENTING AND COUNTERING VIOLENT EXTREMISM

This Cycle of Prevention and Countering Violent Extremism (P/CVE) refers to a basis for a comprehensive programmatic approach to PVE intervention. The work of the United Nations Interregional Crime and Justice Research Institute (UNICRI) explores all of the stages that comprise the Cycle (see Figure 1) for ways to act on these opportunities and to enhance a comprehensive approach.[3] Inspired by the Global

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[1] United Nations General Assembly Resolution (A/RES/60/288) (2006) *The United Nations Global Counter-Terrorism Strategy*.

[2] *Council of Europe Handbook for Prison and Probation Services regarding Radicalisation and Violent Extremism* (2016).. European Committee on Crime Problems (CDPC) and Council for Penological Co-operation (PC-CP) 2 rev 4

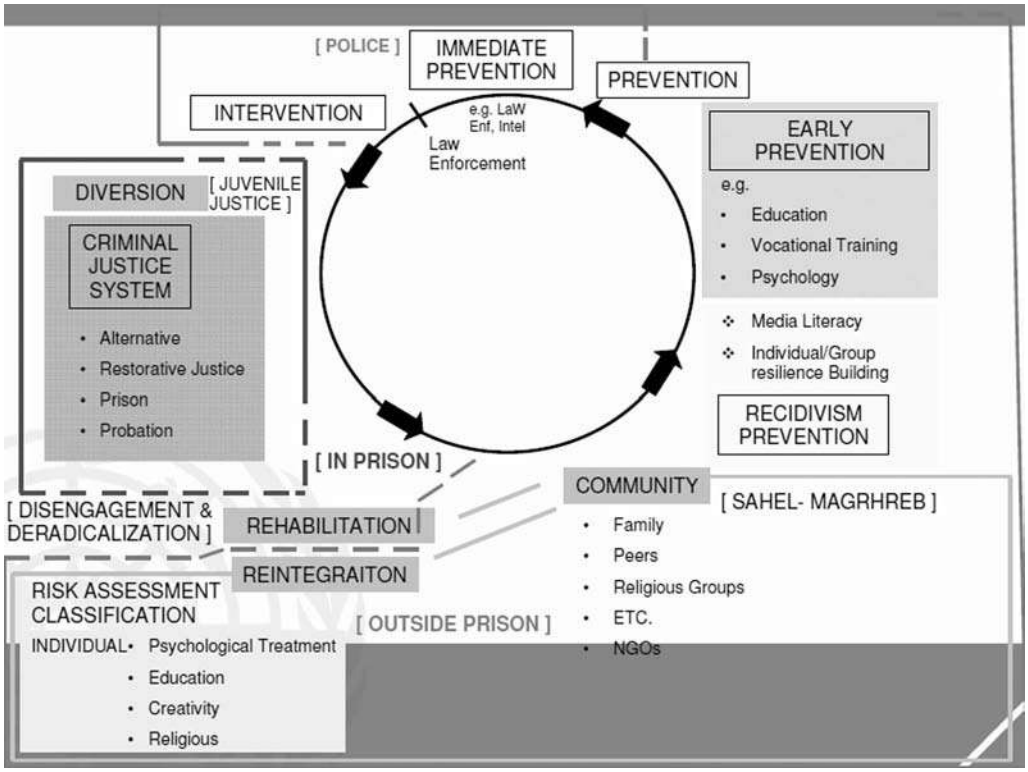

Figure 1. The cycle of preventing violent extremism[5]

Counter Terrorism Forum (GCTF)[4] life cycle and based on UNICRI's work, a cycle model has been developed with the aim to create a comprehensive model towards preventing violent extremism.

When it comes to prevention of violent extremism with a focus on the individual VEO, there are multiple opportunities to have interventions. These start at the earliest stages with PVE and continue as the offender enters and eventually exits the criminal justice system. Once they have re-entered society, whether it is after serving a custodial sentence or not, there is again a need for PVE to reduce the risk of recidivism. In this way, counter-terrorism with regard to the individual is a cycle which can be broken down into a number of stages (see Figure 1), each of which presents its own opportunities for a person to break away from violent extremism. For some, this may occur at the earliest stages but for some individuals the cycle might continue.

One of the stages of the cycle shown above is the community. The community is also one of the influential social layers surrounding each individual offender, even at their time of detention. In order for the individual to go through and sustain behavioural change, support from the community is needed[6]. Therefore, when it comes to offender rehabilitation and reintegration, communities have a crucial role to play as they can serve as the foundation to rehabilitate and reintegrate offenders in numerous ways, namely: before prison if bail is granted, after prison, or instead of custody altogether. For this reason, UNICRI has been working with the countries in the Maghreb and Sahel regions since 2009. In 2015 the Institute embarked on a pilot project launched in cooperation with the European Union.

The main objective of the project is to launch, implement and evaluate innovative projects aimed at preventing and countering radicalization, terrorist recruitment and violent extremism in the Sahel-Maghreb region and disseminate lessons learned and best practices. The Pilot Project has a particular focus on Algeria,

[3] Klima, N. (forthcoming). '*Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building*'. UNICRI, Turin.
[4] For more information on the GCTF, see: <https://www.thegctf.org/>.
[5] Figure based on earlier work of Noel Klima, United Nations Interregional Crime and Justice Research Institute – UNICRI.
[6] See Arispe, I. (2017). '*Programming community-led interventions in CVE*'. Lecture at Specialized Training on International Criminal Law and Global Threats to Peace and Security – Counter-Terrorism UNICRI, Turin.

Morocco, Tunisia, Libya, Mauritania, Mali, Niger, Chad and Burkina Faso. Smaller, innovative projects were launched under this more large-scale initiative. These projects targeted groups within civil society, particularly youth, women, religious groups, the media, and community leaders.

Engagement of civil society and non-state actors is the main focus, as well as cross-border cooperation. These elements are essential in the community-based initiatives to ensure a comprehensive counter-terrorism strategy.

III. COMMUNITY-BASED INITIATIVES

Recognising the fact that VEOs come from, live in, and return to communities makes community-based initiatives indispensable for many P/CVE efforts. No community can consider itself immune since VEOs have been shown to come from all different backgrounds. The importance of communities is highlighted in the UN Security Council's *Foreign Fighters Resolution* 2178 (2014), which recommends all Member States "to engage relevant local communities and non-governmental actors in developing strategies to counter the violent extremist narrative that can incite terrorist acts, address the conditions conducive to the spread of violent extremism, which can be conducive to terrorism".[7]

Many PVE and counter-radicalisation efforts are geared towards building community resilience to violent extremism. The foundation of such efforts provides for a deeper understanding of the radicalisation phenomenon, the associated risk factors, and indicators[8] for when it happens. In general terms, radicalisation is the process by which individuals believe that non-state violence is a valid means to address their grievances or to foster social and political change. There are a variety of risk factors which have been identified as rendering an individual more susceptible to becoming radicalised. While there is no absolute consensus on what all these factors are, some key areas include individual socio-psychological factors, social factors, economic factors, and beliefs and ideologies.[9] What leads a person to violent extremism is likely to be some combination of push factors (negative perceptions of features of the current societal environment) and pull factors (the perceived positive features of adopting violent extremist identity).

Deconstructing the combinations of risk factors in another way, they can also be grouped according to whether they are structural motivators, individual incentives, or enabling factors, as described in Table 1.

Risk Factor combinations:	**Can include the following, depending on the specific context:**
Structural Motivators	Repression, corruption, unemployment, inequality, discrimination, a history of hostility between identify groups, external state interventions etc.
Individual Incentives	A sense of purpose, adventure, belonging, acceptance, status, material enticements, etc.
Enabling Factors	The presence of radical mentors, access to online radical communities, social networks with VE associations, access to weapons, an absence of family support, etc.

Table 1. Source: RUSI

There are a series of stages to developing a community-based initiative for P/CVE or counter-radicalisation. A well-planned approach is needed so that the initiative has a greater chance of success in reducing risk. Figure 2 shows the flow of these stages, as well as some of the main activities involved in each one.

[7] *The 'Foreign Fighters'* Resolution. Paragraph 16.S/RES/2178 (2014). The United Nations Security Council.
[8] Schmid, A. (2013) '*Radicalisation, De-Radicalisation, Counter-Radicalisation: A Conceptual Discussion and Literature Review'*. The International Centre for Counter-Terrorism Research paper.
[9] See *The Root Causes of Violent Extremism* (2016). RAN Issue Paper.

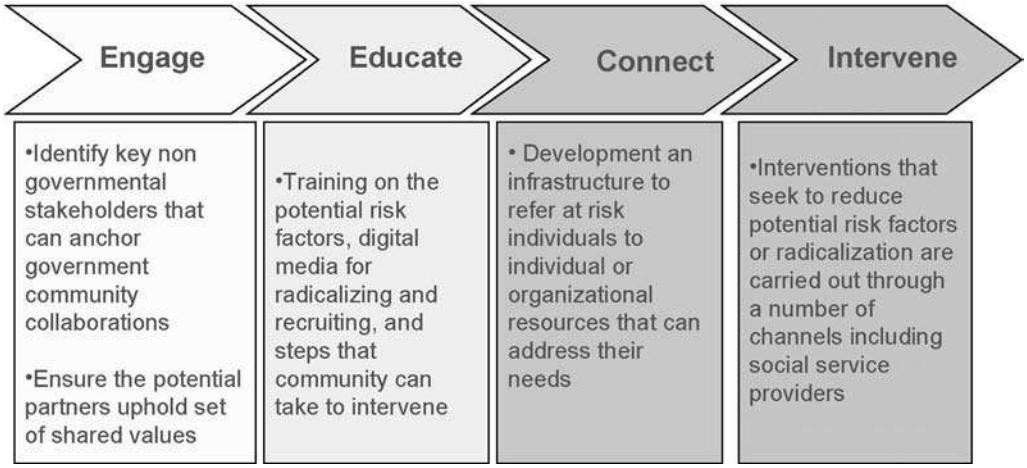

Figure 2. Stages of development of community-based initiatives[10]

Community-led initiatives to prevent and intervene in the radicalisation process can have an impact in ways that are responsive to local realities. This equally applies to rehabilitation and reintegration initiatives for VEOs, which come in different forms. First, the community is itself a source for external experts who can be integrated into the team that is supporting the rehabilitation and reintegration of offenders. Such experts include local religious leaders[11] and well-known charismatic figureheads[12], who, in coming from the same community as the VEO, are well placed to build a good degree of legitimacy in the eyes of the offender.

Another form of rehabilitation and reintegration initiative is one that is entirely based in the community. The difficulty with this can be that community actors who are trained and equipped to run counter-radicalisation initiatives are likely to be few in number. Steps to overcome this challenge include engaging community actors, providing them with training, and creating a supportive network around them by making helpful connections. Ultimately, they will be empowered to deliver interventions.[13] The whole community is also then in a stronger position to build resilience to violent extremism. Some of the programmes will be small-scale and specialised, such as youth projects or engaging with community leaders. This allows for a programme to be put in place with fewer initial resources and for more concrete aims to be set, usually, but not exclusively, to reduce offenders' potential risk factors.

One advantage of community-based programmes for all kinds of offenders, and not just VEOs, is they can be alternatives to custody, which may reflect the best interest of the individual. Mechanisms for diversion from formal legal proceedings are a means of channelling someone away from involvement in crime and, in the appropriate conditions, can be used in cases of violent extremism. This is especially important as a consideration for juvenile offenders who stand to gain a lot from the rehabilitative and non-punitive effects.[14] Diversion can be instigated from the time of apprehension (before arrest) to any point up until the final disposition hearing (the sentencing stage of the juvenile proceedings) and during pre-trial detention wherever it occurs.[15] These mechanisms would then operate in the community and can involve different actors from it.

Communities are sometimes reluctant to accept the return of former VEOs.[16]. This is due to an

[10] Arispe, I. (2017). '*Programming community-led interventions in CVE*'. Lecture at Specialized Training on International Criminal Law and Global Threats to Peace and Security – Counter-Terrorism UNICRI, Turin.
[11] *Additional Guidance on the Role of Religious Scholars and other Ideological Experts in Rehabilitation and Reintegration Programmes* (2013). United Nations Interregional Crime and Justice Research Institute
[12] *Roundtable Expert Meeting & Conference on Rehabilitation and Reintegration of Violent Extremist Offenders: Core Principles & Good practices* (2012). ICCT Background Paper.
[13] Arispe, I. (2017). '*Programming community-led interventions in CVE*'. Lecture at Specialized Training on International Criminal Law and Global Threats to Peace and Security – Counter-Terrorism UNICRI, Turin.
[14] *Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context* (2015), Global Counterterrorism Forum.
[15] Mazzarese, D. & Bologna, C. (forthcoming). '*Alternative Measures and Diversion in Youth Juvenile Justice*', in Klima, N. (forthcoming) '*Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building*'. UNICRI, Turin.

understandable fear and resentment held against this kind of offender. It is a considerable challenge to overcome in terms of reducing negative stigma and preparing the receiving community to accept the VEO both passively and actively[17]. Establishing good relations with communities and reaching out to the disaffected[18] in particular are the basis of soliciting any community backing and involvement in VEO rehabilitation, as indeed with any P/CVE initiative. Strategic communication between stakeholders inside and outside these communities is a useful initiative in this regard.[19] In cases where criminal conviction of strongly suspected VEOs is unlikely, including returning foreign terrorist fighters in communities may be the sole opportunity to rehabilitate, making their engagement all the more important.

Monitoring and evaluation are vital steps in community-based initiatives, as they are in any programme.[20] This makes clear goals and indicators of success all the more important to have at the design stage of programming. Initiatives can then be evaluated against these indicators to see if the extent to which they achieve their stated goals. There are notable challenges in this process, which include:

- Issues of accessing the target population;
- A highly sensitive topic;
- Often indirect and intangible outcomes;
- The lack of baseline data.

Planning the programme evaluation early on helps to prepare for these issues before they arise. What needs to be taken into account at the planning stage are the goals and indicators, the methods and instruments for data collection, the frequency of data collection, and identifying actors who can facilitate this process.

As mentioned in the former section, a UNICRI-led initiative on communities and countering radicalisation and violent extremism was piloted in the Sahel-Maghreb region. Smaller, innovative projects were launched under this more large-scale initiative. These projects targeted groups within civil society, particularly youth, women, religious groups, the media, and community leaders.

In addition to programmes based purely in the community, such as the UNICRI-led initiative piloted in the Sahel-Maghreb, there is also an opportunity for initiatives that bridge some of the stages of the cycle for more continuity in the rehabilitation and reintegration efforts.[21] An example already given is the preparation of communities through strategic communication when it is anticipated that VEOs will re-enter them. Other examples are involvement of community actors with pre-release programmes, halfway houses, and actors from prison-based programmes collaborating with community members to prepare for the offender's reintegration. This acknowledges once again the importance of communities effecting sustained behavioural change for the individual offender by taking an active role in the process.

IV. CONCLUSION

The community represents a stage imbedded in the cycle of opportunities for counter-terrorism intervention focussed on the individual VEO. The reasons for this are that communities are the societal settings for a usually large and diverse group of people, any of whom could be at risk of being radicalised to violence. Thus, community-based initiatives are instrumental to the early prevention stage. They are likewise the settings where convicted VEOs re-enter society. This can be a very delicate issue because of a reluctance to accept these offenders. Efforts to engage communities generally through strategic communication, and community actors specifically as they could be directly involved in VEO reintegration and rehabilitation, are

[16] UNICRI training for religious leaders, Bamako, Mali, 27–28 April 2017.
[17] See Veldhuis, T. (2012) *Designing rehabilitation and reintegration programmes for violent extremist offenders: A realist approach*. ICCT Research Paper;
[18] Lister, C. (2015) *Returning foreign fighters: Criminalization or reintegration?* Brookings Institution.
[19] For examples of this see *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons* (2016) United Nations Office on Drugs and Crime.
[20] Arispe, I. (forthcoming). '*Evaluating Counter Violent Extremism(CVE): A Fundamental Challenge to be Addressed*', UNICRI, Turin.
[21] Bologna (2017). '*The United Nations in Countering Terrorism and Introduction to UNICRI Initiatives*', UNICRI, Turin.

the first step in starting a community-based initiative. Community involvement at these preventative and rehabilitative stages are of course the major focus in the discussion about community-based initiatives. In reality though, the community never stops being important, no matter where the offender is in the cycle. Creating bridges between stages of the cycle is another way to enhance the existing opportunities for the successful rehabilitation of offenders on their way to leaving violent extremism behind.

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JUVENILE JUSTICE

*Chaira Bologna**

I. INTRODUCTION

This paper has the scope of providing a background to the issue of juvenile justice, particularly from the point of view of the research and work carried out in the field by the United Nations Interregional Crime and Justice Research Institute (UNICRI).

In order to promote justice and development, one of the aims of UNICRI is to foster just and efficient criminal justice systems in consonance with international instruments and other significant standards such as the Global Counter-Terrorism Strategy. For this purpose to be attained, one of the areas in which the Institute plays a leading role is juvenile justice.

With dedicated juvenile justice systems absent in many developing countries, young people caught breaking the law often end up in places of detention that are inappropriate for their age and development, and, as such, will not increase the likelihood of their reintegration into society. In such custodial or detention facilities, young people are forced to reside with adult criminals, putting them at risk on a number of different fronts. Violence, including sexual violence, bullying, extortion and torture have been found to be the most typical forms of mistreatment and abuse inflicted on young people by adult inmates, and sometimes also staff of such institutions, who take advantage of age and power differentials. Alcohol or drug intoxication, lack of appropriate food, and untreated illness are other common features of detention centres.

Although in some countries, young people are held in specific juvenile facilities, the detention conditions are often extremely poor and dangerous. Correctional centres and educational establishments can be arenas for fights, violence and abuse between rivals. In any case, international standards provide that detention should be a measure of last resort and used only for the most serious crimes. Moreover, ample research has shown that the intensity and duration of intervention and services should mimic the risk level of the juvenile, with higher risk youth receiving more intense services for longer periods of time.[1] Empirical research also demonstrates that intensive services provided to low-risk youth are often iatrogenic, having the unintended negative consequence of increased recidivism.[2]

Cognizant of the above, part of the work of UNICRI is to carry out action-oriented research to advance the understanding of juvenile justice-related problems, with the finality of aiding future policy. Using this research as a foundation, it offers training and technical cooperation programmes to Member States with regards to preventing violent extremism (PVE), as its mandate indicates.

Furthermore, UNICRI is working on several projects to protect the rights of young people in conflict with the law. In Angola and Mozambique, for example, UNICRI supported local governments in establishing juvenile courts and juvenile justice departments, while at the same time making sure that they were

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[1] Mazzarese, D. & Bologna, C. (forthcoming). '*Alternative Measures and Diversion in Youth Juvenile Justice*', in Klima, N. (forthcoming). '*Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building*'. UNICRI, Turin.

[2] For further information, see: Andrews & Bonta, 2003; Andrews & Kiessling, 1980; Andrews et al., 1990; Baglivio et al., 2014; Gatti, Tremblay, & Vitaro, 2009.

administered in the best interests of young people. In Mozambique, the programme also conducted analysis and information-sharing through a juvenile justice forum and a database on minors in conflict with the law.[3]

II. CONCEPTUALISATION AND INSTRUMENTATION

Throughout this section, this paper will focus on the conceptualisation and instrumentation of juvenile justice and the policies, strategies, laws, procedures and practices that the area of countering terrorism entails. For this purpose to be attained, UNICRI's Guidance for Legislative Reform on Juvenile Justice provides, since its publication in 2016[4], a thorough analysis that sheds light on the particular vulnerability of children and juveniles in the context of counter-terrorism, for which it examines children as perpetrators, direct victims and indirect victims of terrorist-related activity. Moreover, the utility of the Guidance further relies on its aim to increase the capacity of governments to integrate international juvenile justice and child protection standards into their national counter-terrorism standards, which is the reason why it explores radicalisation, de-radicalisation and counter–radicalisation.

A. Conceptualisation

As stated throughout the Guidance, juvenile justice (or children's justice, as it is sometimes referred to) is a general term used to describe the policies, strategies, laws, procedures and practices applied to children over the minimum age of criminal responsibility who have come into conflict with the law.[5] The term 'juvenile justice' needs to be distinguished from the broader concept of 'justice for children', which covers children in conflict with the law (i.e. alleged as, accused of, or recognised as having infringed the penal law), children who are victims or witnesses of crime, and children who may be in contact with the justice system for other reasons such as custody, protection or inheritance.[6]

Albeit there is no generally accepted definition of the term 'juvenile', it is often used to signify a child who is over the minimum age of criminal responsibility and is alleged to, accused of, or convicted of a criminal offence.[7] Moreover, it is a general term used to describe the policies, strategies, laws, procedures and practices applied to children over the age of criminal responsibility.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the 'Havana Rules') simply define a juvenile as 'every person under the age of 18.' The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)[8] provide the following definition: 'A juvenile is a child or young person who under the respective legal system may be dealt with for an offence in a manner which is different from an adult'. The Committee on the Rights of the Child (CRC) avoids the use of the term juvenile, referring instead to "children in conflict with the law".[9]

B. Instrumentation

The 1985 Beijing Rules and The Riyadh Guidelines[10] established basic actions to prevent children and young people from engaging in criminal activities, as well as to protect the human rights of youth already found to have broken the law. In 1989, the focus on safeguarding the human rights of children and young people was strengthened by the Convention on the Rights of the Child (CRC), which entered into force in 1990. In 1995, the United Nations adopted the World Programme of Action for Youth (WPAY), providing a policy framework and practical guidelines for national action and international support to improve the

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[3] Mazzarese, D. & Bologna, C. (forthcoming). '*Alternative Measures and Diversion in Youth Juvenile Justice*', in Klima, N. (forthcoming). '*Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building*'. UNICRI, Turin.
[4] Hamilton, C. (2011) Guidance for Legislative Reform on Juvenile Justice. UNICEF. Available at: <http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdfp.3>.
[5] See Hamilton, C. (2011) Guidance for Legislative Reform on Juvenile Justice. UNICEF. Available at: <http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdfp.3>.
[6] See Penal Reform International (2013) Protecting children's rights in criminal justice systems: A training manual and reference point for professionals and policymakers. Available at: <http://www.penalreform.org/wp-content/uploads/2013/11/Childrensrights-training-manual-Final%C2%ADHR.pdf>.
[7] Ibid. 2011.
[8] For further information, see United Nations (1985) Standard Minimum Rules for the Administration of Juvenile Justice.
[9] Mazzarese, D. & Bologna, C. (forthcoming). '*Alternative Measures and Diversion in Youth Juvenile Justice*', in Klima, N. (forthcoming). '*Pathways towards an integrated and integral life-cycle approach on P/CVE in capacity building*'. UNICRI, Turin.
[10] For further information, see United Nations (1990) Guidelines for the Prevention of Juvenile Delinquency.

situation of young people.

Through the WPAY, the United Nations puts forth policy actions specifically tailored to young people between 15 and 24 years of age. The World Programme of Action for Youth aims at fostering conditions and mechanisms to promote improved well-being and livelihoods among young people. As such, it requires that Governments take effective action against violations of all human rights and fundamental freedoms and promote non-discrimination, tolerance and respect for diversity as well as religious and ethical values. The WPAY focuses on 15 priority areas, among which is juvenile delinquency. Under that priority area, it details proposals for action towards preventing juvenile delinquency and rehabilitating young people who have engaged in criminal activity.[11]

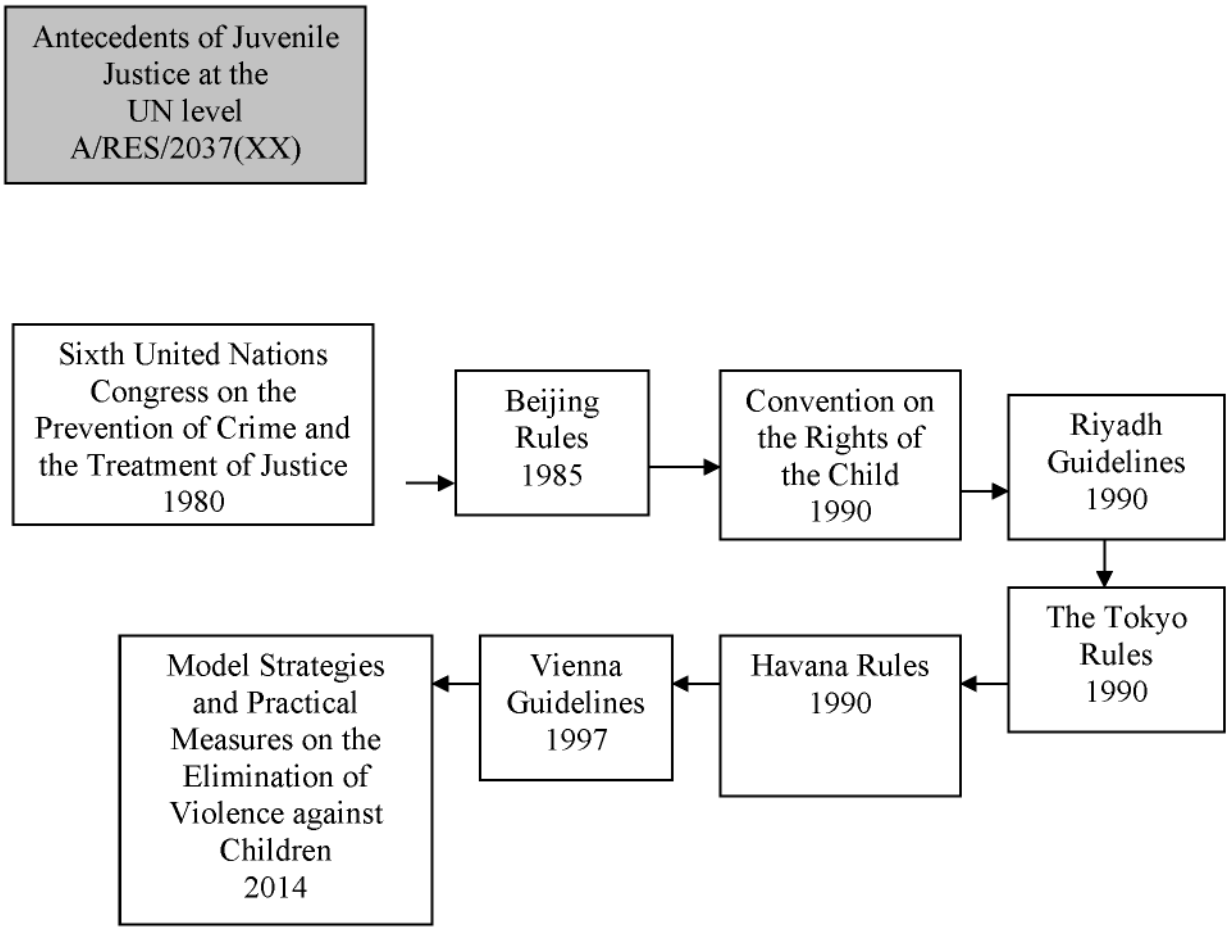

Figure 1: Antecedents of Juvenile Justice Framework at the United Nations level

C. Current Framework

The most important international instruments for the administration of juvenile justice are the CRC and the International Covenant on Civil and Political Rights (ICCPR). Article 40(3) of the CRC requires States to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law. In other words, a State is required to establish a juvenile justice system. Children over the State's minimum age of criminal responsibility and under the age of 18 who are charged with a criminal offence should be dealt with in the juvenile justice system, regardless of the nature of the charge. This applies just as much to terrorist offences as it applies to any other criminal offence.

[11] For current information on international standards, norms and instrument of reference for juvenile justice, see: United Nations Interagency Panel on Juvenile Justice: <http://www.ipjj.org/resources/internationalstandards>.

Regional instruments also address juvenile justice, including:

- the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention);
- the African Charter on Human and Peoples' Rights (Banjul Charter);
- the African Charter on the Rights and Welfare of the Child;
- the Arab Charter on Human Rights (Arab Charter); the American Convention on Human Rights (American Convention);
- the American Declaration on the Rights and Duties of Man as well as the jurisprudence developed by the European Court of Human Rights (ECHR);
- the Inter-American Court of Human Rights;
- the Inter-American Commission on Human Rights, and;
- the African Commission on Human and Peoples' Rights.

III. CHALLENGES

Overall, youth are disproportionately represented in statistics on crime and violence, both as victims and as perpetrators, and in many developed countries violent crimes are being committed at younger ages than in the past. Moreover, there is growing concern that, in some countries, the proportion of violent crimes committed by youth has been increasing:[12]

- Statistical data in many countries show that delinquency is largely a group phenomenon. Between two-thirds and three-quarters of all offences committed by young people are committed by members of gangs or groups, which can vary from highly structured criminal organizations to less structured street gangs. Even those young people who commit offences alone are likely to be associated with groups.
- Though poverty and unemployment are not, by themselves causes of violence, they become important factors when coupled with other triggers such as lack of opportunity, inequality, exclusion, the availability of drugs and firearms, and a breakdown in access to various forms of capital, justice and education.
- While adolescence can be an age of "breaking rules" evidence shows that most first time offenders do not reoffend, and that diversion and other community-based measures are the best responses to offences committed by young people.
- Incarceration, including pre-trial detention, is still used frequently including for young people having committed very minor crimes (such as using drugs, or stealing basic commodities).
- Crime committed by young people is mainly an urban phenomenon. Evidence shows that the probability of being a victim of crime and violence is substantially higher in urban areas than in rural areas.

IV. GOOD PRACTICES

At the Sixth Ministerial Plenary Meeting in New York on 27 September 2015, Global Counterterrorism Forum (GCTF) Ministers endorsed the launch of the GCTF's *Initiative to Address the Life Cycle of Radicalization to Violence (Life Cycle Initiative)*. As part of this new initiative, Switzerland launched an initiative on juvenile justice in a counterterrorism context to address the emerging questions regarding children involved in terrorism, and the different phases of a criminal justice response, which include prevention, investigation, prosecution, sentencing, and reintegration.[13]

The aim of this initiative on juvenile justice in a counterterrorism context is to bring together practitioners and policymakers from a range of GCTF Members and other States representing a variety of disciplines to share experiences, explore good practices, and identify challenges in tailoring responses to threats of terrorism while protecting public safety and upholding the rights of the child. As a result of the Meeting, the memoranda of good practices — the Neuchâtel Memorandum on Good Practices for Juvenile

[12] For further information, see United Nations Office on Drugs and Crime & Latin America and the Caribbean Region of the World Bank (2007).

Justice in a Counterterrorism Context[14] — intended to assist through shaping national, bilateral, regional, and multilateral capacity-building assistance in this area with a view to including consideration of the particular needs of children into counterterrorism policies and measures.

Hence, within the field of the Status of Children and their Protection under International Law and Juvenile Justice Standards, the practices relate to the importance of addressing children alleged to be involved in terrorism-related activities in accordance with international law and in line with international juvenile justice standards. Moreover, they urged States to assess and address the situation of children in a terrorism-related context from a child rights and child development perspective.[15]

In relation to prevention, which plays a significant role in the United Nations Counter-Terrorism Strategy, the good practices focus on addressing children's vulnerability to recruitment and/or radicalization to violence through preventive measures and also focus on the need to develop targeted prevention strategies with a strong focus on the creation of networks to support children at risk.

However, the aspect of prevention also needs to consider and design diversion mechanisms for children charged with terrorism-related offences, even more significantly in light of recent indicators that attest that children are increasingly affected and victimised by terrorism, but at the same time, the last few years have shown them to be increasingly engaged in terrorist-related activity. For example, the Dutch counter terrorism coordinator estimates that at least 80 children with a Dutch connection live within Daesh-held territory in Syria and Iraq. Of these 80 known children, 30 % are between four and eight years old and around half of them are aged three or younger. According to French officials, there are around 460 French minors in Daesh claimed territory, with half of them under the age of five and a third born there. Belgian officials reported around 78 Belgian minors in Daesh-claimed territory.[16]

As for the field of Justice for Children, the importance of addressing children prosecuted for terrorism-related offences was highlighted, especially through the juvenile justice system. In this sense, it was further outlined the necessity to apply the appropriate international juvenile justice standards to terrorism cases involving children even in cases that are tried in adult courts.[17]

Of utmost importance is also to consider and apply alternatives to arrest, detention, and imprisonment including the pre-trial stage, as well as to apply the principle of individualisation and proportionality in sentencing. Should children be deprived of their liberty, this should be carried in appropriate facilities, and all support for their protection and preparation for reintegration should be provided.[18]

In relation to the last point on reintegration, the good practices also refer to the development of

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[13] The Government of Switzerland proposed an initiative on juvenile justice in a counterterrorism context at the GCTF's Criminal Justice and Rule of Law Working Group Plenary Meeting in Malta on 13–14 April 2015. A first expert-level meeting was organized by the International Institute for Justice and the Rule of Law (IIJ) in Valletta, Malta, on 10–12 November 2015 under the auspices of the GCTF, with the participation of experts from governments, the judiciary, academia, international organizations, and civil society. A second expert-level meeting was organized by the IIJ at the United Nations Interregional Crime and Research Institute (UNICRI) in Turin, Italy, on 16–17 February 2016. The findings developed during these expert meetings led to the good practices and recommendations laid out in this Memorandum. However, the experts acknowledged that further empirical research and data is necessary to increase the understanding of the factors that drive children into violent extremism and to tailor responses accordingly. States are therefore encouraged to collect and collate information on children engaged in terrorism-related activities.

[14] Global Counterterrorism Forum (2015), Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context. Available at: <https: //www. thegctf. org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>.

[15] Ibid. 2015

[16] See Meines, Marije, Merel Molenkamp, Omar Ramadan, Magnus Ranstorp, *RAN Manual, Responses to returnees: Foreign terrorist fighters and their families*, RAN Centre of Excellence, 2017.

[17] *Global Counterterrorism Forum (2015), Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context. Available at: <https: //www. thegctf. org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>.*

[18] *Global Counterterrorism Forum (2015), Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context. Available at: <https: //www. thegctf. org/Portals/1/Documents/Toolkit-documents/English-Neuch%C3%A2tel-Memorandum-on-Juvenile-Justice.pdf>.*

Rehabilitation and Reintegration programmes for children involved in terrorism-related activities to aid their successful return to society.

Finally, the fifth set of practices based on the memoranda relate to capacity development, monitoring and evaluation, which could be implemented in line with the numerous relevant international standards, capacity development and specialised training of law enforcement officials, prosecutors, judges, corrections officers defence counsels and other actors dealing with children involved in terrorism-related activities — taking into consideration the applicable legal system. These are needed to help ensure the appropriate application of juvenile justice standards regardless of the charges. Technical assistance should thus be targeted to both policymakers and practitioners. It is likewise important to ensure that those involved in juvenile justice benefit from specialized training to handle terrorism-related cases.[19]

Additionally, with the purpose of ensuring the effective implementation of international juvenile justice standards, it was highlighted to design and implement monitoring and evaluation programmes.

V. RECOMMENDATIONS AND CONCLUSIONS

There is a common acknowledgment within the UN system that strategies to tackle juvenile delinquency are often too narrowly focused on tough penalties and law enforcement. Many countries still have "punitive" prevention programmes that try to suppress juvenile and youth offences and gang activity by means of police surveillance and prosecution.

The UN, however, also puts forward a series of recommendations for Member States to more effectively address youth crime-related issues. An initial stage suggests targeting communities severely affected by violence and other criminal activity with a holistic approach to the rule of law and justice that takes into consideration the causes of delinquency and its prevention through measures that address both individual needs and socio-environmental conditions.[20]

These measures should provide meaningful alternatives for socialisation and achievement for young people. This can be achieved by:

- Providing rural areas with socio-economic opportunities and services to promote rural development as well as discourage young people from migrating to urban areas.
- Providing recreational, sport and leisure activities.
- Improving school quality, incorporating into school programmes seminars and lessons to raise awareness about issues related to violence, and expanding access to/retention in schools for high-risk individuals and communities, with meaningful after-school group activities.
- Providing tailored apprenticeship programmes that enable youth to enter the labour market through an alternative, effective channel.
- Preventing violence by involving families and entire communities, raising awareness of the importance of domestic support in the prevention of juvenile crime, and setting up information campaigns and training and educational programmes for family members or guardians.[21]

Overall, these recommendations and good practices on juvenile justice need to be seen as a vital part of the puzzle for the success of the pillars of the Counter-Terrorism Strategy launched by the United Nations and followed by UNICRI.

Being that juvenile justice is a meaningful element within counter-terrorism efforts and, more concretely, of the Counter-Terrorism Strategy, UNICRI plays a very important role while drawing the attention to this topic, making an emphasis on those countries where there is a systematic absence of juvenile justice platforms.

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[19] Ibid (2015).
[20] See United Nations Fact Sheet on Juvenile Justice (2015) <http: //www. un. org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>.
[21] See United Nations Fact Sheet on Juvenile Justice (2015) <http: //www. un. org/esa/socdev/unyin/documents/wyr11/FactSheetonYouthandJuvenileJustice.pdf>.

Therefore, the Institute's mandate to carry out action-oriented research to advance the understanding of juvenile justice-related problems further represents an opportunity to implement and innovate in ways to tackle the effects of young people caught breaking the law and committing terrorism-related crimes often ending up in places of detention that are inappropriate for their age and development, thus conditioning the likelihood of their reintegration into society.

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United Nations Resolutions

- United Nations (1985) United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), Resolution A/RES/40/33. Available from: http: //www2. ohchr. org/english/law/pdf/beijingrules.pdf

- United Nations (1990) Rules for the Protection of Juveniles Deprived of their Liberty, Resolution 45/113. Available from: http://www.ohchr.org/Documents/ProfessionalInterest/res45_113.pdf

STRATEGIC COUNTERTERRORISM, TERRORIST REHABILITATION AND COMMUNITY ENGAGEMENT: THE SINGAPORE EXPERIENCE

*Sabariah Mohamed Hussin**

I. BACKGROUND

Following the terrorist attacks in the United States (US) on 11 September 2001, the Internal Security Department (ISD) in Singapore uncovered a local cell of the Jemaah Islamiyah (JI), a group that aimed to establish a Daulah Islamiyah (Islamic State) in Southeast Asia through violent means.[1]

The ISD through intelligence sharing and quick response, crippled and foiled at least six different plans to attack foreign and local assets on Singapore soil. Unfortunately, JI was successful elsewhere in the region. Some examples include the bombings of churches in Indonesian cities on Christmas Eve in 2000, the October Bali Bombings of 2002 and the Metro Manila bombings on Rizal Day in the Philippines.

After detaining more than 20 JI members between 2001 and 2002, the Singapore government was confronted with a unique situation. Initial findings led to insights into government consciousness that psychologists alone may not be sufficient to understand the phenomena of violent extremism. Outcomes from the sessions and meetings with the detainees, the counsellors observed that all detainees had distorted ideologies on Islam which encouraged simplistic thinking, fueled them towards anger and hatred, and promoted the use of violence to achieve their aims. Their exclusivist paradigm contributed to their radicalization.

II. MODES OF REHABILITATION

From the chart below, there are 7 modes of terrorist rehabilitation that are currently being employed by governments around the world. Empirical evidence has shown that some countries are developing different facets of terrorist rehabilitation programmes, focusing on ideological, religious, educational, vocational, social, creative arts therapy, sports and recreation and psychological issues that cause violent extremism. The varied rehabilitation modes are employed by governments and agencies around the world, depending on the recommendations, availability of resources and acceptance by the implementing bodies.

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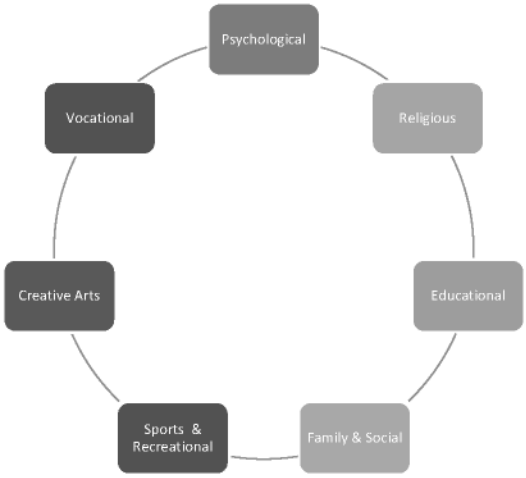
[1] HistorySG, "Operations against Jemaah Islamiyah Begins", 8 Dec 2001, assessed on 10 August 2017, http://eresources.nlb.gov.sg/history/events/90267935-71ef-4829-8faf-f6039a086cda



The Kingdom of Saudi Arabia (KSA), for example, has a comprehensive rehabilitation approach consisting of religious, psychological, social, vocational, creative art therapy, as well as 'Online Engagement' as part of their rehabilitation initiatives. In the area of religious rehabilitation, the Ulama' (religious scholars) perform group counselling and discuss the legitimacy of the king as the ruler of Saudi Arabia. They conduct comprehensive discussions on the position of a fatwa (Islamic rulings and guidance) vis-à-vis their leaders. The KSA's psychological component employs psychologists to engage detainees and to further examine the rationale behind these detainees' decisions to use extremism. In their social rehabilitation programme, family members are engaged in incentives like supporting the detainee's marriage, education, or financial assistance. The KSA's vocational rehabilitation gives the detainees opportunities to learn carpentry, clay shaping, pottery and the like. In addition, they make use of art through drawings, guided by professional art therapists in their art rehabilitation. A distinct feature of the rehabilitation of KSA is their 'Online Engagement'. The Sakinah campaign, run under the auspices of the Ministry of Islamic Affairs, is a government agency and independent programme where qualified scholars are hired to enter online chat rooms to hold discussions with users on Islam, wherein, for example, they discuss the dangers of the *takfiri* (apostasy) ideas.

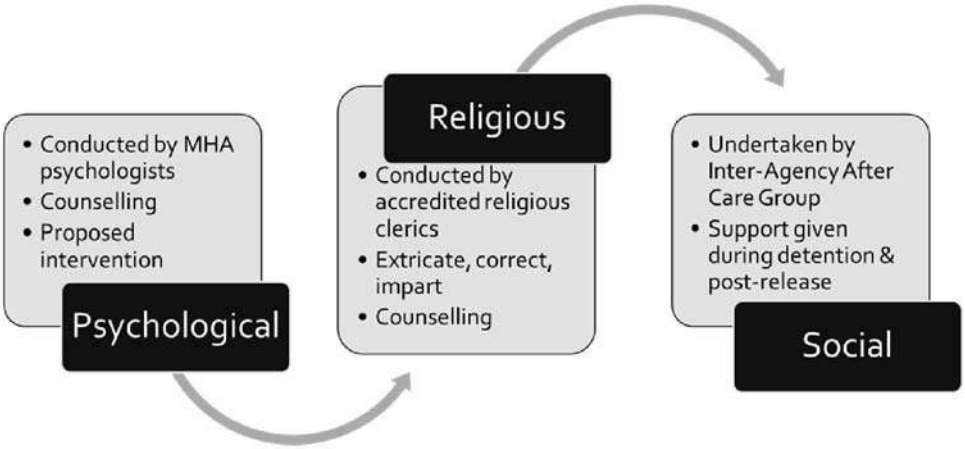
Evidently from our experience, religious intervention is a pivotal component that must be a part of terrorist rehabilitation programmes. In Singapore, Religious rehabilitation had played a key role in educating detainees, as mentioned by our Deputy Prime Minister in 2005. The government had sought expertise from religious experts as they believed that these initiatives should be carried out by subject matter experts.

Different states have different concerns and considerations, which thus decide which mode suits their detainees best. In my view, the modes of rehabilitation can be divided into two prongs. The core rehabilitation approach must include psychological, religious and social approaches. For the other, states may decide to provide an enhanced rehabilitation programme that includes other skills where suitable.

Another country worth mentioning is Sri Lanka. They had worked closely with the private sector as an enabler to terrorist rehabilitation in South Asia. Sri Lanka is in a unique position to be able to work closely with the private sector. It is a multi-faceted programme. They have rehabilitated and reintegrated 12,000 fighters. These detainees studied and transformed into productive citizens. You know it is a success when the rehabilitation produced men and women with a fresh outlook.

III. THE SINGAPORE EXPERIENCE

The Singapore rehabilitation programme consists of three components: psychological rehabilitation, social rehabilitation and religious rehabilitation. Throughout their detention, detainees are visited regularly by psychologists, who provide psychological counselling and assess their ability to cope with the mental stress of detention as well as their psychological reasoning to establish their propensity for hatred and violence, and vulnerability to radical influence. The psychologists also assess behavioural and cognitive aspects of the detainees' progress in rehabilitation.



A. Psychological Rehabilitation[2]

Studies (e.g. Prochaska, Velicer, DiClemente & Fava, 1988; Prochaska, DiClemente & Norcross, 1992) have found commonalities in the manner people modify their behaviour. They showed that it was necessary to assess the client's level of readiness for change and to customise interventions accordingly. Thus, through interviews with detainees and RO supervisees, ISD psychologists have identified seven positive changes in assessing detainees' level of readiness for change[3] that take place in the course of rehabilitation.

The stages are illustrated with reference from anecdotal evidence derived from former detainees and RO supervisees who have been through the ISD rehabilitation programme.

1. Self-Re-Evaluation

Self-re-evaluation is the cognitive and affective process of re-appraisal of one's self and his behaviour (Prochaska et al., 1988). During the initial period of detention, detainees begin to reflect on their past actions and their consequences. According to M, an ex-member of Jemaah Islamiyah (JI) who had received military training in Afghanistan, "When the detention order was served to me, I accepted the danger that I had posed to national security" (Hussain, 2012). This detainee felt guilty and remorseful for all that he had done and felt that the move by the JI members to create chaos in Singapore had tarnished the good name of the Muslim community here. "We had not been fair. Because of the actions of a minority, the majority Muslim community had to bear the brunt. I am guilt-ridden," he said (Ibrahim, 2007).

By not being defensive about their past actions, detainees are able to appreciate the process of self-re-evaluation in their reflections.

2. Environmental Re-Evaluation

A re-evaluation of their environment occurs when radicalised individuals re-assess the impact that his radical beliefs and actions have on the social environment (Day, Bryan, Davey & Casey, 2006). When in detention, they realize the consequences of the impact of detention on their families. They also gain insight into the consequences of their action on the wider Singapore society. In addition, being detained means that these radicalised individuals are removed from the online or offline radical community, which provides the space needed for them to reflect and re-evaluate their previous radical beliefs.

Religious counsellors also help the detainees to realise that the radical ideology propagated by radical preachers has deliberately ignored the importance of 'context'. They learn that contextualisation has to be applied in the interpretation of Quranic verses. Through these religious counselling sessions, detainees eventually realise that radical Islamic scholars, who supported armed jihad, misinterpreted Islamic religious texts and their ideas promoting hate and violence are in fact in contradiction with the religion.

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[2] Hu Weiying, "The Process of Change in the Rehabilitation of Violent Extremist- The Singapore Experience" paper resides with ICPVTR, 2017.

[3] Home Team Journal, Ministry of Home Affairs Singapore
Studies (E.g. Prochaska, Velicer, DiClemente & Fava, 1988; Prochaska, DiClemente & Norcross, 1992)

3. Formation of Therapeutic Relationships

Through their care and concern for the detainees and their families, the case officers and counsellors develop a close rapport and therapeutic relationship with the detainees. This helps detainees to develop confidence that the help and advice rendered are well-intentioned and will benefit them and their families. The therapeutic relationship aids detainees to be more receptive to the alternative ideas presented to them. It also provides a safe environment for them to share openly and encourages them to change. Former JI member M said: "Throughout (my) detention, I was treated well, and given encouragement and guidance when required. This on its own was an encouraging factor" (Hussain, 2012). As time passes, a trusting relationship is developed between the detainee and his case officers. This leads to the detainee becoming more cooperative with investigations and rehabilitation efforts.

4. Awareness of Radicalisation Pathway

Upon reflection and self-re-evaluation, detainees learn to be more cognizant of their radicalization pathway. Moreover, through interactions with case officers, psychologists and religious counsellors, they become aware of the factors and processes leading to their radicalisation.

Former JI member recollected that he was impressed by the religious knowledge and apparent piety from the white robe of their leader. He recounted the seemingly innocuous beginnings where the leader suggested that he attend a class conducted by another preacher. He shared that he did not question the JI spiritual leader because of his trust in his friend. Ex-JI member M added that soon, he and several others went for an intensive course, which stressed the need to start a struggle to establish an Islamic state. He explained: "The preachers told us that the establishment of an Islamic state must be pursued by waging jihad. According to the JI's terminology, this meant the use of armed force to take over control of the state.... I accepted their explanations because they were charismatic and very convincing. The way they presented themselves gave the impression that they were sincere and wanted only the best for Islam" (Hussain, 2012). Recognising their path of radicalisation helps detainees to understand their actions and to avoid making the same mistakes in future.

5. Ideological Rectification

Upon reflection and engagements with the case officers and counsellors, detainees recognize that the ideas they have been exposed to and subsequently imbibed through books, the Internet, and from terrorist personalities, are not mainstream. They have been led to believe that hate and violence were what Islam required of its adherents. Through counselling by religious counsellors and reading mainstream literature promoting peace and non-violence, detainees undergoe the processes of change that help keep them inoculated against terrorist ideas. The RRG counsellors helped the detainees see that the ideologies presented actually cause harm to the society, and it is a challenge to develop oneself and one's society.

The detainees start to realise that terrorists have been misinterpreting Islam and that hate and violence is not propagated by the religion. They also learn to identify inconsistencies between these values and how they behaved in the past (Robinson & Porporino, 2001). The work of the RRG counsellors is crucial in helping detainees achieve this change. Many detainees continue to see their religious counsellors after release and are also encouraged to seek guidance from their local mosques.

6. Cognitive Restructuring

Radicalised individuals have a distorted sense of reality and a tendency to focus solely on information which confirms their biases while disregarding alternative views. Through counselling, these cognitive distortions are restructured and detainees start to develop the cognitive tools that help prevent themselves from falling prey to aberrant influences again (Robinson & Porporino, 2001).

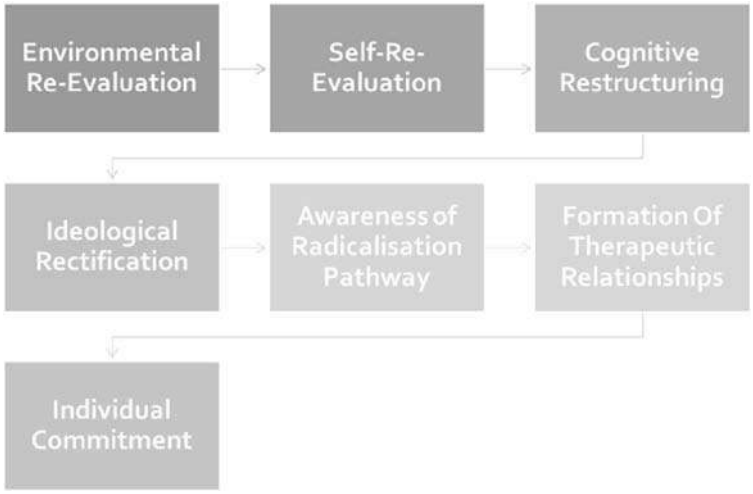
An example of cognitive restructuring can be seen when the detainees gradually learn from the psychologists how to manage emotion and develop the capacity to objectively frame global events. Detainees also learn personal problem-solving skills, to evaluate ideas critically and to be more open-minded.

Through counselling, detainees learn: (i) that their actions carry consequences for others, (ii) how to evaluate ideas objectively and consider a variety of sources of information in the process of decision-making, and (iii) to become less rigid and narrow in their thinking and less prone to externalise blame.

7. Individual Commitment

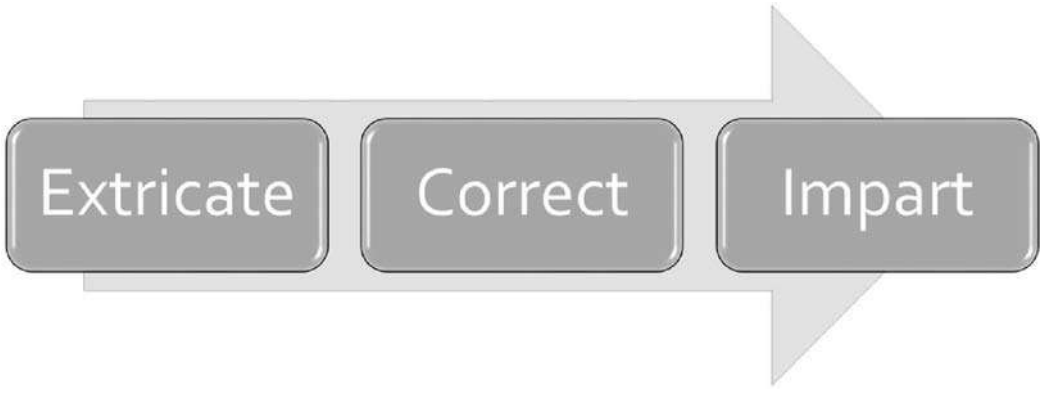
Towards the end of the change process, detainees are led to the stage where they make a choice about their future path (Prochaska & DiClemente. 1982). When the detainees' beliefs have been restructured, they are guided to commit themselves not to be re-involved in terrorist activity. They make resolutions, testimonies, and post-release plans to show their determination to fulfil what they have committed themselves to. Before a detainee is released, they are encouraged to share their reflections of their detention, including their regrets, and resolutions and plans for the future.

With their commitment not to be re-involved in terrorist activities, detainees are more likely to focus on constructive activities to rebuild their lives and reintegrate into the community. Nonetheless, as with all terrorist rehabilitation programmes, the notion of relapse is a possibility. This underscores the criticality of a rigorous post-release programme to ensure that detainees do not re-engage in terrorist activity after their release.



The distinct feature observed thus far is that people modify their behaviour. It is then necessary to assess the level of each detainees' readiness for change and to customise interventions accordingly. These were seen in individuals detained by ISD for involvement with groups — disengage from radical ideologies — renouncing the use of violence. The above has no fixed pattern. Each could develop in different directions for different individuals. In some cases, the stages feed off one another in a mutually reinforcing way. In other words, they strengthen one another as they interact.

B. Religious Rehabilitation



The Religious Rehabilitation Group (RRG) is a group of volunteers mainly from the Asatizah (religious clerics) fraternity and teachers in Singapore. Members of RRG contribute their services based on their personal capacity and their areas of expertise.

Detainees were exposed to verses and most of the time, part of the verse and not the entirety of the holy Quran. There are two components for Muslims to be aware of in order to practice Islam fully. One is to be able to read the holy book and secondly to understand the Islamic sciences (*asbab ul nuzul* (reason of revelation), *Nashikh Wal Mansukh* (the abrogation)) and related issues. Having this knowledge would then give the Muslim a complete understanding of the verses in applying them to the daily life.

The approach that the RRG counsellors have been undertaken through the detainees' thoughts with the following objectives:

1) To extricate their negatively imbibed ideology 2) To replace the negative ideology with the correct ideology 3) To imbue in them the rightful understanding of Islamic knowledge and finally and 4) To exemplify the fulfilling ways of living in a multi-racial, multi-religious society as shown by our beloved Prophet Muhammad saw.

In order to ensure consistent messaging given by the counsellors to the detainees, RRG had produced three manuals to date. The manual serves as an important tool and guide for our religious counsellors to conduct structured counselling sessions. The manual is divided into three themes – Understanding Realities, Purely Concepts and Exploring Behaviors.

All the *Asatizah* involved in counselling the detainees are certified and have been endorsed by the Islamic Religious Council under the *Asatizah* recognition Scheme in Singapore. The scheme, which endorses qualified religious teachers in Singapore, was made compulsory this year in a move to ensure the community knows whom to turn to for credible religious advice. A register of these teachers is available at www.ars.sg

C. Social Rehabilitation

Social rehabilitation in the form of social support is also given to enable the detainees to reintegrate smoothly into society upon release. The family also plays a significant role in this regard. Detainees are granted family visits to preserve the family unit as much as possible. An aftercare officer is assigned to each detainee's family to provide social and financial support for the detainees. The support provided by the ACG ensures that the family remains functional. Detainees can then focus on cooperating with the investigation and rehabilitation. Regular interactions with ISD case officers also provide the detainees with another source of social affiliation and support. Regular assessment, monitoring and guidance by the case officers are also conducted. Efforts are also undertaken to help detainees improve their academic and other vocational skills. This is to help the detainees find employment upon release.

To facilitate the reintegration process of the detainees released under restriction orders (RO) through career preparation and job matching exercise. This is where the detainee will be matched with relevant jobs according to their skills. The employers are fully aware of the situation of the candidate. Here we see a tripartite partnership undertaken by MHA, MOM and MOE.

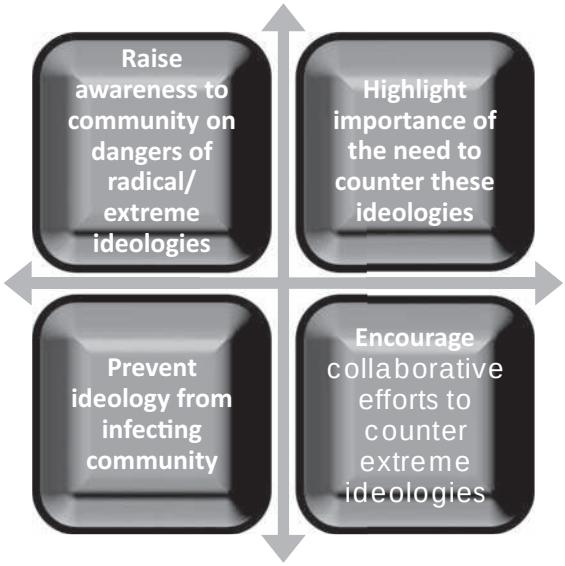
In implementing terrorist rehabilitation, we have identified challenges. For example, some governments may not be willing to invest in a soft approach and may prefer the kinetic approach as religion is seen as a private affair.

In some countries, the involvement in religion should remain in the private sphere. It's a fallacy to look at the programme as one that strictly focuses on religion. While counsellors do teach about Islam, the programme is really about de-radicalization, and you cannot pull someone away from extremism unless you touch on all the reasons that have driven a person to engage in violence.

There is no way we can guarantee that rehabilitation is a full proof process. But to measure, for instance we could look into recidivism in Singapore. Since 2002, of 83 people detained under ISA for terrorism related activities, 62 were then released. To date there have been reported only two cases of recidivism and this is a very low figure.

IV. COMMUNITY ENGAGEMENT INITIATIVES

A. Objectives



While there have been many initiatives, designed and implemented in Singapore for corrective purposes, since 2002, Singapore has been active in getting the participation of the public to build community resilience. As a society, Singapore has always emphasised the need to build trust between communities and decades of work have gone into developing such relations. The Inter-Racial Confidence Circles (IRCCs), set up in 2002, helped entrench these efforts, as did the Community Engagement Programme, launched in 2006, with the latter now receiving an important refresh through the SGSecure movement.

SGSecure is our community's response to the terror threat. It is a national movement to sensitise, train and mobilise the community to play a part to prevent and deal with a terrorist attack. It is a call to action for everyone to unite and safeguard our way of life. The intent of terrorists is to inject fear and weaken the psychological resilience and social fabric of our society. This is why the cornerstone of our counter-terrorism strategy must be the strengthening of community vigilance, cohesion and resilience. We can all do our part to keep Singapore safe and secure.

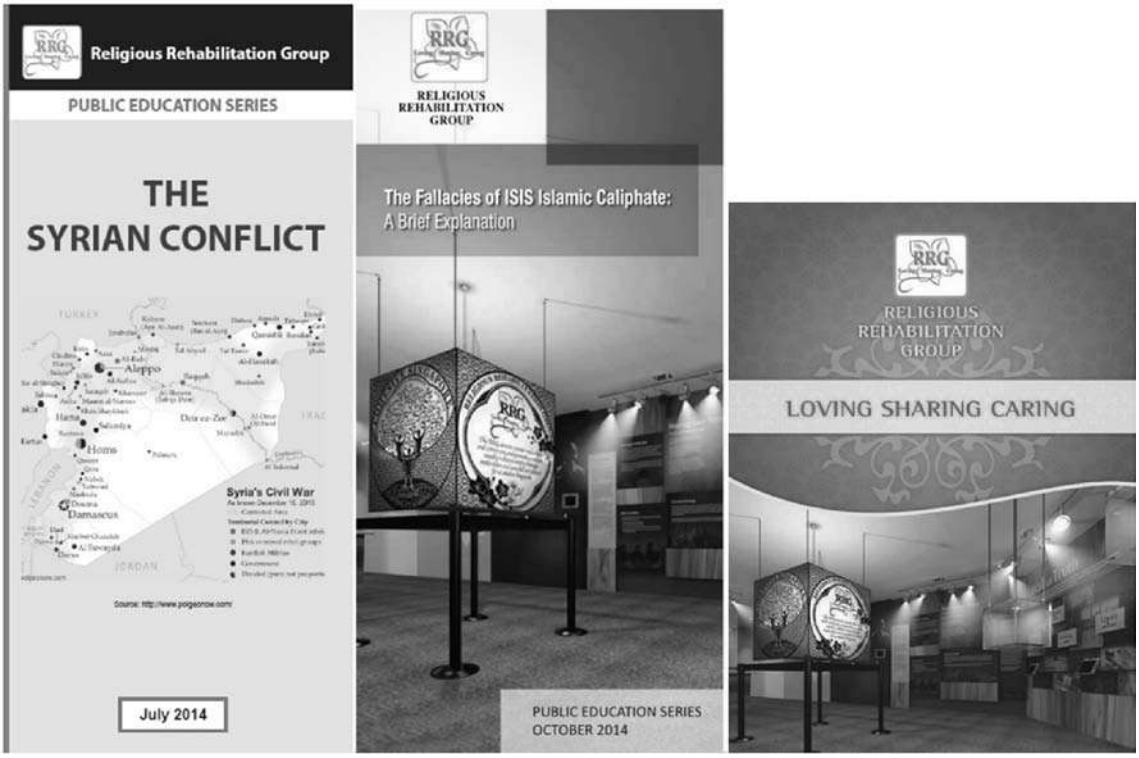
The message that Islam is a peaceful religion needs to be amplified. The table below shows the messages that RRG, ICPVTR and other bodies are communicating with the members of the public.

Islam prohibits extremism and promotes moderation	Muslims must avoid extremist narratives	Counter-ideology is an integral part of counter-terrorism efforts
Terrorists do not represent any religion	Upholding values of peace, acceptance and respect	Promote harmonious living in multi-racial & multi-religious Singapore

B. In Community Engagement

RRG has made several efforts through establishing an Intellectual Partnership with Academicians, Institutions (RSIS) building Social Networking with Government Agencies, NGOs, and Multi Religious Organizations & Grassroots, thus promoting Community-based Learning by having Dialogue Sessions or Closed-Door Discussions, Forums and talks.

The RRG helpline was launched in June 2015. This is a toll-free helpline as part of RRG effort to provide outreach services to the community at large. The public can use the helpline to clarify religious concepts or seek help if they are unsure or wanting to help someone they know who might need help. The RRG App launched in June 2016, allows members of the public to chat with counsellors on issues related to ideologies or terrorism-related matters. This App allows booking of the RRG resource and counselling centre for visits.



Besides the helpline and Apps, we produced publications. This is intended to provide the public with information to clarify doubts on terrorism-related events or issues currently in public debate.

The Islamic Religious Council (MUIS) of Singapore's efforts to counter extremism and exclusivism include: 1) Pre-sermon on Fridays before the mandatory Friday prayers for men 2) certification programmes for graduates returning from Islamic Institutions abroad and 3) Mandatory Asatizah Recognition Scheme (ARS).

Topics covered in the Friday pre-sermons, range from the fallacy of ISIS' so-called Islamic caliphate, to the need to avoid literal interpretation of religious texts — an approach that is prevalent among extremists — and the concept of moderation in Islam. MUIS has also worked with the RRG on themes such as the

importance of staying vigilant, and building resilience against extremist and exclusivist ideologies.

Certification programmes for graduates returning from overseas Islamic institutions feature automatic enrolment into the programme, which aims to familiarise them with how Islam should be practiced in Singapore's context. A 10-day pilot was run last year, and a second run is due in 2017. It is being adapted into a certification course, which has been made a compulsory requirement in the Asatizah Recognition Scheme. This was launched in early 2017. The scheme, which endorses qualified religious teachers in Singapore, move to ensure the community knows whom to turn to for credible religious advice.

In conclusion, the soft approach in countering terrorism must be positioned strategically. Governments must introduce both preventive and corrective measures in addressing violent extremism. The challenge today is to ensure terrorists are rehabilitated in the best possible way. This is imperative because if not rehabilitated, these terrorists when released will pose security threats, become terrorist iconography and influence the rest of their family members or the larger community.

PARTICIPANTS' PAPERS

CONTROLLING THE ACTIVITY OF CRIMINAL FACTIONS WITHIN THE BRAZILIAN PRISON SYSTEM

*Carlos Vinicius Soares Cabeleira**

I. THE CHARACTERISTICS AND CURRENT STATE OF ORGANIZED CRIME AND TERRORISM

A. The Current State of the Brazilian Prison System

In June 30, 2014, which is the date of the latest official data available[1], Brazil had a prison population of 607,731 inmates, distributed in 1,424 prisons spread over the country. The installed capacity of these prisons is 376,669 places[2], which means that there is an overcrowding of 61%. The prison population grew by an average 7% per year from 2000 to 2014, while the total population grew only a much smaller average of 1%.

In absolute numbers, Brazil has the fourth largest prison population in the world, after the United States, China and Russia. Relative to their general population, rates of imprisonment in these countries also rank Brazil as the fourth largest prison population: only the United States, Russia and Thailand have more people behind bars.

The Brazilian federal prison system comprises 4 prisons, each one with 208 vacancies, where the most dangerous criminals and leaders of criminal organizations are held. All other prisons are run by the states. The state of Espírito Santo manages 35 prison units. By June 13, 2017, it counted 19,778 inmates for a total of 13,873 vacancies.

B. The Current State of Terrorists in the Brazilian Prison System

Terrorist groups and cells have not been acting significantly in Brazil. There have been no reports of terrorist attacks since the country's re-democratization in 1986. There are groups of individuals carrying out illegal activities similar to terrorism. However, they do not fit into the most usual international definitions. Among them, left-wing oriented social movements such as the Landless Rural Workers Movement (*Movimento dos Trabalhadores Rurais Sem Terra – MST*), which promote occupation and often depredation of public buildings, as well as highway blockades. Also, the news has been frequently reporting attacks to police facilities and public buildings promoted by criminal organizations related to drug trafficking, such as the First Command of the Capital (*Primeiro Comando da Capital – PCC*) from São Paulo and the Red Command (*Comando Vermelho – CV*) from Rio de Janeiro.

The National Security Act issued during the military government (Law 7170/1983) incorporated a broad definition of terrorism, which was criticized by Criminal Law scholars for not describing in detail the criminal conduct, as can be seen from article 20:

> Article 20 - Devastating, pillaging, extorting, robbing, kidnapping, keeping in false imprisonment, setting fire, wrecking, provoking explosion, assaulting individuals or carrying out acts of terrorism, for political non-conformity or acquisition of funds intended for maintaining clandestine or subversive political organizations. (Punishment: imprisonment, from 3 to 10 years.)
>
> Sole Paragraph – Should the assault result in aggravated battery, the punishment shall be increased in up to double; should it result in death, the punishment shall be increased up to three times.

* Federal Prosecutor, Espirito Santo Prosecution Service Office, Federal Prosecution Service, Brazil.

[1] http://www.justica.gov.br/seus-direitos/politica-penal/documentos/relatorio-depen-versao-web.pdf

[2] The Globo Media Group, in January 2017, has come to the number of 668,182 inmates for 394,835 vacancies, which means an overcrowding of 69.2%. http://g1.globo.com/politica/noticia/am-supera-pe-e-lidera-ranking-de-superlotacao-em-presidios-brasil-tem-270-mil-presos-acima-da-capacidade.ghtml

In fact, the conduct criminalized by virtue of article 20 was similar to then existing definitions of criminal acts. New definitions brought by Law 7170/1983 were qualified as "crimes against national security, political and social order" depending on the element of *mens rea*. Criminal intent sufficient to qualify such offences, however, was not clear. On the other hand, the conduct of terrorism was described only as "carrying out acts of terrorism".

With the intensification of international terrorism, notably after the 9.11 attacks in New York, Brazil became a signatory to international agreements and was pushed to pass legislation that would promote more modern and detailed criminalization of terrorism. Such legislation has become more urgent with the designation of Brazil to host world events such as the 2014 FIFA World Cup and the 2016 Olympic Games.

Law 13260/2016 came into force on March 2016, a few months before the Olympic Games. It incorporated the following legal definition of terrorism:

> Art. 2 Terrorism consists in the practice by one or more individuals of the acts foreseen in this article, for reasons of xenophobia, discrimination or prejudice in regard to race, color, ethnicity and religion, when committed for the purpose of provoking social or generalized terror, exposing persons, property, public peace or public safety to danger.
>
> Paragraph 1. The acts of terrorism are:
>
> I - use or threaten to use, carry, keep, possess or bring explosives, toxic gases, poisons, biological content, chemical, nuclear or other means capable of causing damage or promoting mass destruction;
>
> II and III – (VETOED);
>
> IV - to sabotage the functioning of or to seize, with violence, by means of posing a serious threat to persons, or through making use of cybernetic mechanisms, the total or partial control, albeit on a temporary basis, of means of communication or transportation; ports; airports; railways or bus stations; hospitals; nursing homes; schools; sports stadiums; public facilities or places where essential works of public services are performed; facilities for the generation or transmission of energy; military installations; facilities for the exploration, refining, and processing of oil and gas; and bank institutions or their service network;
>
> V - to make an attempt against the life or physical integrity of a person.
> Penalty - imprisonment, from 12 to 30 years, in addition to the sanctions corresponding to the threat or violence elsewhere prescribed.
>
> Paragraph 2. The provisions of this article do not apply to the individual or collective conduct of persons in political manifestations, social movements, trade unions, religious, class or professional category, directed by social or claim purposes, aiming to contest, criticize, protest or support, with the purpose of defending constitutional rights, guarantees and freedoms, without prejudice to the criminal classification contained in law.

The aforementioned statute has been enforced only once, in the so-called *Hashtag case*, which culminated in the arrest of 10 persons suspected of terrorist activity on July 21, 2016. In September 2016, Brazil's Federal Prosecution Service indicted eight of those persons based on the new counter-terrorism law. On May 4, 2017, the defendants were sentenced to imprisonment from 5 to 15 years. The sentence is still subject to appeal. Four of them are currently under pre-trial arrest, incarcerated in federal prisons[3].

Considering the limited importance of Brazil to international terrorism and the fact that anti-terrorism legislation was passed a little more than a year ago, with only one sentence of conviction imposed so far, Brazil has no experience with the rehabilitation of prisoners convicted of terrorism.

[3] http://brasil.elpais.com/brasil/2017/05/06/politica/1494076153_663185.html

C. The Current State of Organized Crime in Brazil

On the other hand, organized crime has played a key role both in the context of high-level national corruption and in the context of urban violence related to drug trafficking.

As to the first, it is worth mentioning the now worldwide famous *Car Wash case*[4], which has revealed criminal acts by the current President of the republic, former Presidents of the republic, ministers and former ministers, congressmen, state Governors, hundreds of politicians and low-level civil servants, in association with the largest business groups in the country. It has already been shown that this criminal organization was responsible for fundamental decisions in the direction of the country in recent years. *Car Wash* has resulted in several defendants being convicted so far, whereas some other defendants are still under pre-trial arrest. Corruption-related organized crime, however, is not relevant in the context of the prison system.

Organized crime related to drug trafficking is the most pressing problem for the Brazilian prison system. In March 2017, around 32.6% of prisoners were held for illicit drug trafficking[5]. Among women, the percentage grows up to 70%[6]. In addition to that, trafficking of illicit substances fuels firearms and ammunition smuggling, as well as the bulk of police corruption. Most homicides are related to drug trafficking. Even property crimes such as theft, bank or vehicle robbery have a strong link to the trafficking of narcotics, as they are a means of financing drug use, paying debts related to trafficking, or simply a way to raise money for criminal organizations, when the crackdown of drug trafficking itself increases.

It should be stressed that simple personal consumption of drugs, although still formally a criminal offence, does not lead to imprisonment, since a number of alternatives to incarceration are at hand. In fact, drug users are seldom being subjected to law enforcement. Even petty trafficking has been treated more leniently by the courts. As a result, it is unlikely that a defendant will be sentenced to a long prison term for drug trafficking alone.

Thus, it can be said that criminal organizations related to drug trafficking are responsible for the most criminal convictions. The greatest threat to the correctional system, however, is the domination of prisons by these organizations, known as criminal factions.

D. The Current State of Organized Crime in the Brazilian Prison System

In October 2016, the warfare between aforementioned criminal factions PCC and CV led to rebellions in the states of Rondônia, Roraima and Pará, with the death of 18 detainees. In 2016, Brazil had 379 violent deaths inside prisons. The state of Espírito Santo had none[7].

In January 2017, the same 'war' led to the deaths of 60 inmates inside a prison in the city of Manaus, state of Amazonas, and 33 inmates were killed in Roraima. In Manaus, the victims were members of the PCC, while in Roraima the members of the PCC were the executors. Between January 1st and 16th 2017, violent deaths in Brazilian prisons reached a peak of 133[8].

These events of violence and related numbers demonstrate that many prisons are completely dominated by criminal organizations. Over them, the state has no control. Very often, state control is only exercised off the walls, to prevent prison-breaks, whereas the internal routine of prisons is dictated by the leaders of criminal factions.

Even in state-controlled prisons, order is often maintained only by the separation of prisoners affiliated to different criminal factions in different wings, which makes those prisons a space for strengthening these organizations and increasing their internal cohesion.

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[4] For a case presentation in English: http://www.mpf.mp.br/atuacao-tematica/sci/car-wash-case/car-wash-case-brasilia-april-2016.pdf The official website in portuguese is http://lavajato.mpf.mp.br/lavajato/index.html

[5] http://g1.globo.com/politica/noticia/um-em-cada-tres-presos-do-pais-responde-por-trafico-de-drogas.ghtml

[6] https://jota.info/artigos/10-anos-da-lei-de-drogas-quantos-sao-os-presos-por-trafico-no-brasil-24082016

[7] http://g1.globo.com/politica/noticia/brasil-teve-mais-de-370-mortes-violentas-nos-presidios-em-2016.ghtml

[8] http://g1.globo.com/bom-dia-brasil/noticia/2017/01/mortes-em-presidios-do-pais-em-2017-ja-superam-o-massacre-do-carandiru.html

The domination of criminal factions over the prison system is fundamentally linked to the lack of resources being invested in the prison system: (i) lack of investment in the increasing of vacancies, which leads to permanent overcrowding; (ii) low numbers of prison staff, leading to difficulty in controlling inmates; (iii) lack of investment in technologies such as surveillance cameras, metal detectors, X-ray machines; (iv) lack of physical structure for legal, medical, dental, psychological and social assistance; (v) permission for visitors to bring inside prisons food, clothing, medicines and hygiene material, which are not adequately supplied by the state; and (vi) lack of job opportunities, education and professional qualification.

The state of Espírito Santo has made massive investment in its prison system over the last ten years. These investments led to the building of new prison units, the hiring and training of prison staff, and ultimately the re-gaining of prison control by the state, with full provision of all the needs of inmates and the prohibition of private materials inside the prison system. For those reasons, Espírito Santo has been currently regarded as a model for other states in Brazil.

II. DISENGAGEMENT INTERVENTIONS IN PRISON

A. Prison Intelligence and the Separation of Faction Members

For the disarticulation of criminal organizations in the prison system, prison intelligence activity plays a crucial role. Prison intelligence works by identifying negative leaders in the prison environment, members of wealthy criminal organizations, violent prisoners, prisoners capable of inciting uprising and indiscipline.

Initially, these prisoners are separated inside the prison unit in specific wings or cells. The most serious cases are transferred to maximum security units or to the federal prison system.

Practice has shown that the separation of prisoners by criminal offence type, with the exception of a few exceptional cases such as sexual offences, is not the best strategy. Separation of prisoners in accordance with their level of reintegration can be more effective. First, if the focus is on social rehabilitation and reintegration, the most important thing is what the prisoner sees in his/her future instead of the crime he/she has committed in the past. Second, the absolute majority of prisoners have been sentenced for drug trafficking or related offences, so there is significant homogeneity. Third, the grouping of prisoners who study, work, or take part in a particular rehabilitation programme facilitates their movement inside prison facilities, and stimulates the mutual encouragement to maintain discipline and make progress towards re-socialization. In addition, for security reasons, since inmates who work or study may be pressed by others to bring prohibited items to the cells or carry unauthorized communications, it's better that they dwell separately.

In addition to prison intelligence considerations, classification and separation are decided by multidisciplinary commissions, the Technical Classification Commissions, taking into account a range of criteria.

Acts of indiscipline are punished through administrative processes. Serious misconduct reflects in the impossibility of obtaining progression of prison regime and legal benefits such as pardon, grace, commutation of sentence or conditional release. Less serious misbehaviour entails less harsh consequences, such as temporary bans on social visits or intimate visits, bans on playing games in the cells or watching movies or TV in the wings.

Law 10792/2003 introduced what is termed Differentiated Disciplinary Regime (*Regime disciplinar diferenciado - RDD*). This prison regime is designed for highly dangerous prisoners, and is intended to last a maximum of a 1–year term in which the prisoner is deprived of collective activities, work or study, remaining 23 hours a day in his individual cell. Social visits and interviews with lawyers, however, are maintained. If separation in specific wings or maximum-security units does not suffice, the detainee may be put under RDD.

Law 11671/2008 regulated the system of federal prisons, designed to remove inmates with great articulation capacity from their state of origin. The federal system is the destiny of the top leaders of criminal factions. Although some degree of communication with the criminal faction outside prison still remains, no breakouts have been reported since its creation.

The isolation of leaders of criminal factions is impossible as long as they are entitled to contact visits, whether social visits or intimate visits, or even have physical contact with lawyers. The other way of breaking the isolation regime is by means of corrupting prison agents.

Apart from the isolation of members of criminal factions from the outside world, segregation of members of criminal organizations from other prisoners who are not part of these organizations is crucial. These prisoners become employees or servants of faction members and begin to carry out their orders, including outside prisons upon release. These orders are related especially to sending scraps abroad; practising acts of indiscipline, and even beating up or executing prisoners of other factions.

Criminal organization members seek to be as disciplined and obedient as possible, in order to be entitled to the benefits related to good behaviour, and to get out of jail quickly. All their indiscipline acts are carried out through the other prisoners, who even assume the authorship of the leader's crimes or disciplinary faults.

B. Progressive Execution of the Prison Sentence

The execution of sentences in Brazil takes place progressively. There are three statutory penalty regimes: closed, semi-open, and open regimes. A convicted defendant may begin to serve his/her sentence in any of these regimes depending on the length of the sentence imposed, the type of crime committed and the personality of the sentenced person. Then, after certain periods of time and maintaining good behaviour, a prisoner can progress to a more favourable regime.

A closed regime is executed in maximum-security or average-security prison units. It allows the inmate to work, study or participate in re-socialization programmes inside the prison unit. Initial closed regime is applicable for prison sentences of more than eight years or those resulting from a conviction for heinous crimes, including terrorism.

A semi-open regime is implemented in the so-called agricultural or industrial colony. It allows an inmate to work or study outside the prison unit if certain requirements are met. A prisoner is entitled to temporary exits of up to seven days, up to four times a year. It is the initial prison regime for sentences from four to eight years of custody.

An open regime is based on self-discipline of the inmate, who must work or study outside the prison system without supervision, remaining at a designated place at night and on days off. Although it is expected that the sentenced would sleep at certain public establishments called sheltered houses (*Casa de albergado*), due to their scarcity, usually they practice the house recollection. Community labour and periodic attendance at court may also be added as conditions of this prison regime.

In many states in Brazil, the open regime can be executed through electronic monitoring. The main use of electronic tagging, however, is as a substitute for pre-trial detention.

There is also conditional release (*livramento condicional*), by means of which an offender can leave prison under parole. It is intended for those convicted who have served one-third to two-thirds of the sentence, depending on the crime committed. He/she must comply with certain conditions such as attendance by social service staff.

III. MECHANISMS FOR REHABILITATION AND SOCIAL REINTEGRATION

The main mechanism of social re-insertion carried out in prison units is internal and external work, paid or voluntary — unpaid, but never forced. Unpaid work is not mandatory under the Brazilian legal framework, but it allows a reduction of sentence and is one of the main factors taken into account when selecting an inmate for paid work. Work of the inmate is stimulated with tax benefits and exemption from labour charges. Nevertheless, it still faces great resistance from society and companies, so there are few workplaces in the prison system.

Likewise, formal education and professional training are not compulsory, but they ensure a reduction of the sentence term, preparation for a paid job during the sentence and afterwards. Despite the absence of

statutory provision, judges sometimes admit that the mere reading of certain books, accompanied by a review to be evaluated by an appointed teacher, can also reduce prison time.

Psychological care and treatment of the prisoner's health are fundamental mechanisms for re-socialization, in large part by the recovery of self-esteem and dignity, especially when it comes to dependants of chemical substances.

There is also strong presence of social services, seeking to resolve documentary barriers to work and promoting the monitoring of prisoners by families.

A major ally of the prison system are religious assistance groups, almost entirely Protestant and Catholic Christians. They have easy access to prison units, to attend individually and to worship in common. In almost every case, desisting from crime and drug use is heavily influenced by religious engagement. In any case, for many sentenced persons, religious practice does not prevent them from returning to their previous criminal life as soon as they leave the prison system.

Experience in the prison system shows that family and religious practice are the most important motivational factors for re-socialization. In the case of members of criminal organizations, they are the only ones.

Criminal factions are governed by their own statutes of mutual protection and vows of reciprocal loyalty. Desertion is punishable with death as provided in the PCC statute. In some other criminal factions such as the First Command of Vitoria (*Primeiro Comando de Vitória – PCV*), in addition to death, the individual conversion to a Christian faith is the sole reason accepted for abandoning the faction.

Drug trafficking is a highly profitable economic activity, which allows individuals to enjoy an economic standard of living absolutely inaccessible to people without formal education, who came from humble families and who have no interest in working hard. It is difficult for the common trafficker to comply to the rules of honest work, which requires much more dedication and discipline and provides much smaller gains. This breakup requires a great deal of will, family support, and humility.

For members of criminal factions, the punishment of death for desertion is the factor that virtually prevents their re-socialization. After adhering to a criminal faction, criminals treated each other as "brothers" and enter a network of mutual protection that provides them with legal and financial support and protects their family when they are incarcerated. Upon release, they have an obligation to remain in their previous criminal life in order to obtain resources for the faction to be able to also support those who are in jail. Desisting from crime and breaking such commitment are considered crimes that cannot be forgiven, subject to capital punishment. Only if he/she can move away and disappear, along with his/her family, would it be possible for him/her to untie.

IV. CONCLUSION

Terrorist organizations still have little penetration and little activity in Brazil. Criminal organizations linked to drug trafficking, however, play a leading role not only in criminal life in general, but also in the functioning of Brazilian prisons. There are many prison units controlled by criminal factions, responsible for almost all murders within the prison system.

The lack of investment in the prison system, either because of lack of resources or because of political disinterest, is the main reason why the state has lost control of these prisons.

There is a plethora of support activities aiming at re-socialization, promoted by the state, although insufficient due to lack of resources. The re-socialization of members of criminal factions is largely hampered by the death penalty they impose on deserters, combined with the low profitability of legal activities as opposed to those coming from drug trafficking.

Only the neutralization of these organizations within the prison system, through effective control by the state, can prevent their continued growth and serve as a basis for the fight by the criminal law enforcement

agencies on the streets.

REHABILITATION AND SOCIAL REINTEGRATION OF ORGANIZED CRIME MEMBERS AND TERRORISTS

*Ahmad Naser Altaharwah**

I. INTRODUCTION

Prisons matter. They have played an enormous role in the narratives of every radical and militant movement in the modern period. They are 'places of vulnerability' in which radicalization takes place. Yet they have also served as incubators for peaceful change and transformation. Much of the current discourse about prisons and radicalization is negative. But prisons are not just a threat — they can play a positive role in tackling problems of radicalization and terrorism in society as a whole.

The objectives of the rehabilitation are to change the individual's belief system, rejecting the extremist ideology, and embracing mainstream values, emphasizes that the extremists do not actually care about us, but callously use them to achieve their own objectives. Also, the prison is to prevent the most ideologically committed individuals from converting more vulnerable persons and offer them alternatives.

II. SUCCESSFUL DERADICALIZATION DEPENDS UPON AN UNDERSTANDING OF THE PATH TO RADICALIZATION

A sound deradicalization programme needs to learn from how individuals become radicalized: indeed, both radicalization and deradicalization lean heavily on family or other social ties, and the Internet is increasingly playing a large role in both. Indeed, a particularly striking feature of radicalization is that today it happens primarily over the Internet. As this paper will explore in greater depth later on, an individual need have had no prior contact with a terrorist group, nor have ever traveled to those countries where the group is active, to become directly involved with terrorism. This trend of "self-recruitment" has moved many governments and NGOs to look more closely at the Internet's role in both terrorism and counterterrorism.

Researchers described those generally susceptible to radicalization as having a combination of the following characteristics: trusting a person already involved with a radical group; being "spiritually hungry" and dedicated to their faith, but having limited knowledge of their religion; and being desperate, naïve, or simply in need of money. Those seeking to recruit such people try to cater to their needs and interests.

During the process of radicalization, as described, the "target's" characteristics are identified to determine their suitability for terrorism. They are then engaged in dialogue, befriended, and their social, financial, or psychological needs are addressed as a means of gaining their trust. This part of the process closely resembles the initial steps taken in many deradicalization programmes. However, throughout the recruitment process, radical groups will often isolate the targeted individual and "educate" them about the cause.

If they refuse to participate in violence, they may then be asked to do something seemingly innocuous, like renting a car or an apartment to help out the group. This act is then leveraged to elicit continued participation. For example, they may be told that "the security forces now know about you, and they may torture you." The targeted individual is consequently drawn closer to the radical group.

III. THE APPROACH IN JORDAN

The Government of Jordan's approach is based on the premise that violent extremism is not a political

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issue but rather stems from "misguided youth" taking a "perverse view of Islam." The state has tackled this issue with a two-pronged approach that focuses on military measures and an education initiative. Much of the state's action has resulted from its own experiences with terrorism, especially the 2005 Amman hotel bombings, which have led it to take a more comprehensive and aggressive approach to violent extremism.

However, the real blow against radical groups has come not from the state's deradicalization activities but from the impact of the 2005 bombings, the devastation of which led to a decline in support for extremist groups.

The security steps taken by the state have led to the infiltration and monitoring of these groups as well as crackdowns, arrests, and prosecutions. Jordan also introduced an Anti-Terrorism Law and a Fatwa Law in 2006, which gives only clerics sanctioned by the state the right to issue fatwas. The Anti-Terrorism Law has been viewed by critics as being detrimental to civil society because of the freedoms it undermines.

The cultural initiative to tackle the problem began with the Amman Letter of 2004, which confronts Islamist extremism with its presentation of a wide consensus against its ideology.

The Letter was issued following an accord with 180 prominent Muslim scholars representing a range of schools of Islamic thought. The aim of the initiative was to refute and delegitimize certain radical interpretations of Islam and bring back the focus to disseminating a moderate and apolitical Islam. This has been followed up with conferences as well as media outreach on television and radio. Interestingly, Jordan has seen a spillover effect from the Saudi deradicalization programme in the form of its prison inmates demanding a dialogue with the state. The demand of prisoners for dialogue with religious scholars led to a two-month ad hoc programme, which included debates and lectures. However, a speaker noted that the programme was not a success, as many inmates felt that the state had not provided tenable, independent scholars—a misjudgement that significantly weakened the programme. The need for a credible prison programme is particularly urgent in Jordan as studies indicate that its jails have proved to be a hothouse for the growth of extremism.

IV. DEREDICALIZATION IN JORDAN

Jordanian deradicalization is based on the following:

A. Contain a mix of different kinds of programming, typically combining ideological and/or religious re-education with vocational training

B. Pay attention to facilitating prisoners' transition from prison back into mainstream society, typically by providing them with the means for a new beginning and by establishing (or re-establishing) social networks away from extremism

C. One of the overriding aims is to reduce opportunities for re-offending and increase the social and material cost of doing so. Much of the activities in sophisticated programmes are consequently geared towards locking prisoners into commitments and obligations towards family, community, and the state

D. The programme realized that the structure and instruments must reflect local contexts and conditions, in particular prisoner population, and their individual and collective needs and motivations;

   1. the nature and ideology of the groups to which prisoners used to belong;

   2. the society from which they originate, its structure and customs;

   3. the dynamics of the wider conflict and other external conditions, which may affect the programme's outcome.

   4. The need to consider what the societies in which they take place find politically and ethically acceptable.

5. The programme realized that it can be significant when both external conditions and the wider political environment are conducive. In particular, they can play an important role in facilitating the transition from conflict to peace when the political momentum is no longer with the terrorists and/or conflicts are winding down.

6. Religious Members, the members will directly engage in the prisoner dialogues and the counselling process. The sheikhs are typically approached on a personal basis and asked whether they would like to participate in the committee activities and engage in dialogue with detainees. Key in selecting members is communication style. One member is a formal extremist who has changed his ideas and perceived as good role model.

7. Members trained on psychosocial support (preferably on psychology) and members trained on social skills, these members focus primarily on evaluating a detainee's social status, diagnosing any psychological problems and determining the type of support the prisoner and his family may need after his release.

8. Security Members, security members are to evaluate prisoners for security risks and then make release recommendations based on input provided by the Religious, Psychological and Social members. One of the Security Members serves as the overall Chief of the Advisory Committee.

9. Media Members. Media members produce materials aligned to the agreed Communication Strategy used for sensitizing the community about the deradicalization project. This will include public educational materials for use in schools and mosques, focused on outreach and education, primarily targeting young Somali men using Internet, radio, television, and print media.

10. The Jordanian deradicalization programme shows that prisons are not just about locking people away, but that they can make a real and positive contribution to tackling problems of radicalization and terrorism in society as a whole.

V. CONCLUSION

Prisons matter. Often ignored by the public and policymakers, they are important vectors in the process of radicalization, and they can be leveraged in the fight against it.

Much of the public debate about prisons and terrorism is about locking people away. This paper has aimed to focus a more sophisticated understanding of the role prisons can play in radicalizing people — and in reforming them. In doing so, it has analysed the policies. Take, for example, prison regimes for terrorists. Governments everywhere have had to address a trade-off between wanting to treat terrorists 'just like other prisoners' and preventing them from mobilizing outside support, recreating operational command structures, and radicalizing others.

The paper showed that there are no hard and fast rules about whether terrorist prisoners should be concentrated, separated and/or isolated. In fact, most of the countries that have been looked at practice a policy of dispersal and (partial) concentration, which distributes terrorists among a small number of high security prisons. Even within such mixed regimes, however, it rarely seems to be a good idea to bring together leaders with followers and mix ideologues with hangers-on.

The wider, and perhaps even more important, problem is that — in most of the countries that have been looked at — prison regimes for terrorists are informed by the demand for security before everything else. While understandable, the 'security first' approach has resulted in missed opportunities to promote reform. Many prison services seem to believe that the imperatives of security and reform are incompatible. In reality, though, reform does not need to come at the expense of security. Prison services should be more ambitious in promoting positive influences inside prison, and develop more innovative approaches in facilitating prisoners' transition back into mainstream society.

Another issue which this paper has devoted much attention to is that of prison-based radicalization. Prisons are often said to have become breeding grounds for radicalization. This should come as no surprise.

Prisons are 'places of vulnerability', which produce 'identity seekers', 'protection seekers' and 'rebels' in greater numbers than other environments. They provide near-perfect conditions in which radical, religiously framed ideologies can flourish. While the extent of the problem remains unclear, the potential for prison radicalization is significant, and the issue clearly needs to be addressed.

Based on the research, it seems obvious that over-crowding and under-staffing amplify the conditions that lend themselves to radicalization. Badly run prisons also create the physical and ideological space in which extremist recruiters can operate at free will and monopolize the discourse about religion and politics.

For many prison systems, therefore, the first and most important recommendation is to improve general conditions, avoid over-crowding, train staff, and provide meaningful programming that allows prisoners to develop stable inmate identities. Prison imams are important in denying religious space to extremists, but they are not a panacea.

Not all the findings in this paper are negative. The paper shows that, while certain countries fall short of even the most basic good practices, others have recognized the enormous potential for prisons to become net contributors in the fight against terrorism, and have encouraged — sometimes sponsored — initiatives that seek to promote disengagement and de-radicalization.

For example, where groups are hierarchical and have strong, authoritative leadership, collective disengagement and de-radicalization becomes possible. Such processes have to be carefully managed. When political concessions form part of the 'deal' between the government and the terrorists, collective disengagement and de-radicalization may, in fact, assume the character of a fully-fledged peace process, and requires the necessary skills, resources, and — above all — patience.

Individual disengagement and de-radicalization, on the other hand, remains understudied and is often misunderstood — despite all the publicity that programmes have attracted in recent years.

Looking at six individual disengagement and deradicalization programmes in the Middle East and South East Asia, the paper has identified key principles, which will help policymakers understand the phenomenon and identify elements of best practice that can be adopted in their own prison systems.

Whether individual disengagement and deradicalization programmes can make a strategic contribution to bringing a terrorist campaign to an end remains to be proven. The programmes that have been examined suggest that they can — as long as the political momentum is no longer with the insurgents and other external conditions are conducive. An over-reliance on individual disengagement and de-radicalization programmes as the primary means of fighting terrorism should be avoided, therefore — they complement rather than substitute other instruments in the fight against terrorism.

In bringing together the experiences of 15 countries, the paper has attempted to show the diversity of policy and practice across the world. Not every lesson may be relevant or applicable in every context, but — taken together — they demonstrate the enormous possibilities for prisons to make a positive and significant contribution to countering terrorism.

INDIVIDUAL PRESENTATION ON THE REHABILITATION AND SOCIAL REINTEGRATION OF ORGANIZED CRIME MEMBERS AND TERRORISTS

*Soufiane Ahoujil**

The topic of extremist offenders in Morocco surfaced in May 2003 as five suicide bombings took place in Casablanca. In the ensuing crack-down, the Moroccan authorities arrested 1100 terrorist suspects (more than 50 sentenced to life in prison and 16 to death). Since then, several terrorist cells have been dismantled and many radicals have been arrested for the formation of terrorist groups and the preparation for terrorist attacks. Thus, the Moroccan Prison Department has adopted different approaches to manage this specific category of offenders by ensuring effective security measures and developing and implementing suitable reintegration programmes.

The present paper emphasizes the new management mode of offenders in Moroccan prisons, in terms of security and reintegration, while providing some relevant statistical data on regular and extremist offenders.

A. Statistical Data on Extremist Offenders in Morocco

1. Extremist Offenders in Morocco since 2008

Year	Extremist offenders	Prison population	%
2008	**852**	**59212**	**1.43**
2009	**730**	**57563**	**1.26**
2010	**755**	**64877**	**1.16**
2011	**635**	**64833**	**0.97**
2012	**582**	**70758**	**0.82**
2013	**604**	**72005**	**0.83**
2014	**764**	**74941**	**1.01**
2015	**915**	**74039**	**1,23**
2016	**970**	**76139**	**1.27**
March 2017	**1062**	**77784**	**1,36**

From 2008 up until 2012, the vast majority of offenders were incarcerated since the 16th May 2003 attacks. However, starting from 2012 up until the ongoing year, the number of extremist offenders grew bigger due to the increasing scale of the various hotbeds of tension in the world, namely Syria, Iraq, the Sahelo-sub-Saharan region, and the south of Libya.

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2. Extremist Offenders of Foreign and Dual Nationality

Nationality	Number
Algerian	**2**
French	**3**
Tunisian	**1**
Italian	**1**
Chadian	**1**
Turkish	**1**
French-Algerian	**1**
Moroccan-French	**5**
Moroccan-Belgian	**6**
Moroccan-Dutch	**1**
Moroccan-Hispanic	**1**
Total	**23**

B. The New Security Approach in Extremist Offenders' Management

The management mode of extremist offenders in Morocco has evolved gradually. Up until 2014, extremist offenders were gathered in four correctional facilities. Hence, they were able to undertake collective and concerted actions, like the riot they started in one correctional facility. From then on, the Correctional Department decided to reconsider extremist offenders' classification by dispersing them in 47 correctional facilities, mixing most of them with common-law offenders. However, this procedure also proved to have some drawbacks, such as the tendency of extremist offenders to indoctrinate regular ones. In line with these measures, the UNODC Handbook on the Management of Violent Extremist Prisoners suggests that: "*violent extremists should be categorized according to the security risk (escape) and control risk (likelihood of participating in activity that would disrupt the prison or radicalize other prisoners to violence) that corresponds to the findings of their risk assessment*".

The Prison Department had also to cope with the increase of extremist offenders arrested since 2003 (815 out of 1074 offenders) connected in any way with the new hotbeds of tension, especially in Syria and Iraq. This led to the occurrence of extremist rhetoric and attitudes in prisons, as well as connections with drug traffickers likely to provide financial support and to smuggle contraband.

C. The New Classification System in Moroccan Prisons

This system consists in separating extremist from regular offenders according to their risk degree. Similarly, the UNODC Handbook on the Management of Violent Extremist Prisoners states that: "*the classification process is based on the information gained through the individual risk and needs assessment of each prisoner and may be further informed by potential health issues assessed in the course of the medical examination upon admission*".

After the risk and needs assessment process, extremist offenders are classified in four subcategories to ensure complete or partial isolation and efficient supervision:

- *Subcategory 1* includes: "*indoctrinators*", "*instigators*", "*leaders*", "*hard-liners*", the "*indoctrinated*", and "*suppliers of material support*" for potential disruptive actions. Individual cells contain "*indoctrinators*", "*leaders*", "*instigators*", the "*indoctrinated*" and "*indoctrinators*". "*Hard-liners*" and "*suppliers of material support*" are accommodated in collective cells with five beds.

The said category has access to separate courtyards in restricted groups, with restrictions in all movements, namely during visitation, health care, food service and reintegration programmes.

- *Subcategory 2* comprises: introverted extremist offenders and those with psychological vulnerabilities. Besides, the said category houses ideological review offenders, as well as royal pardon/amnesty requests offenders. This isolated category is housed in high supervision units in cells with a capacity of 7 beds each. Collective recreation is organized in successive groups so as to avoid any mass movements. Offenders of this category can be directed in groups under close supervision for indoor medical examination and outdoor hospitalization.

- *Subcategory 3*: is placed in cells with an accommodation capacity of 9 beds and is constituted of compliant offenders yet under supervision. This has reduced the number of prison facilities for this category of offenders from 47 in 2016 to only 18 in April 2017.

D. Extremist Offenders' Participation in Regular Reintegration Programmes in 2016

Programmes	Regular Offenders	Extremist Offenders	Percentage among Extremist Offenders
Vocational training	**7341**	**51**	**4.80 %**
Educational programmes	**3920**	**201**	**18.92 %**
Literacy programmes	**6666**	**40**	**3.76 %**
Total	**17927**	**292**	**27.48 %**

In Moroccan prisons, as illustrated in the table above, extremist offenders are less involved in vocational training programmes than their regular counterparts, preferring higher education in different fields, mainly in religious sciences, law and sociology on account of the fact that only **9.03%** of them are unemployed. It is worth noting that sentence length may justify their desire to pursue long-term studies.

Similarly, the general prison population benefits from sessions of Quran memorization, guidance and religious counselling, delivered by scholars affiliated to the Moroccan Department of Religious Endowment and Islamic Affairs, with the purpose of safeguarding prison population from radicalization. Moreover, 109 extremist offenders out of 9,321 participated in Quran memorization programmes. In addition, 228 extremist offenders out of 90, 460 participated in religious guidance and counselling sessions. However, extremist offenders' low rate of participation in these programmes may be due to the prejudice they hold against official Islamic scholars. However, many of them are fully involved in religious contests, such as Quran psalmody, prophetic Hadiths memorization and Quranic exegesis.

1. Counter-Radicalization Programmes

In early 2016, the Moroccan Correctional department signed a convention with the UNDP on support for Prison system reform, in cooperation with the Rabita Mohammedia of Islamic scholars, which developed and implemented a specific programme funded by the Japanese government, aiming namely at training correctional staff members and religious scholars to identify and analyse extremist signs, attitudes and behaviours, by deconstructing extremist religious rhetoric to prevent regular offenders' radicalization.

The first category of participants is constituted mainly of security chiefs and social workers trained by experts from the Rabita Mohammedia of Islamic scholars. The second category includes peer educators trained by the first category. The training is more didactic than pedagogical, as the kind of language used during sensitizing and persuasion activities is made clear to all offenders.

The training of peer educators started in 6 piloting prison facilities with a view to training 120 peer educators in 60 training sessions. Each session involves 20 offenders, i.e. the total number of offenders to sensitize is 22.000 offenders. For their part, peer educators are assisted by supervisors among the trained correctional staff and religious scholars. Being in charge of the overall follow-up of sensitizing activities, each supervisor assists binomial teams in implementing an evaluation grid on a quarterly basis in each of the six corrections. Hence, to implement the training programme, the Rabita Mohammedia of Ulemas developed a training guide aimed at achieving capacity and skill building relating to counter-radicalization in corrections.

The table below illustrates the number of extremist offenders involved in peer education. Two extremist offenders operated as peer educators for offenders' sensitization:

Target Population	Regular Offenders	Extremist Offenders	
		Salafi-Jihadists	ISIL Jihadists FTFs/Supporters/ Sympathizers
500	465	11	24

Some extremist offenders expressed their wish to participate in peer education:

Salafi-Jihadists	ISIL Jihadists FTFs/Supporters/ Sympathizers	Total
09	06	15

2. Creating Room for Open Debate and Interaction

Two major events were held in this regard. The first one under the theme: "*Citizenship as a key to reinsertion*", which is a summer university organized in September 2016 by the Correctional Department in partnership with national reintegration, human rights and academic institutions and organizations.

In 2017, a Spring University was organized under the theme: "*The Preparation of Inmates: What Role Could Elected Representatives Play?*" Among addressed topics was offenders' voting, (especially those who are not deemed eligible), as well as the role of the parliament in supporting Prisons' overall strategy and offenders' reintegration programmes. Noteworthy, 17 Extremist offenders out of 129 have partaken in activities conducted by the two universities and 20 offenders out of 165 in the second one. Participants have had a successful education path or vocational training. They even have shown great interest in the topics covered and interacted constructively with the lecturers. The general purpose of the meeting was to make extremist offenders call in question their extremist mode of thinking.

The two universities had very positive feedback on the public opinion, more importantly on extremist offenders. At the closing ceremony of Spring University, a speech was delivered by a Salafi jihadist extremist offender connected with the 16th May 2003 terrorist attacks in Casablanca, Morocco. During the event, he expressed his readiness and that of his counterparts to interact positively and constructively with all kinds of initiatives aiming at their reintegration in society, expressing their will to prohibit extremist thoughts and remain devoted to the Moroccan state's fundamental constants.

Civil society actors, members of diplomatic missions and local representatives have all highly appreciated and encouraged the initiative. Likewise, the head of the Prison Department received several letters of gratitude, not only from extremist offenders participating in those debate platforms, but also from those who did not participate at all: they manifested their interest and wished such an approach in offenders' reintegration may continue.

3. Cooperation with International Agencies and NGOs on Deradicalization via Staff Training

Staff training is a key factor to successful deradicalization. In this respect, correctional personnel are to be sensitized and well trained on detecting signs of radicalization. They are also required to learn ways and techniques of radicalization, accountability, professional confidentiality, effective professional communication, conflict management, mediation, ethics, etc. as a means of preventing regular offenders' manipulation or recruitment by radical offenders. To this end, a training guide was developed in 2016 on radicalization prevention in prisons.

In 2016, all correctional psychologists were involved in a training programme delivered by international experts in cooperation with UNICRI on psycho-social assistance to prison populations in general and extremist offenders in particular, while implementing related good practices.

In cooperation with the Global Centre on Cooperative Security (GCCS) a tailored and targeted a training programme (CVE/P) was developed, which was conducted in March 2017 on behalf of 23 frontline prison officials to help them better manage extremist offenders by focusing on understanding and identifying violent extremism and radicalization, identifying the best methods and practices in the management of extremist offenders, as well as defining the role of correctional staff in addressing radicalization in prisons.

IS NAMIBIA A SIMMERING POT FOR TERRORISM AND WOULD THE CURRENT STATUS QUO IN CORRECTIONS BE ABLE TO DEAL WITH THE REHABILITATION OF POSSIBLE FUTURE TERRORISTS?

*Remona Visser**

This paper has two main parts. Firstly, it looks at Namibia as a possible "simmering pot" for terrorist activities, and secondly it aims to see whether or not the current status quo in corrections will be able to deal with the rehabilitation of possible future sentenced terrorists.

The sequence is as follows: First a definition of terrorist activities is provided. This will be followed by outlining some of the key reasons why someone would engage in such terrorist activities and whether or not those reasons are applicable to the Namibian situation. The supposition being that if these reasons are applicable in the Namibian environment this will facilitate the increase of terrorism. At this point protective factors that could inhibit the development of terrorist activities is also discussed.

This will be followed by what is currently happening in Namibia in terms of rehabilitation within a correctional facility, and how this measures up to what is currently being done in other parts of the world in response to the rehabilitation of terrorists.

I. DEFINITIONS

Although defining of terrorist activity remains highly contested in the literature on the subject as well as amongst countries, in Namibia it is defined in the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014). The definition reads:

(a) Any act committed by a person with the intention of instilling terror and which is a violation of the criminal laws of Namibia and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any private property, natural resources, the environment or cultural heritage and is the calculated or intended to-
- *(i) Intimidate, instil fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles;*
- *(ii) Disrupts any public service, the delivery of any essential service to the public or to create a public emergency;*
- *(iii) Create general insurrection in the State; or*

(b) any act which constitutes an offence within the scope of, and as defined in one of the following treaties –
- *(i) the Convention of the Suppression of Unlawful Seizure of Aircraft (1970);*
- *(ii) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);*
- *(iii) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973);*
- *(iv) the International Convention against Taking of Hostages (1979)*
- *(v) the Convention on the Physical Protection of Nuclear Material (1980)*
- *(vi) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988)*
- *(vii) Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (2005);*
- *(viii) Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on*

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the Continental Shelf (2005);
(ix) International Convention for the Suppression of Terrorist Bombings (1997) and
(x) International Convention for the Suppression of the Financing of Terrorism (1999);
(xi) International Convention for the Suppression of Acts of Nuclear Terrorism (2005)
(xii) Convention on the Suppression of Unlawful Acts relating to International Civil Aviation (2010) and
(xiii) Protocol Supplementary on the Convention for the Suppression of Unlawful Seizure of Aircraft (2010);
(c) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) and (b);
(d) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act; or
(e) the payment of ransom to designated persons or organisations, except where such payment is approved or authorised to secure the safety of a national of that country.

II. NAMIBIA AS A SIMMERING POT

A. Conditions That Foster Terrorism

Individuals are propelled to join terrorist organizations and / or to launch a terrorist attack due to prolonged unresolved conflicts; de-humanization and violation of human rights; lack of law; collective grievance and victimization; intolerance or exclusion; lack of good governance; socio-economic marginalization; political discrimination; economic reasons including under/unemployment; lack of educational opportunities, deprivation, attachment to people who are in terrorist organizations; personal experience with unfair treatment; charismatic leaders of terrorist organizations that speak to the disenfranchised and globalization to name a few. (The United Nations Office on Drugs and Crime (UNODC); Kruglanski et al.).

In addition to this, Kruglanski and Fishman (2009) assert that terrorist behaviour can also be understood as a form of psychopathology and/or as reflecting as a unique constellation of personality traits. Thus, individuals who possess a specific problematic personality profile could also foster terrorism as the chances of them being recruited in terrorist organizations could not be overlooked.

It is difficult to establish if these factors prove true for Namibia, as at present there are no documented cases for terrorist offenders in Namibia.

What is discussed above refers to conditions that foster terrorism. In the next section what will be discussed is to what extent the conditions outlined above are relevant to the Namibian context.

B. Factors That Could Be Warning Signs for Namibia

Having looked at some of the basic conditions that foster terrorism one can assess if these conditions are present in Namibia. The author would like to reiterate that the path to offending is different for each individual. The factors and motivations that contribute to offending are unique to an individual, and great care should be taken not to generalize. Furthermore, the presence of the conditions that foster terrorism mentioned under Section 2.1 should not be viewed as conclusive evidence of the presence of terrorism, but merely as warning signs. Warning signs, which without intervention could escalate the current Namibian situation.

From the writer's observation and experience, having worked at a Correctional Facility as a Case Management Officer, there are no known cases of offenders who have been incarcerated due to acts of terrorism. This, however, is not an indication that it does not exist, or that there are no ongoing investigations related to terrorism.

The biggest and longest trial in the history of Namibia took place from 2003-2015. This case was of treason, and it started with the indictment of 132 people who attempted to secede (the Caprivi Strip) from Namibia. Given the definition of terrorism as indicated in the Prevention and Combating of Terrorist and

Proliferation Activities Act, 2014 (Act No. 4 of 2014) it is highly likely that had the Act been in place in 2003 some if not all of the accused would have been tried under the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014).

In recent years there have also been newspaper articles related to terrorist organizations such as Al-Qaeda and Al-Shabaab using Namibia as a springboard for their terrorist activities. (*The Namibian 14.08.2015*). In the last couple of months there have been newspaper reports of a group of young people who call themselves Boko Haram terrorising the streets of Katutura (*The Namibian 24.03.2017*). What is worthy of note about this case is not only the name choice for the group, but also that witnesses described the youth as angry and having no regard for other people. At the very least this indicates that Namibia is not immune to international influence. This influence is made more readily available to people through the easy access to the internet.

Globalization therefore increases the likelihood of Namibia becoming a fertile ground for terrorism. Technology has made it easy to get news as it is developing from around the world. As Namibians we can see what is happening in other countries, the demonstrations, the violence, the tactics used by extremist organizations to get what they want. We are not immune to this information. This information can affect us in two primary ways. Firstly, it can cause Namibians to use those tactics in pursuit of what we want. This has come out in some of the actions of the people who are in pursuit of acquiring land as well as recent activities by the children of the liberation struggle. Secondly, Namibians can view the footage of what is happening around the world and endeavour to take up the fight for those who seemingly cannot fight for themselves.

Namibia has one of the biggest gaps between the rich and the poor (UNDP Income Inequality Report, 2013). According to the last Namibian Housing and Population Census of 2011 the unemployment rate of Namibia is at 37 %. This gap is conducive to the fostering of terrorist activities because the poor which is the majority could feel as if the government is not responsive to their needs, making them fertile to being incited to anarchy. The high unemployment rate, particularly amongst the youth, is significant in three key ways. Firstly, it leads to idleness. If time is not used productively, it creates an opportunity for offending especially when individuals are not able to afford or provide their basic needs or let alone have access to services and resources (Mehlum, Moene & Torvik 2004). This is especially telling as in the last number of years there has been an increase in the number of instances of "land grabbing", which is the illegal occupation and appropriation of land. Making this portion of the population susceptible to recruitment into terrorist activities.

Secondly, unemployment can make the youth vulnerable to recruitment, particularly if they are offered financial or material compensation for their efforts (Kruglanski and Fishman, 2009). Thirdly, it can lead to an increase in anger or feelings of being disenfranchised. These feelings could be exploited by terrorist recruitment officers that aim to direct these feelings of anger at, for example, the government. Terrorists are notorious for distorting or misusing cultural, political or religious beliefs in an attempt to garner support for their nefarious activities (Kruglanski and Fishman, 2009).

The children of the liberation struggle are another group of people vulnerable to recruitment into terrorist activities. As a group these individuals have a collective memory of feeling victimized. They have been airing their grievances over the last couple of years in a variety of ways. They are not above using violence to get their point across. Last year in a struggle between the children of the liberation struggle and the police, shooting broke out where one protestor died. This collective memory of grievance, or sense of feeling oppressed or victimized could easily be exploited by a terrorist organization who might look to recruit in an attempt to cause civil unrest, or to overthrow the government. This group is worth looking into further as they have shown to be both willing and able to use violence in pursuit of their agenda and have been relentless and steadfast in that pursuit.

C. Protective Factors

Namibia is run as a secular state where people are free from discrimination based on religion, culture and ethnicity. The Constitution protects people's right to life, education, to own property, to a fair trial to name a few. People have under the Constitution some inalienable freedoms such as the freedom of speech and expression, freedom of peaceable assembly, freedom of movement and freedom of association. Namibians vote in free and fair elections for their representatives in government including the president, who can serve a maximum of two terms. Added to this is the establishment and running of the Office of the Ombudsman.

One of the key roles of this office is to investigate all violations of the rights and freedoms afforded to the Namibian people under the Constitution of the Republic of Namibia. Since independence, Namibia has also enjoyed relative peace and stability in the country, free from civil war and lawlessness. These factors could be viewed as protective factors against the likelihood of Namibia becoming a fertile ground for terrorism.

III. CAN THE CURRENT STATUS QUO IN NAMIBIAN CORRECTIONAL FACILITIES DEAL WITH THE REHABILITATION OF POSSIBLE FUTURE TERRORISTS?

As stated earlier, at present there are no offenders in incarceration for offences related to terrorist activities. This being said it is important to look at whether or not the Namibian Correctional Service (NCS) will be able to effectively rehabilitate these offenders based solely on what is currently being done.

First the author will look at what has been identified as best practices in the rehabilitation of terrorists in correctional facilities, followed by what is currently being done within correctional facilities in Namibia. The aim is to see if we are on par with global trends and possible shortfalls that need to be ironed out before the NCS is faced with terrorists to rehabilitate while in custody.

A. Global Trends

The UNODC's Handbook on the Management of violent extremist prisoners and the prevention of radicalization to violence in prisons, the UN Standard Minimum Rules for the treatment of prisoners as well as the Rome Memorandum on good practices for Rehabilitation and Reintegration of violent extremist offenders jointly discuss various strategies or good practices for use in the rehabilitation of offenders while in a correctional facility. In a nutshell these include but are not limited to: Respect for human rights and non-discrimination based on race, colour, sex, language, religious or political affiliation; housing offenders in safe, secure and adequately resourced facilities (preventing overcrowding); rehabilitation that is dynamic by relying on input from various disciplines such as social workers, religious leaders, and psychologists; adequately trained and educated staff; effective intake, assessment and classification system; separation of offenders (juveniles from adults, men from women, and tried from untried); medical service;, opportunity to work, improve their education and engage in recreation and sport. These are a few of the elements outlined that improve or foster rehabilitation of offenders.

B. The Namibian Situation

Namibia, as a member of the UN, has ratified all UN resolutions or guidelines including the UN Standard Minimum Rules for the treatment of prisoners. Furthermore, the Namibian Constitution protects all human life and safeguards all offenders' inalienable rights and freedoms secured thereunder. This sentiment is evident in the Namibian Correctional Service Act, 2012 (Act No. 9 of 2012). Some of the key functions outlined in the Act include: to ensure the secure, safe and humane custody of all inmates, rendering health care to inmates, applying rehabilitative programmes and other meaningful and constructive activities that contribute to their rehabilitation and successful reintegration as well as the supervision of offenders on conditional release.

The structure of the Namibian Correctional Service (NCS) has provisions made to assist offenders in a multi-faceted manner. There are Directorates for Rehabilitation and Re-integration (which includes psychological services, educational services, conditional release, community corrections, programmes and research); Health Care; Inmate Affairs, Pastoral Care, Community Supervision and a separate division tasked with female and juvenile offenders. The Government through the NCS provides an offender with their basic needs such as bedding, food, clothing and cleaning materials. Correctional Officers also receive basic training of six months before starting to work with the NCS. This basic training is aimed at equipping correctional officers with the necessary skills to work with offenders. It also provides them with skills to assess dangerous situations and how to diffuse these using minimum force. This period is therefore aimed to relay skills necessary for working in the NCS.

On the ground at present, correctional facilities have a total population size of 3,505 (as on 17.05.2017), and the total capacity for all thirteen correctional facilities is 4,150. This indicates that at present as a whole there is no overpopulation.

NCS is fervent in its pursuit to use the period of incarceration as a means through which to rehabilitate offenders. To this effect NCS has implemented the Offender Risk Management Correctional Strategy (ORMCS). This is a multi-faceted approach to incarceration, rehabilitation and reintegration. Although the system has not rolled out to all the facilities, it is envisioned to do so in the next couple of years.

C. The Offender Risk Management Correctional Strategy (ORMCS)

The Offender Risk Management Correctional Strategy (ORMCS) at its core is a three-component-based system that deals with offenders from admission to discharge. The three components are: The Offender Data Management System (ODMS), the Unit Management System and Case Management System.

The ODMS is an electronic and automated data-capturing and management system that records all the key and relevant information of the offender. This system captures the basic profile of offenders including but not limited to their identity, offence, sentence, further charges, nationality and property booked in and kept until their release.

Unit Management focuses on separating offenders based on their level of security risk. In order to manage offenders, they are divided into four main categories (minimum, low-medium, medium and maximum security) upon admission. Furthermore, a re-classification is done annually thereafter, or upon a breach in security. Each unit will therefore have different privileges and different security protocols. Unit management also allows for offenders to be separated: males from females, juveniles from adults, and sentenced offenders from non-sentenced offenders.

Case Management is the cornerstone for rehabilitation and reintegration. Different tasks are completed from admission to discharge. Upon admission Case Management Officers (CMOs) at the Reception and Assessment (R&A) Unit are tasked to complete the tools that will put in process the path of the offender's stay within the correctional facility. These tools are scientifically based. CMOs complete the initial security classification that will determine the first security level of the offender, they complete a risk and needs assessment that will outline what criminogenic factors (both internal and external factors) contributed to the commission of the offence, and what needs need to be addressed during the period of incarceration. Based on this they also complete a correctional treatment plan that aims to address these needs and criminogenic factors. After this the offender is sent to the living units. The onus then rests on the CMOs of the living units to make sure that the plan is followed and that the offender's criminogenic factors are addressed. The CMO does this in a number of ways. By referring the offender for education, to workshop to learn a marketable skill, or to Programmes where the offender is assisted with structured core programmes that are cognitive–behavioural in nature and attempt to address problematic thinking.

The above-mentioned indicates that Namibia is on par with what is expected for the rehabilitation of offenders. The Unit Management and Case Management components of the ORMCS is still in the process of being rolled out to all thirteen correctional facilities. Whether or not it is effective in the rehabilitation of terrorists remains to be seen. At present there is not a programme tailor-made for the rehabilitation of people sentenced for terrorist activities.

OFFENDER TREATMENT FOR ORGANIZED CRIME MEMBERS AND TERRORISTS

*Nanding N. Bayle**

I. INTRODUCTION

The threat to security of countries both from the homeland and international fronts is taking on a new form. The claw of terrorism has spared no one and has rendered even the most advanced countries vulnerable to this emerging security risk. Terrorism is traced to radicalism in ideologies and religious practice.

From the 1960s to 1970s, domestic terrorism widely increased in the United States of America such as the groups known as the Black Panthers, the Weatherman, and other radicals. It was only during the late 1980s that international terrorism began to proliferate around the world. The war in Lebanon was a result of a terrorist attack. In 1993, the bombing of the World Trade Center in New York City started a new era of international terrorism in the United States. Thereafter, in 1996, the Unabomber, Theodore Kaczynski (an individual terrorist) was arrested and charged for killing three and injuring twenty-three individuals. In 1998, Islamic terrorist Osama Bin Laden attacked American embassies in Kenya and Tanzania, killing American citizens. Then, on a sad day in the history of America, on September 11, 2001, Bin Laden successfully funded and organized an attack on the World Trade Center and Pentagon, killing approximately 3,000 individuals (Rotledge, 2009).

In Central Asia, terrorism is largely a cross-border phenomenon. The source of most terrorist organizations that operate is Pakistan and Afghanistan. Southeast Asia also has faced multiple terrorist attacks in the past, particularly in Indonesia, the Philippines and Malaysia. The Prime Minister of Singapore has called Southeast Asia a "key recruitment area for ISIS."

II. SETTING

Basically, terrorism consists of criminal activity. The one well-known definition of terrorism is in the Federal Bureau of Investigation's Policy and Counterterrorism Guidelines. It states that terrorism is "a violent act or an act dangerous to human life in violation of the criminal laws of the United States or of any state to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives. It has a broad definition that includes actions designed to instill fear and intimidation (Schubert, 2016).

A. Human Security Act of 2007

In the Philippines, terrorism is a crime under the Human Security Act of 2007 and is described as causing widespread and extraordinary fear and panic among the populace." The first group to be listed as a terrorist organization under the law is the Abu Sayyaf Group, as declared by the Basilan Provincial Court on September 10, 2015 (Sun Star, 2015).

Public transport and other gathering places, such as street markets, have been the favoured bombing targets; however, large-scale abductions and shootings have also been carried out by the groups, predominantly by Abu Sayyaf and the Rajah Solaiman Movement.

Most of these (groups of) individuals ended up in jails where the crime was committed. However, due to

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security reasons, these individuals were typically transported and transferred to BJMP jails located at Camp Bagong Diwa, Taguig City. They can be re-committed to jail upon issuance of an appropriate order issued by a competent court or authority so mandated under Philippine laws. As such, by way of imprisonment, there had been several questions as to whether or not imprisonment helps in crime control even for individuals behind the four walls of the jail. Some agents of criminal justice believed that imprisonment can be a form of retribution, deterrence, reformation, and protection, but it can also be a perfect place to radicalize the inmates.

B. BJMP Manual, under Rule 1, Book II, on Safekeeping Functions

The BJMP Manual, under Rule 1, Book II, on Safekeeping Functions (Operations) enumerated the different classification of inmates according to security risk. These involve among others the following: High Profile Inmates, High Risk Inmates, High Value Target (HVT), Security Threat Group, Subversive Group, Terrorist Group, Violent Extremist Offender (VEO), Medium Risk Inmates, and Minimum Risk Inmates (Ordinary Inmates).

Mainly, the very purpose of classification of inmates in the Jail Bureau under the Directorate for Operation Manual is to (a) separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence and (b) divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

The Classification Board is tasked to conduct background investigation of inmates to determine the cell assignment, the appropriate rehabilitative programme, type of supervision and degree of custody and restrictions applicable to him/her. The investigation shall focus on the following: a. Facts and data of the present case; b. Earlier criminal history and if he/she is a recidivist or habitual delinquent, the facts about his/her attitudes and behavior while confined in other institutions; c. Biography or life history; d. Medical History; e. Vocational, recreational, educational and religious background/interests; and f. Psychological characteristics as evaluated by the psychiatrist and psychologist. The inmate is then required to appear before the Classification Board for validation of his/her profile. Upon completion of the classification assessment, the inmate is then apprised of his/her cell assignment and welfare programmes appropriate for him/her.

C. Philippine Criminal Justice System

The institution of the Criminal Justice System in the country has also recognized incarceration as the best tool to prevent and control crime; however, this strategy has remained futile in resolving the growing crime rate in the country, and worse, resulted in progressive overcrowding of detention centres and prisons.

D. Bureau of Jail Management and Penology

The Bureau of Jail Management and Penology (BJMP), created pursuant to Republic Act 6975, is under the Department of Interior and Local Government (DILG) and is responsible for persons detained, awaiting investigation or trial, and/or awaiting final judgement. Similar to the innovations of other correctional institutions, the Jail Bureau emphasized the safekeeping and development of inmates as the two important mandates to ensure the safety of individuals housed in any of its facilities.

E. Special Intensive Care Area

There were different groups of inmates detained in a Special Intensive Care Area (SICA); these include among others: Abu Sayaff Group, Raha Solaiman Movement, Jemaah Islamiah, the Communist Party of the Philippines/New People's Army/National Democratic Front, Moro Islamic Liberation Front, and all other inmates detained and classified according to security risk.

Out of 29,794 NCR inmates, 2,809 inmates are classified as high-risk and high-profile or special management (herein referred to as "high security inmates"). This constituted 10.06% of the population. With this alarmingly increasing number, the emergence of radicalization is very much daunting. Currently, there exists SICA 1 and SICA 2 holding 374 and 317 inmates (as of December 2016 from the database of the Directorate for Operations), respectively. As the Jail Bureau tends to truly gauge its success on continuous achievements, at this point, it is obvious that the jails were now struggling to attain their purpose. Consequently, they cannot be given credence as a formal modernized detention facility to handle high-security inmates.

As prison grows in complexity, the demand for secured facilities and intervention programmes, especially for (radical) inmates in the country, has become essential and challenging. The Jail Bureau, in this regard, finds it necessary to actively develop strategic action plans and preventive measures to safeguard the facility against possible threats of escape, rescue from unfriendly forces, instabilities, riots, siege, and radicalization.

F. Experience Factors

On March 14, 2005, a 29-hour stand-off occurred by an extremist group at Special Intensive Care Area (SICA) 1, Bicutan, Taguig City. The siege was led by Commander Robot, despite being incapacitated inside the jail. This incident, which caused the loss of lives, was presumably a clear and distinct case of radicalization. Although, at that time, radicalization was not yet widely known to have proliferated in the Philippine jails. However, the vulnerability of the jail sector may become a breeding ground for radicalization, and without being aware of it, there are greater chances of bringing surprisingly the same consequences in the future (Bonto, 2012).

Ahmed Sadat, a Palestinian terrorist, commented in 2004 that, "The prison became their best university for finding and teaching recruits" (Speckhard, 2007). It has been said and done in 2005 at SICA, Bicutan, Taguig wherein the extremist led by commander Robot successfully radicalized some inmates to join the Abu Sayyaf groups and put the jail under siege.

It also assumes that terrorists live in places where they can be singled out and hunted down. In fact, terrorists do not fight on traditional battlefields: they live and fight among civilians, making it difficult to know where to aim, and even more difficult to avoid civilian casualties. Their goal is to frighten the enemy into launching attacks that hurt civilians (Stern, 2010).

The terrorist strategy of fighting is within places of civilians, valuable and historical structures, more so in prison jails. These will serve as their shield and part of their glory once unsuccessful and killed. They stand happily with their ideologies that their death is admirable when they killed a lot of civilians and humiliated the government.

However, terrorists are still human beings who need care and treatment. If they are living in a wrong way of thought or ideologies, that is because they are also victims, having been tricked, swayed or seduced into adopting a radical perspective. They are victims, objects of pity and fear who have been dragged away from their homeland into foreign beliefs and alien values (Edwards, 2015). If radicals are products of radicalization, then it is true to believe that there is a chance for them to be deradicalized and to bring back to their normal perspective of life.

G. Prison-Based Disengagement Interventions

Radicals are known people who hold extreme views and ideologies that are not open to any kind of counselling to change their perspective. The BJMP initiated the implementation of Alternative Learning System (ALS) for the deradicalization of inmates at SICA 1 and 2 in 2012. ALS is a kind of programme which serves as an intervention strategy for high-risk and high-profile inmates. The ALS is a national government programme under the Department of Education (DepEd). The programme provides a viable alternative to the existing formal education instruction encompassing both the non-formal and informal sources of knowledge and skills that provide "education for all".

The DepEd's Bureau of Non-Formal Education (BNFE) was renamed as the Bureau of Alternative Learning System (BALS) by virtue of Executive Order No. 356 (2004). It aims to provide a free education programme implemented by the Department of Education (DepEd) under the Bureau of Alternative Learning System which benefits those who cannot afford formal schooling and at their available schedule. It is a ladder-like, modular non-formal education programme in the Philippines for dropouts of elementary and secondary schools, out-of-school youths, non-readers, working Filipinos and even senior citizens. It became part of the educational system of the Philippines but an alternative to the regular classroom studies where Filipino students are required to attend daily.

Through the ALS, it is more fitting to say that a majority of those incarcerated lack formal education. However, despite this fact, the person charged with a crime should not be denied of his/her freedom and protection of the laws. Thus, the present task of today's modern penologists as agents of the government is to

be morally responsible in upholding the fundamental rights of its clientele during their stays in jail.

III. CHALLENGES TO THE BUREAU OF JAIL MANAGEMENT AND PENOLOGY

At the very least, the BJMP must put emphasis on this, and complacency by disregarding radicalization in jails is not an option. The Jail Bureau cannot afford to experience another stand-off brought about by terrorists or other group of high profile inmates that causes loss of lives and destruction of facilities. The BJMP, having the mandate and big role in public safety, must act in a way toward sustainable homeland security.

The rehabilitation programmes of detainees at SICA 1 and 2 are usually part of a larger deradicalization scheme. Different countries used strategies to rehabilitate individuals and vulnerable communities, ranging from engagement to winning their hearts and minds, but the main purpose of the programmes is neutralizing the security threats.

In response to the challenge of terrorism, during the last quarter of 2008 up to the third quarter of 2009, the Prison/De-radicalization/Counter Radicalization Program of the National Intelligence Coordinating Agency (NICA), through its Anti-Terrorism Council Coordinating Center (ATC-CC) began a nationwide information campaign among jail wardens and prison authorities on the phenomenon of terrorists' recruitment inside jail and prison facilities, or what is simply known as "prison radicalization".

Strongly supported by BJMP management and heavily participated in by BJMP Wardens nationwide, the programme continued through its second phase of implementation in early 2010 with the crafting of a National Project Framework for Intensified Prison De-radicalization Program. The second phase of the programme is now organized by the National Counter Terrorism Unit (NCTU) of the NICA.

Towards this end, the proponent as a Commissioned Officer of the Jail Bureau has acknowledged his role in the management of said inmates. Though the detention facilities are places of vulnerability in which radicalization and all other forms of ferocity may take place, nevertheless, these facilities can also become special places for the transformation and reintegration of individuals behind bars, not excluding the radicals. It was necessary to actively develop strategic action plans and preventive measures to deradicalize (radical) inmates in order to safeguard the jail facilities in the country against possible threats of escape, rescue from unfriendly forces, instability, riots, siege and other jail disturbances that affect public safety.

There should be a clear motivation and goal against the current situation of jail management even during the most difficult time of seeking support to improve the administrative, logistical, and operational services of the Jail Bureau. This will eventually set how the organization should be planned and programmed and how the (radical) inmates should be managed during their period of confinement. Hence, certain priorities and developments should be ideally employed in all areas of concern to strengthen the capabilities of the Jail Bureau in the deradicalization programme through the Alternative Learning System in coordination with the Department of Education. This will create and stimulate the foundation on which the Bureau's mission and vision is based.

REPORTS OF THE COURSE

GROUP 1

SPECIFIC MEASURES: DISENGAGEMENT INTERVENTIONS IN PRISONS

Rapporteur: Ms. Folole Lemisio (Samoa)
Co-Rapporteur: Ms. Remona Visser (Namibia)

Chairperson	Mr. Ahmad Altaharwah	(Jordan)
Co-Chairperson	Mr. Nanding Bayle	(Philippines)
Members	Mr. Yuta Abe	(Japan)
	Mr. Galih Rakasiwi	(Indonesia)
	Ms. Chantima Uiyyasathian	(Thailand)
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	Mr. Kei Takayama	(Japan)
	Mr. Yukio Kono	(Japan)
Advisers	Prof. Mana Yamamoto	(UNAFEI)
	Prof. Fumiko Akashi	(UNAFEI)

I. INTRODUCTION

Group 1 started its discussion on the 4th of September 2017. The group elected by consensus the chairperson, co-chairperson, rapporteur and co-rapporteur. Five topics were decided by the group as the most important to address:

A. How do we manage prison staff and other people who work with organized crime members and violent extremists?

B. How do we classify, allocate and accommodate violent extremists in prison?

C. How can we assess violent extremists' risk and needs?

D. What are methods and approaches to delivering interventions, especially psychological and cognitive interventions?

E. How can we involve community and governmental organizations in the process of reintegration of rehabilitated violent extremist offenders into the community?

II. SUMMARY OF THE DISCUSSIONS

Brief summary of the problem (definitions) the group discussed:

1. The logic behind disengagement programmes: Radical Islamism has been an enduring problem for many nations, but it became a prominent international priority only after the 9/11 attacks. Counterterrorism campaigns in many theatres around the world have produced a mounting number of incarcerated Islamist extremists. These detainees present a dual problem for the nations holding them. Firstly, most states do not want to hold the growing numbers of extremists in their prisons indefinitely, and, in many cases, they lack the resources to do so. They have, therefore, searched for a way to rehabilitate these prisoners so that they can be released without posing a threat to society. Secondly, many states have recognized that prisons are often incubators of radicalization, and, in an effort to stymie this process, they have sought to tackle radicalization in their penitentiaries by reforming violent extremist detainees.

2. Radicalization: Most of the definitions currently in circulation describe radicalization as the process (or processes) whereby individuals or groups come to approve of and (ultimately) participate in the use of violence for political aims. *(Ms. Chiara Bologna, UNICRI, Preventing and Countering terrorism and violent*

extremism, 167th UNAFEI International Training Course (5 September 2017)

3. Disengagement entails a change in behaviour (i.e., refraining from violence and withdrawing from a radical organization) but not necessarily a change in beliefs. A person could exit a radical organization and refrain from violence but nevertheless retain a radical worldview. *(Dr. Andrea Moser, Correctional Service Canada Management of Radicalized Offenders and Security Threat Groups in a Correctional Context, 167th UNAFEI International Training Course (30 August 2017)*

A. How Do We Manage Prison Staff and Other People Who Work with Organized Crime Members and Violent Extremists?

Individuals play an integral role in any workforce. Prison systems cannot function well if there are no staff members to implement its core responsibilities. Hence prison administrations should recognize this and devote significant time and resources to the recruitment, selection and training of personnel who work in prison. Ensuring that prisons holding violent extremist prisoners have a sufficient number of good quality and well-trained staff should be a priority for all prison systems.

1. Quality of Prison Staff

Staff working with violent extremist prisoners requires a good combination of personal qualities and technical skills, and high standards of personal and professional conduct. They need personal qualities that enable them to deal with all prisoners, including the difficult, dangerous and manipulative, in an even-handed, humane and just manner. It should be remembered that people joining the prison administration do so with a range of existing skills, knowledge and abilities.

2. Recruitment and Selection of Staff

Safeguards should be put in place to ensure that staff selected to work with violent extremist prisoners are not members of violent extremist groups, criminal gangs or associated with organized crime, and are not being used to infiltrate the prison.

Every effort should be made to recruit staff from ethnic, religious and racial minorities and indigenous peoples represented among the violent extremist prisoner population. This will help to ensure a better understanding among staff about different cultures and establish a nondiscriminatory attitude towards prisoners from minority groups and indigenous peoples.

Particular attention needs to be paid to the recruitment of specialist staff. These are likely to be individuals who are already trained in a specific profession. They will include faith leaders, teachers, instructors and health-care staff. Adequate numbers of specialist staff, such as psychiatrists, psychologists and social workers, should also be appointed to prisons holding violent extremist prisoners, given the requirement to address the complex needs of this group of prisoners.

3. Training and Development of Staff

Training, which is crucial to any environment, is especially important for people working with violent extremist prisoners. International standards indicate that prison staff should receive training before beginning work in prison (pre-service "orientation" training) and throughout their careers in the prison administration (in-service "refresher" training).

Introductory-level modules such as on "Managing violent extremists in prison" or on "Identifying radicalization to violence within prison" can be delivered to new staff as part of their primary orientation training. In addition, it is important to offer courses that educate and sensitize staff to linguistic, cultural and religious diversity.

More advanced training should be provided for staff working with violent extremist prisoners on a daily basis and should include topics such as: understanding violent extremism; recognizing signs of radicalization to violence; assessment of violent extremist prisoners; implementing a positive regime for violent extremist prisoners; assessment of intelligence and other information about violent extremist prisoners; and anti-conditioning and manipulation training. It is particularly important that frontline prison staff understand and are carefully attuned to the disengagement and reintegration process, even if they are not directly responsible for its delivery. Staff should avoid actions that undermine disengagement and reintegration.

(*Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons 2016*)

4. Conditions of Service

As the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) make clear, prison staff should be given appropriate status, levels of pay and conditions of employment. The conditions of service for staff working with violent extremist prisoners should reflect the challenges and importance of their role. The issue of pay requires careful consideration. If staff does not receive salary levels appropriate to the economic situation in their country, they may be open to corruption of a direct or indirect nature.

5. Contributions of Specialist Staff and Other People

Faith professionals: Integrating appropriate faith professionals into the disengagement process should be considered, as they can play an important role in the process.

6. Psychologists

Psychologists can play a key role in the disengagement process and should be fully integrated into those disengagement interventions. They can help identify factors in the social context and psychological make-up that made the individual vulnerable to violent extremism and the motivational factors that contributed to his or her decision to engage in violent extremist activity.

B. How Do We Classify, Allocate and Accommodate Violent Extremists in Prison?

Governments everywhere have to ask themselves how violent extremists are different from "ordinary" prisoners and what this means for how they should be treated in prison.

1. Prison regimes for violent extremists need to be informed by a sophisticated understanding of the motivations and behaviours of politically motivated offenders, who – unlike "ordinary prisoners" – may want to mobilize outside support.

2. Radicalize other prisoners, and (in the case of violent extremists) re-create operational command structures.

3. Most practice a policy of dispersal and (partial) concentration, which distributes violent extremists among a small number of high security prisons. The overall approach can be characterized as "security first",

4. In the prison context, most difficulties in dealing with violent extremists are caused precisely by the fact that these offenders do not see themselves as criminals. Rather than quietly serving their sentences, many regard their time in prison as an opportunity to continue the "struggle",

5. Challenges in dealing with violent extremist inmates include:
   - Preventing the radicalization of (non-violent-extremist) inmates;
   - Preventing the maintenance and/or re-creation of operational command structures;
   - Preventing the exploitation of the prison environment for the purpose of mobilizing outside support. In addition, prison regimes for violent extremists should also aspire to:
     - ✓ Providing opportunities for deradicalization and disengagement; and
     - ✓ Making a positive contribution to reducing terrorism and radicalization on the outside.

6. Concentration, Separation and Isolation

   All prison services that deal with violent extremists need to decide how to distribute this prisoner population around their systems. In most cases, this boils down to three related questions, namely whether they should all be held in one place (concentration); whether they should they be separated from the general prison population (separation); and if they should be isolated from each other (isolation). There is no one right answer, and prison administrations will need to determine the best approach to accommodation, based on specific factors within the country, such as:
   - The size of the violent extremist population
   - The state of the prison infrastructure

- The financial resources available
- The cultural, political and social context (*Dr. Andrea Moser, Management of radicalized offenders and security threat groups in a correctional context, 167th UNAFEI International Training Course, 30 August 2017*)

The group explored different accommodation strategies used by countries such as France, Spain, England/Wales, Morocco, Canada, Algeria and Indonesia. Some Member States adopt a mixed approach based on the influence of the violent extremist prisoner. For example, violent extremist ideologues and charismatic leaders are assessed as more likely to radicalize others than those who are criminal opportunists. Therefore, the ideologues and leaders are separated from the general population, while criminal opportunists are integrated with the general population. (*Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders*)

The group agreed:

- To adopt a hybrid strategy that merges the ideas of separation (separate housing units) and isolation (single cells) depending on the level of influence and modus operandi based on assessment, in order to deny violent extremists the opportunity to influence vulnerable prisoners in the general population.

- That those who are successfully rehabilitated can be moved back into the general population.

C. How Can We Assess Violent Extremists' Risk and Needs?

Assessment may be conducted during an offender's stay in prison, and an assessment is also recommended: (a) at the time of determining the appropriate sanctions or measure or when diversion from formal criminal proceedings is being considered; (b) at the beginning of a period of supervision; (c) whenever there are significant changes in the offender's life; (d) when consideration is being given to a change in the nature or the level of supervision; or (e) at the end of the supervision measure.

There are methods and instruments to evaluate the key factors that may have an impact on the likelihood that an offender will reoffend. These risk factors are defined as prior factors that increase the probability (risk) of reoffending and the potential danger an offender may thus represent to the victim and the community.

Knowledge about risk factors associated with recidivism can be used to develop profiles of high-risk offenders (forensic profiles) to help practitioners and decision makers identify candidates for various forms of intervention. Evidence suggests that an accumulation of risk factors in an individual's life is associated with a higher likelihood of involvement in criminal behaviour.

A lot of work has been done to try to identify an empirical framework capable of supporting decisions concerning the treatment of offenders and their successful reintegration into the community.

The risk-needs-responsivity (RNR) framework is one of those frameworks, initially based on research to identify the risk factors associated with recidivism (as outlined in the *UNODC Introductory Handbook on the prevention of recidivism and the social reintegration of offenders* p 38).

1. Risk
   - What do we know about offender characteristics that are associated with reoffending
   - Risk factors are not necessarily causal factors (behavioural and cognitive markers)
   - Risk factors can be static or dynamic
   - High-risk offenders can be identified

2. Needs
   - Needs that are criminogenic (associated with reoffending)
   - Needs that can be addressed by treatment or other interventions
   - Needs may vary by types of offender (e.g. violent offenders)
   - Needs may vary by age (young offenders)

3. Responsivity
   - General responsivity (emphasis on cognitive social learning interventions within a supportive structure)
   - Specific responsivity (motivation, special characteristics of offenders, special circumstances, culture)

These risk factors are not necessarily causal, but their identification led to the formulation of the notion of "criminogenic needs" associated with the factors and are therefore related in a more "causal way" to reoffending. These criminogenic needs can be understood as issues that must be addressed by treatment, including various cognitive-behavioural intervention techniques.

Furthermore, a risk/needs assessment is not complete without a corollary assessment of protective (or resiliency) factors. These are factors that reduce the risks for the onset and repeat offending behaviour associated with the risk factors.

A number of tools have been developed and validated for different types of offenders in order to proceed as systematically as possible with the identification of risk factors in individual offenders. However, there are quite few specific tools for violent extremists at the moment, for example, VERA-II (Pressman, D. and Flockton, J. (2014) "Violent extremist risk assessment: issues and applications of the VERA II in a high security setting", chapter 9 in Silke, A. (ed.) *Prisons, Terrorism and Extremist – Critical Issues in Management, Radicalization and Reform.*) and ERG22 (Lloyd, M and Dean, C. (2015) "The Development of Structured Guidelines for Assessing Risk in Extremist Offenders", *Journal of Threat Assessment and Management, 2015, Vol.2, No. 1,40-52.*)

Summary of scored areas for VERA II

	Risk Factors (Not changeable)	Need Factor (Changeable)
Beliefs and attitudes	Victim of personal or group injustice and grievances	Feelings of hate, frustration, persecution and / or alienation
		Dehumanization of identified targets of injustice
		Rejection of democratic, pluralistic society and values
		Attachment to ideology justifying violence
		Hostility to national collective identity/identity conflict
		Lack of understanding or empathy for those outside own group
Context and intent	Seeker, consumer, developer of violent extremist materials	Anger and expressed intent to act violently
	Identification of target (person, place, group) in response to perceived injustice	Expressed desire to die for cause or martyrdom
	Active personal contact with violent extremists	Expressed intent to plan, prepare violent action
		Susceptible to influence, authority, indoctrination
History and capability	Early exposure to pro-violence militant ideology	
	Network of family, friends involved in violent action	
	Prior criminal history of violence	
	Tactical, paramilitary, explosive train-	

	ing	
	Extremist ideological training	
	Access to funds, resources, organizational skills	
Commitment and motivation		Driven by perceived noble cause/ glorification of violent action/religious obligation
		Driven by opportunism, excitement, adventure
		Driven by comradery, group belonging, status in group, social needs
		Driven by moral imperative, moral superiority, identity
		Driven by excitement, adventure
Protective items	Re-interpretation of ideology less rigid, absolute; rejection of violence to obtain goals, change of vision of enemy; involvement with offence-related programmes; community support for non-violence, family support for non-violence.	

D. What Are the Methods and Approaches to Delivering Interventions, Especially Psychological and Cognitive Interventions?

Key Components of Successful Disengagement Programmes:

1. To effectively challenge radical Islamism, a programme must employ an interlocutor whom the militants view as credible. In addition, after the programme has been completed, graduates must be carefully monitored and offered continued support to reduce the likelihood of recidivism.

2. Disengagement programme is not likely to succeed unless the ties with the organization can be broken and alternative means to meet the militant's psychological and material needs are provided. (Rome Memorandum on Good Practices for Rehabilitation and Reintegration of Violent Extremist Offenders)

3. Many radical organizations not only provide for all their members' basic needs, but they also offer assistance to their members' families. Thus, disengagement programmes need to help ex-militants and their families find alternative sources of income, housing, health care, and education.

4. Disengagement programmes need to continue to monitor and support rehabilitated violent extremists after they have completed the programme to facilitate their reintegration into mainstream society.

5. It appears that it is important that efforts be made to facilitate the process of disengagement during the crucial early stages.

6. A government can take actions that make disengagement more attractive and continued extremist behaviour less appealing by implementing counterterrorism measures that increase the costs of remaining in an extremist organization while strategically offering incentives that increase the benefits of exiting.

7. It is important that these programmes continue to assist freed, rehabilitated individuals. In particular, the programme should assist the ex-militant in finding a job and locating a supportive environment (*Ms. Chiara Bologna UNICRI, Prison-based rehabilitation and reintegration approaches and community-led initiatives, 167th UNAFEI International Training Course (7 Sepember 2017)*

8. Rehabilitated violent extremists engage extremists in discussions of Islamic theology in an effort to convince the militants that their interpretation of Islam is wrong.

9. Prison Imams:

Little attention had been paid to the provision of religious services for this segment of the prison population. Only recently have prison services begun to embrace the institution of the prison imam as a counter-radicalization tool.

E. How Can We Involve Community and Governmental Organizations in the Process of Reintegration of Rehabilitated Violent Extremists into the Community?

In order to ensure public reassurance and understanding, regular work with the media (newspapers, television) should take place to explain the positive disengagement activity taking place in prison, The growing popularity of social media offers many opportunities for publicizing disengagement activity and success stories to the members of the community, including celebrities and other influential personalities, can also help inspire change among violent extremist prisoners, and could be included in disengagement interventions. The motivational themes and public service messages they deliver can be quite captivating and effective. Enhancing relationships with the private sector to support the released extremist with employment opportunities or financial support after release is also important. (*Dr. Rohan Gunaratna, Global Terrorist rehabilitation and community engagement programs: The state-of-the-Art, 167th UNAFEI International Training Course (8 September 2017).*

Good governance can deter the involvement of people from terrorist activities, and consideration should also be given to involving non-governmental organizations (NGOs), community-sector organizations and the private sector. These bodies are often not seen as being part of the system or State and, therefore, may find it easier to establish relationships with violent extremist prisoners. Engaging these groups brings the added benefit of continuity of care for the reintegration of violent extremist prisoners upon release. The prison authorities should carefully assess external bodies before they are permitted to engage with violent extremist prisoners.

III. CONCLUSION AND RECOMMENDATIONS

A. Recommendations

At the end of the discussion, the Group reached a consensus on the following recommendations:

1. Prison staff working on this challenging category of prisoners should be carefully selected for their integrity, humanity, professional capacity, personal suitability and ability.

2. Prison administrators should implement measures to prevent prisons from becoming locations in which violent extremism can thrive and where prisoners can be radicalized to violence. All violent extremist prisoners should be (a) separated according to gender, legal status, and age; (b) classified according to the information gained through the risk and needs assessment; and (c) categorized according to the appropriate level of security they will need to be held in.

3. Upon admission of a violent extremist prisoner, a thorough, evidence-based risk and needs assessment should be undertaken by specialized trained staff and based on structured professional judgement.

4. Disengagement interventions may consist of a variety of activities including:
Psychological counselling and support; cognitive-behavioural programmes; social work interventions; faith-based debate and dialogue;

5. In order to ensure public reassurance and understanding, regular work with the media should take place to explain the positive disengagement activity taking place in prison. Consideration should also be given to involving non-governmental organizations (NGOs), community sector organizations and the private sector.

B. Conclusion

1. The first and most crucial recommendation is to enhance security, staff training, and evidence-based assessment that contributes to classification and allocation. Furthermore, it is necessary to provide meaningful programmes and work collaboratively with the wider community, allowing violent extremists to develop stable inmate identities.

2. The good practices outlined in this document are intended to inform and guide countries as they develop programmes designed to rehabilitate and disengage incarcerated violent extremists or to address more general issues relating to prison radicalization.

3. The document also can be used to shape any bilateral or multilateral technical or other capacity-building assistance that is provided in this area.

GROUP 2
RESPONDING TO ORGANIZED CRIME MEMBERS AND TERRORISTS IN CONTACT WITH THE CRIMINAL JUSTICE AND PENAL SYSTEMS

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Co-Chairperson	Mr. Adam Azim	(Maldives)
Members	Ms. Phoungpaka Wilson	(Thailand)
	Mr. Helder Cosme Marcal Belo	(Timor-Leste)
	Mr. Karma Tshewang	(Bhutan)
	Mr. Adachi Taku	(Japan)
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	Mr. Yamane Sachio	(Japan)
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I. INTRODUCTION

Group 2 started its discussion on 4 September 2017. The group elected, by consensus, Mr. Carlos Vinicius Cabeleira as its chairperson, Mr. Adam Azim as its co-chairperson, Mr. Soufiane Ahoujil as its rapporteur, and Ms. Li Pui Ling as its co-rapporteur. The group was assigned to discuss the topic of "responding to organized crime members and terrorists in contact with the criminal justice and penal system". Despite differences in each country's penal and correctional systems, the group undisputedly agreed that alternative measures to incarceration have many advantages but are, nonetheless, difficult to implement considering the specific requirements they entail. In addition, all participants concurred that offenders' reintegration through alternative measures necessitates the support of several stakeholders as well as sufficient financial resources.

II. SUMMARY OF THE DISCUSSIONS

Throughout the discussions, the group identified two major themes pertaining to organized crime members and terrorists in contact with the criminal justice and penal systems, i.e. A) alternative measures to incarceration; B) reintegration into society: rehabilitation after release.

A. Alternative Measures to Incarceration

Through the discussions, most participants agreed that many forms of alternative measures need to be taken to divert offenders from jail into the community. Hence, to confront the underlying causes of crime, and ensure offenders stay on track, it was suggested by all participants that courts should tailor sentences that fit offenders, protect citizens and provide suitable rehabilitation programmes.

During the discussion, the group considered both the use of this measure in the extra judicial phase, as an alternative to prosecution, and their assignment in the adjudication, as an alternative to imprisonment.

Alternative measures to incarceration may be used for some associates of criminal organizations or low-risk offenders. For terrorists, however, some difficulties were pointed out. Indeed, some participants believe that they should be jailed, but depending on the crime they perpetrated.

Reasons why alternatives to incarceration are difficult implement:

a) Potential risk to society (reoffending, radicalize others etc.)
b) Ideology-driven crime (need to address ideology itself)
c) Security issues for the suspects/accused.

Advantages of alternative measures:
a) Preventing sympathizers from joining terrorist organizations.
b) Identifying low-risk offenders to avoid high-risk reoffending.

Upon discussion, the group concurred that alternative measures to incarceration can also involve terrorists, while considering:

- The severity of the crime charged
- The kind of organization they are affiliated with
- Acceptance of alternative measures by the victim and the community
- The level of radicalization to violence and commitment to violent extremism.
- The offender's receptiveness to intervention and treatment
- The likelihood of the person reoffending

1. Procedural Considerations: Pre-assessment

The group debated the necessity of creating a pre-assessment procedure to implement appropriate treatment of offenders. Some participants referred to one of the Global Counter Terrorism Forum (GCTF) recommendations, stating that "*alternative measures should be based on a comprehensive assessment process*[1]". Likewise, a participant contended that in the case of juvenile offenders, it is necessary "*to hold investigations using medical, psychological, pedagogical and other expert knowledge and, among other items, the findings of the assessment by the juvenile classification home*[2]". The above-mentioned participant also indicated that pre-assessment is not necessary for adult cases, considering that judges are entitled to decide a sentence based on the nature of the act committed rather than the person's characteristics. Nevertheless, all participants agreed that in some alleged terrorist-related crimes, pre-assessment is a viable means to help investigating prosecutors and judges impose appropriate treatment for offenders. Most participants agreed that probation officers involved in the implementation of alternative measures to incarceration should play a part in the pre-assessment process; given their ability to determine which alternative measures to incarceration best suits the offender. In addition, many participants emphasized the importance of intelligence gathering in the pre-assessment process.

2. Examples

(a) Community service

During the discussion, most members of the group agreed that community-service can be a reparative sanction, in the sense that it defines responsibility of the offender for their crime and can reduce prison overcrowding. By contrast, some participants stated that judges can sentence defendants to perform unpaid community service under enhanced supervision, mainly on behalf of civic or non-profit organizations. Some group members, however, argued that serious crimes such as first-degree murder, firearms trafficking, conspiracy and terrorist-related cases should not be subject to community corrections. Most participants also pointed out that if the offender violates the terms set by the court, probation should be revoked, after which the offender is liable to a term of imprisonment. The group also suggested that the offender be given the opportunity to repair the damage caused by their crime.

(b) Electronic Monitoring

In parallel, most participants agreed that electronic monitoring can be a relevant community-based alternative measure to incarceration, mainly for low-risk offenders. Hence, upon discussion, it was asserted that proximity monitoring can identify offenders' locations using electronic ankle or wrist bracelets. However, from various viewpoints that have been expressed during the discussion, some participants were reluctant as to the use of that alternative. They argued that no such alternative is stipulated by their respective countries' constitutional texts, considering it a violation of privacy, mainly without the offender's prior consent. Nevertheless, all members of the group shared the view that if the offender violates conditions set by the court regarding that alternative measure (*ex*: taking off the bracelet), the offender should be denied the right to undergo electronic monitoring.

[1] The GCTF's "Recommendations on the Effective of Appropriate Alternative Measures for Terrorism-Related Offenses (Recommendation 6)".
[2] Article 9 of the Japanese Juvenile Law.

B. Reintegration into Society: Rehabilitation after Release

1. The Role of the Community and Civil Society

The group agreed that reintegration is of the utmost importance for organized crime group members or terrorists. Hence, with the exception of convicts sentenced to death, all offenders have to receive necessary support to go back to the community. All participants underscored that the reintegration process shall begin before an offender's release, by promoting interaction between reintegration partners and offenders before release.

In addition, the group called attention to the fact that reintegration is a fundamental approach in addressing recidivism, on account of the fact that offenders may well undergo rehabilitation programmes and yet unscrupulously reoffend all over again. Therefore, there was general agreement that community acceptance is the backbone of social reintegration. Accordingly, the group unanimously agreed on the following measures as being advantageous, mainly to organized crime members and terrorists:

(a) Religious partners

Group members discussed the situation in some countries, such as Morocco, Maldives and Singapore, where official bodies are in charge of religious education, notably the Ministry of Religious Endowment which works in collaboration with the correctional department in implementing peer education programmes and national religious contests (Quran memorization and recitation, prophetic Hadith memorization, etc.). In Brazil and Japan, however, official religious bodies or agencies are not permitted to undertake such activities. Despite all those differences, the group members highlighted the importance of religious guidance in reintegration.

(b) Non-Governmental Organizations (NGOs)

It was stated by visiting experts that in order to make good use of community resources, NGOs should provide support, counselling, recreational activities and visits to organized-crime members (OCMs) and terrorists. In this regard, most participants agreed that halfway houses are essential for supporting released offenders and an opportunity for them to learn the necessary skills to reintegrate into society. In addition, the group believes that halfway houses can bridge the gap between prison and community, thus enabling OCMs and terrorists to start afresh with the aid of community support networks.

(c) Companies/Employers

The group reached a consensus that providing OCM/terrorist offenders with an adequate income is fundamental to bringing them back into society. Hence, government policies are no less necessary in advocating and encouraging the public to employ OCMs/terrorists. Consequently, the overwhelming majority of the group stressed the significance of the governments' input in supporting companies or employers in hiring former OCMs and terrorists. Throughout the discussion, focus was placed on the "Incentive Payment" and "Guarantor" systems in Japan. Most participants called for encouraging the private sector to offer more job opportunities to offenders. Moreover, public campaigns in recognizing the contribution of such cooperative employers as well as promoting corporate social responsibility may also increase the number of cooperative employers.

(d) Individuals

The group discussed and expressed their interest in volunteer probation officers as being preponderant players in supporting rehabilitation of former offenders in the community and connecting them with welfare services. All agreed that volunteer probation officers (VPOs) play the most important role in the Japanese offenders' rehabilitation system. Furthermore, volunteers' active participation would assist former OCMs/terrorists and regular offenders in reintegration. The implementation of the VPO system was unanimously highly regarded by group members for giving support and advice as well as serving as a model to OCMs/terrorists.

(e) Mass Media

Most participants concurred that mass media is a public channel that not only helps with the transmission of positive messages, but also enhances the public's acceptance of offenders' rehabilitation. Self-reflection of former organized crime members and terrorists and interviews may be adopted for such objectives. Nevertheless, victims' feelings and consent should be taken into consideration when using the mass media.

2. Restorative Justice

Most participants agreed that restorative justice can repair harm and restore justice to the victims. They stated that the justice system can resort to victim-offender mediation and conferencing through joint meetings with the offender and the victim's family, with a view to reaching an agreement as to which option may best suit the victim's family and the community.

III. CONCLUSION AND RECOMMENDATIONS

The recommendations outlined in this report are intended to demonstrate that organized crime members and terrorists should not be considered as an obstacle to the implementation of alternative measures, especially in the case of juvenile offenders, first-time offenders, etc. Nevertheless, balance needs be struck regarding the rights of individual offenders and those of the victims, as well as the concern for public safety. Therefore, at the end of the discussion, the group reached a consensus that the following should be recommended as possible measures. Key components in implementing alternative measures for OCMs and terrorists would be:

- Creating a pre-assessment procedure at the request of the court or authority in charge of the decision, by public officers involved in the supervision process or experts, with the objective of providing information regarding the proper assignment of alternative measures.

- In addition to the punitive scope, the judicial and criminal justice systems should consider the reintegration of organized crime or violent extremist offenders as one of the main objectives of incarceration.

- Providing close assistance to offenders in the community and connecting them with the community: (halfway houses, probation officers, etc.).

- Offering job opportunities to offenders and financial support to reintegration programmes, according to their corporate social responsibility, by providing government support to private companies.

- Providing religious assistance and guidance on behalf of ideologically driven violent extremists by official agencies or private religious organizations, according to each country's legal system.

- Particular attention should be given to reconciliation with victims and the community, to enable the offender to express regret and repentance through direct communication, written communication or videos, as well as mass and social media.

References:

- The GCTF's "*Recommendations on the Effective of Appropriate Alternative Measures for Terrorism-Related Offenses* (Recommendation 6)".

- *Article 9* of the Japanese Juvenile Law.

PART TWO

RESOURCE MATERIAL SERIES

No. 104

Work Product of the 20th UNAFEI UNCAC Training Programme

Effective Measures to Investigate the Proceeds of Corruption Crimes

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UNAFEI

VISITING EXPERTS' PAPERS

(ANTI)CORRUPTION WITHOUT BORDERS: BEST PRACTICES AND LESSONS LEARNED FROM THE CAR WASH CASE

*Vladimir Aras**

I. INTRODUCTION

March 2014 will long be remembered in Brazil as a turning point. A huge police operation took place in Curitiba and other Brazilian cities. The Lava Jato (Car Wash) case was started. There is little doubt that a culture of self-enrichment and collusion prevailed at the top echelons of Brazilian government and business sector, and kickbacks were and still are the norm when it comes to large government contracts.

According to the Latinobarómetro[1], for the first time in Brazilian history, corruption is at the forefront of citizens concerns. Since 2003 reducing corruption has been a major issue, and it is also a subject considered by policymakers when building local, public policies. It is quite easy to perceive that grand corrupt practices have a close connection with poor public management, which has well-known impacts on social rights.

Daron Acemoglu and James Robinson explain that "[e]mpowerment at the grass-roots level in Brazil ensured that the transition to democracy corresponded to a move toward inclusive political institutions, and thus was a key factor in the emergence of a government committed to the provision of public services, educational expansion, and a truly level playing field"[2]. One of those inclusive institutions in Brazil is the Public Prosecution Service[3], responsible for fighting corruption in both civil and criminal arenas and to advocate civil and social rights before Brazilian courts.

Many countries in Latin America have been struggling against corruption and bribery for many years. Citizens across the Americas press for more transparent governance, probity and accountability. Some nations in the hemisphere, including Brazil, have implemented legal reforms that favour integrity and accountability. However, other civic attempts to implement new laws were defeated, as the nation witnessed last year when the Brazilian Parliament rejected the bill for the 10 Measures Against Corruption. In this regard, the ratification of international treaties on anti-corruption is of paramount importance for the advancement of Latin American nations on this item. At this point, the results achieved by prosecutors and other law enforcement agents across the region have been impressive.

Brazil and other countries in this region are striving to counter corruption since popular demands for more transparency and integrity are increasing. On the other hand, politicians and some entities from the private sector are resisting and pushing back reforms against the work of those national institutions engaged in anti-corruption efforts. When prosecutors use the powers vested in them by the Constitution to initiate probes, immediate retaliation is expected. This decade seems to be a perfect time to raise awareness on the huge costs of corruption and its impact on civil and social rights.

In this article, I intend to address the current Brazilian criminal and civil justice practice against corruption, constructed over the past two decades. International cooperation strategy with foreign authorities to tackle cross-border corruption is also discussed. Considering my vantage point as former head

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[1] Latinobarómetro Corporation is a non-profit NGO based in Santiago, Chile, and is responsible for data production and publication on Latin American democratic, social and economic development, using indicators of opinion, attitudes, behaviour and values.

[2] *Why nations Fail: the origins of power, prosperity, and poverty*. Profile Books, London, 2013, p. 460.

[3] This institution is known as "Ministério Público" in Portuguese.

of the international cooperation unit at the Office of the Prosecutor General[4] between 2013 and 2017, my intention is to provide an overview of the good practices applied on and the lessons learned from the Lava Jato case. In other words, this essay will analyse the Brazilian context and drill down on lessons learned from a major, recent corruption scandal, the largest corruption scheme ever unveiled in Latin America.

II. THE 2030 AGENDA FOR SUSTAINABLE DEVELOPMENT

It is very important to consider the purpose of fighting corruption for the development of human societies. It is not about incarcerating people, according to a criminal law perspective. It is all about enforcing citizen's rights. Having this in mind, in 2015, the United Nations have decided to adopt new global Sustainable Development Goals (SDG). The representatives of the Member States have resolved "to end poverty and hunger; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources"[5]. This is a new agenda to be accomplished by 2030.

For the purpose of this article, one should pay attention to the Goal 16, which calls for the promotion of peaceful and inclusive societies for sustainable development, demands that access to justice is provided for all, and requires nations to build effective, accountable and inclusive institutions at all levels. Some of the main targets of SDG 16 are to:

16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all
16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime
16.5 Substantially reduce corruption and bribery in all their forms
16.6 Develop effective, accountable and transparent institutions at all levels
16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels
16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements
16.a Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime.

Notably, by implementing target 16.5 nations across the globe are expected to reduce corruption and bribery as a way to save and provide public moneys, funds and resources to provide health and educational services, build infrastructure works, empower women, protect children, enforce environmental laws and so on, in order to achieve sustainable development all over the world.

III. THE BRAZILIAN CRIMINAL JUSTICE SYSTEM

Firstly, I would like to explain how the prosecution services in Brazil are organized. An independent nation since 1822, Brazil is a federation of 26 States and the Federal District, which means that there are federal and state courts, and federal and state prosecution services in all the 26 Brazilian states and in the Federal District, where Brasilia is located.

The Federal Prosecution Service (MPF)[6] – the agency I work for – has jurisdiction all over the nation. The Prosecutor General is the head of the MPF and the president of the National Council of Public Prosecution Services (CNMP), an external, oversight body.

Under the 1988 Constitution, the prosecutors are responsible for investigating crimes and prosecuting criminals before state, federal, military and electoral courts. Police forces at the state and federal level also conduct criminal investigations and must refer their reports to the relevant prosecutors. There is an

[4] Procuradoria-Geral da República (PGR), in Portuguese.
[5] United Nations. *Sustainable Development Goals* at <www.un.org> accessed 20 Oct. 2017.
[6] Ministério Público Federal (MPF) in Portuguese.

accusatorial system. One-judge courts try criminal cases. The defendant has all the fundamental rights specified by Article 14 of the International Covenant on Civil and Political Rights, including the right to counsel and right to appeal.

There are two central authorities for mutual legal assistance purposes, the Ministry of Justice (MoJ) and the Office of the Prosecutor General (PGR), which handles cases from the Portuguese-speaking countries and Canada, pursuant to two specific treaties.

Taking account of the Federal Prosecution Service (MPF), its strategic plan states a mission and a vision. Its vision is to promote justice and social welfare and to defend the rule of law. According to its vision, by 2020, the MPF intends to be acknowledged both nationally and internationally as a chief agent in fostering of justice, protecting civil rights and in the fight against crime and corruption. Bear in mind that in Brazil the Ministério Público (the prosecutorial agency) has powers to investigate illegalities outside the criminal field and to file civil lawsuits to enforce social and fundamental civil rights, including aspects of non-criminal corruption or improbity. This unique feature of the prosecution service in Brazil grants opportunities to the agency's influences on public policies[7].

This subject brings us back to the 17 Sustainable Development Goals, especially some targets of Goal 16. It is important to stress the Brazilian Federal Prosecution Service's commitment to the SDGs. There is no doubt that prosecution services, courts and law enforcement agencies across the world should adopt in their strategic plans an approach consistent with the United Nations 2030 Agenda.

As a matter of fact, the global legal framework is very complex, so it is also necessary to face the challenges of implementing the United Nations Convention on Transnational Organized Crime (UNTOC) and the United Nations Convention Against Corruption (UNCAC) by enacting new legislation when it is needed.

To achieve this purpose, since 2003 the Brazilian government instituted a National Strategy to Tackle Corruption and Money Laundering. Also known as ENCCLA, this initiative brings together many different agencies and public bodies which propose draft bills and bylaws to implement international conventions that are legally binding in Brazil and to improve the national legal framework.

For this reason, in order to tackle money laundering, the Brazilian government and independent agencies, prosecution services and courts get together every year to establish goals to be achieved the following year by each branch, agency or institution.

ENCCLA stands for national strategy against corruption and money laundering. Other predicate offences are dealt with in this coordinated work of the Brazilian Federation. The strategy includes proposals for enacting new legislation, capacity building, and coordination of law enforcement agencies.

Thanks to ENCCLA proposals, Brazilian prosecutors and judges can rely on up-to-date legal tools and special investigative techniques to prosecute felons and protect their victims, including under UNTOC and UNCAC provisions.

It goes without saying how important these conventions are to the effectiveness of complex prosecutions, especially when it comes to investigating the relationship between corruption, money laundering and other forms of organized crime.

IV. THE LAVA JATO CASE

The major part of political and economic institutions in Brazil fall under the classification of "extractive institutions" developed by Acemoglu and Robinson:

We will refer to political institutions that are sufficiently centralized and pluralistic as inclusive

[7] This dual power is consistent with target 16.a, which aims to strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime.

> political institutions. When either of these conditions fails, we will refer to the institutions as extractive political institutions.
> There is strong synergy between economic and political institutions. Extractive political [institutions] concentrate power in the hands of a narrow elite and place few constraints on the exercise of this power. Economic institutions are then often structured by this elite to extract resources from the rest of the society. Extractive economic institutions thus naturally accompany extractive political institutions. In fact, they must inherently depend on extractive political institutions for their survival. Inclusive political institutions, vesting power broadly, would tend to uproot economic institutions that expropriate the resources of the many, erect many barriers, and suppress the functioning of markets so that only a few benefit. [...]
> Nations fail economically because of extractive institutions. These institutions keep poor countries poor and prevent them from embarking on a path to economic growth. This is tue today in Africa, in places such as Zimbabwe and Sierra Leone; in South America, in countries such as Colombia and Argentina; in Asia, in countries such as North Korea and Uzbekistan; and in the Middle East, in nations such as Egypt.[8]

This is absolutely true when it comes to Brazil. In the Car Wash Case (or Petrobribe), prosecutors investigate the largest corruption scheme ever discovered in Brazilian history. A coalition between political elites and tycoons from the civil engineering sector engaged in a huge, long-running scheme, designed to make profit and obtain illegal advantages harming the public interest.

In a nutshell, high-level employees within the state-owned company PETROBRAS received bribes in order to benefit certain private companies hired to execute large construction projects. In addition to that, these private companies formed a cartel, which increased artificially their prices and profits in detriment of the state-owned company.

PETROBRAS is a huge company whose performance areas comprise oil, gas and energy. Some of its directors were aware of this cartel formation, and they agreed to receive bribes in order to foster the cartel's interests within the state-owned company. Bribe payments were handled by financial brokers and illegal money exchange providers ("doleiros" in Portuguese), who laundered the money and handled it in such a manner that it appeared to stem from legitimate operations. But it was nothing but bribes. A criminal organization was settled, integrating construction companies, financial brokers, and PETROBRAS' employees. It is estimated that the amount paid in bribes exceeds USD 1 billion.

Later on, the investigators found out that other Brazilian companies were involved in the scheme, such as ODEBRECHT, OAS and CAMARGO CORREA. These giant construction companies were part of the cartel, which was also responsible for providing slush funds to political parties and to politicians running for elections across the country, both for the Legislative and the Executive branches.

So as to help grasp the scope of those illegal operations, only one of the state-owned company's employees, who entered into a collaboration agreement with the Federal Prosecution Service, returned to the Brazilian government treasury USD 100 million he had received as bribes.

The Car Wash case uncovered a large criminal scheme involving the commission of the following crimes: engaging in a criminal organization, tax crimes, official misconduct (both active and passive bribery), financial crimes and money laundering, as well as the formation of a mighty cartel, which was settled by the largest construction companies from Brazil, with operations across Latin America and Africa. In this scheme, between 2004 and 2014, bids for government contracts for PETROBRAS were fraudulent, and civil agents were paid bribes in order to make that fraud happen.

According to court files, this cartel for bid rigging was formed, at first (in the mid-2000s), by the following construction companies: ODEBRECHT, UTC, CAMARGO CORRÊA, TECHINT, ANDRADE GUTIERREZ, MENDES JÚNIOR, PROMON, MPE, and SETAL-SOG. As of 2006, other companies joined the cartel, and they were as follows: OAS, SKANSKA, QUEIROZ GALVÃO, IESA, ENGEVIX, GDK, and GALVÃO

[8] *Why nations Fail: the origins of power, prosperity, and poverty*. Profile Books, London, 2013, pp. 81 and 398.

ENGENHARIA.

So that the cartel would remain operative, the construction companies paid bribes to several high-level civil servants at PETROBRAS. Among them, the Head of Downstreaming Operations PAULO ROBERTO COSTA, who was in charge of having the government bids manipulated. Furthermore, the construction companies taking part in the cartel and both the civil and the private agents who took part in the scheme used the services of financial brokers, such as ALBERTO YOUSSEF. These co-conspirators employed many scams in order to launder the illegal money stolen from PETROBRAS, such as making fraudulent contracts, and the issuance of false invoices through front companies. This was made so that the payment of bribes would seem to be legitimate. At times, the amounts would also be sent to bank accounts overseas.

Therefore, the criminal organization was operating in three core areas. The first one involved the members of the cartel, CEOs of large construction companies, who paid bribes so that the government bids were rigged. Civil servants who received bribes in order to conduct the criminal scheme within PETROBRAS formed the second area. Finally, the third one was composed by financial brokers, such as ALBERTO YOUSSEF, who were in charge of handling the payment of bribes to members of the second group, as well as of laundering the money stemming from crimes perpetrated by the criminal organization.

Then there were the political parties, which shared bribes with the former PETROBRAS employees, assigned by their leaders and committed to maintain the scheme running and making money turned into slush funds for political campaigns.

Two CEOs of construction companies involved in the scheme entered into collaboration agreements with the Federal Prosecution Service (MPF), and corroborated PAULO ROBERTO COSTA's and ALBERTO YOUSSEF's testimonials.

The Federal Prosecution Service has received from Switzerland bank statements regarding bank accounts maintained by the suspects. Following Swiss mutual legal assistance to Brazil, it became possible to determine the origins and the destination of the amounts transferred from and to the bank accounts held by PAULO ROBERTO COSTA and other defendants.

As one may see, the main target of the criminals, either from the public or the private sector, was the government procurement of goods, services, public works, construction and supply contracts on behalf of a public company or other government agency. To prevent fraud and corruption, cartels or protectionism, the law must be enforced by independent and accountable agencies.

During this investigation, federal prosecutors in Brazil pressed charges and indicted politicians and businesspersons for committing financial crimes, bribery, money laundering, and obstruction of justice. The relevant legal provisions are in the Criminal Code and in special laws.

Pursuant to Article 317 of the Brazilian Criminal Code, passive bribery is committed when someone requests or receives for oneself or for a third party, both directly or indirectly, undue gain or advantage by using his/her position as a public official or a civil servant. The undue advantage or gain may be obtained even outside of the scope of the public position, or before taking office. The crime also takes place when the agent accepts an offer of a future payment of undue gain or advantage under the outlined circumstances. The punishment for this felony is imprisonment from 2 to 12 years, and a fine. According to the law, the punishment can be increased by a third if, as a consequence of the undue advantage or promise, the public employee delays or does not practice an official act or if such an act is practiced by the infringement of an official duty.

The Federal Law No. 9.613, of 1998 (Anti-Money Laundering Law) makes it a crime to conceal or dissimulate the nature, origin, location, availability, transfer or property of assets, rights or amounts stemming from crimes, whether direct or indirectly. The punishment under this law is imprisonment, from 3 to 10 years, and a fine. The punishment can be increased from one to two thirds if the crimes provided by this Law are committed repeatedly or by members of a criminal organization.

In Brazil, it is considered a crime, under Federal Law No. 12.850 of 2013 (Organized Crime Law) to

promote, constitute, finance or integrate a criminal organization, either in person or through the actions of intermediaries. The punishment is imprisonment from 3 (three) to 8 (eight) years, and a fine, regardless of the corresponding penalties related to the other criminal offenses committed by the offender. The punishment is increased, from 1/6 (one sixth) to 2/3 (two thirds), if a civil servant is involved as a co-conspirator, and the criminal organization relies on such a condition to commit the offense.

V. INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

In this section, it is time to address the issue of international cooperation to tackle corruption and organized crime, especially in the context of complex financial and white-collar crimes, such as Lava Jato. It is also adequate to discuss the experience and current problems when it comes to mutual legal assistance in Latin America.

For the purpose of clarification, Latin America is a socio-cultural concept, not a geographic one. It refers to the 20 Spanish-speaking and Portuguese-speaking countries of the Americas, from Mexico to Argentina and Chile. More than 588 million people live in that region which faces many problems related to public security, civil rights violations, access to justice and failure of criminal justice.

Considering the mutual legal assistance scenario, the most serious crimes in Latin America are drug trafficking, trafficking in human beings, smuggling of migrants, trafficking firearms, corruption and money laundering. However, the Lava Jato case added a new element to the interaction amongst the Prosecution Services across the region: fighting transnational schemes of corruption and illegal funding of electoral campaigns.

Unfortunately, many countries in Latin America have porous, penetrable and unprotected borders. Even outside certain economic cooperation zones, there is a free movement of goods, assets and citizens, including criminals. In some places there are no immigration and customs controls whatsoever, which facilitates many forms of criminal activities.

It is hard for authorities to track down those serious crimes, because of legal loopholes in many countries. It is true that there are some very useful treaties in criminal matters, which are binding for Latin America and for other countries in the region, like the Inter-American Convention on Mutual Legal Assistance in Criminal Matters, the Inter-American Convention on Serving Criminal Sentences Abroad, and the relevant United Nations Conventions. Specifically on bribery, it is important to highlight that the first comprehensive international convention on this matter was negotiated in the Americas. I refer to the Inter-American Convention against Corruption, adopted in Caracas in 1996. One of its purposes, under Article II.1 is to "promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption".

It is worth mentioning the COMJIB Agreement on the Use of Videoconferencing in International Cooperation; and the COMJIB Agreement on Joint Investigation Teams. COMJIB stands for the Conference of Ministers of Justice of Ibero-American Countries. However those treaties are not implemented yet.This list will not be complete without the MERCOSUR treaties on extradition and MLA and other regional agreements ratified in Central America for similar purposes. Still, this legal framework is not sufficient to supply prosecutors with the proper tools to investigate transnational organized crimes.

This scenario makes it necessary for the countries to have proper rules on MLA and to provide their prosecutors and judges with sufficient information on judicial cooperation in criminal matters; and on police and customs cooperation. For example, many countries across Latin America need to enact legislation on hot pursuit and trans-border surveillance. In general, nations from Central and South America have neither a legal scheme for cross-border cooperation nor rules permitting the free flow of evidence between their investigative and prosecutorial officials. And there is little experience on transferring criminal proceedings within the region.

The lack of training programs for magistrates is an important issue as well. Some judges and prosecutors are not prepared to deal with MLA requests. The requirements to write an outgoing request sometimes seem very hard to cope with. So States and international organizations, such as UNAFEI and ILANUD,

should offer such training programs on international cooperation on a regular basis.

Another problem is the translation of the MLA requests into Portuguese or into Spanish. The translations are expensive and sometimes the result is of poor quality. For this reason it is important to develop an electronic writing tool to facilitate the work of prosecutors, like the one designed by the UNODC.

Besides that there are concerns on human rights violations and the due process clause during criminal proceedings and the related MLA requests. This clause should always be invoked as a ground to refuse the execution of a particular request in order to protect the defendant from unfair or unjust prosecution.

Lack of coordination at the national level between law enforcement agencies and prosecuting authorities at the national level is also a problem because it has an impact on international cooperation, especially on the incoming MLA requests. Moreover, in some countries there is more than one central authority in criminal matters, and in some other countries this task is performed by the Ministry of Justice and not by the Public Prosecution Services.

International cooperation to fight serious crimes is one of the most important policies to promote peace and security, foster justice and advocate human rights. However, the principle of mutual recognition of foreign decisions is not present in many domestic legal systems and it is not clearly stated in any of the binding Organization of American States (OAS) and Mercosur treaties. And generally speaking there is poor capacity to enforce foreign judgements, meaning that the transfer of the execution of criminal sentences (which is different from the transfer of convicted persons) as an alternative to extradition is not available. So the scenario is completely different from Europe.

There are well known best practices for the betterment of international cooperation. Direct contact between prosecutors in different countries is the first one of them. Before preparing an MLA request prosecutors should talk to their colleagues abroad in order to write requests more suitable for transmission by the Central Authority, facilitating their execution by the receiving State.

The use of networks of prosecutors – both formal and informal – is also a good practice. Most of the Latin America countries are members of the Ibero-American Association of Prosecutors (AIAMP), established in 1954; are integrated in the Ibero-American Judicial Cooperation Network (Iber-Red); take part in the Hemispheric Network of the OAS; have public officials assigned as focal points within the RRAG or Asset Recovery Network of the Financial Action Task Force of Latin America (GAFILAT). Some *Ministérios Públicos* are also part of the Specialized Meeting of Public Prosecution Services of Mercosur Member States and of the Central American Council of Public Prosecutors Offices.

It is also necessary to improve the coordination between prosecution services both at the regional and at the global level. Two good examples are the West African Network of Central Authorities and Prosecutors (WACAP), and the Central America and the Caribbean Network of Prosecutors Specialized in Organized Crime (REFCO).

The Commission on Crime Prevention and Criminal Justice (CCPCJ) Resolution 19/7 recognizes the potential benefits of establishing such networks in regions where they do not exist, in order to facilitate coordination to tackle organized crime and make it easier to exchange information between prosecuting authorities. The Conference of the Parties (CoP) to the UNTOC adopted Resolutions 5/8 and 6/1 which mandate the UNODC to foster international and regional cooperation by facilitating the development of regional networks, and where appropriate, facilitating cooperation between such networks.

Therefore, we should facilitate cooperation between such networks for the betterment of MLA in Latin America and in other regions. Perhaps in the future the Americas could have a more formal, supranational body, according to the Eurojust model and we could call it Amerijust.

Another best practice is the assignment of police attachés and liaison magistrates/prosecutors to deal with mutual legal assistance and extradition matters. In Brazil, the services provided by the Federal Police liaison officers are very useful. In a particular case, Italy's highest court has granted the extradition of a Brazilian banker. The banker, who has dual Brazilian and Italian citizenship, had fled to Italy to avoid serving

12 years in prison for corruption, embezzlement and money laundering. He was convicted as a co-conspirator of the *Mensalão* trial (case file No. 470), a huge political corruption scandal previous to Lava Jato. Without the efforts taken by the Brazilian police attaché in Rome and the Italian police attachés in Brazil, this difficult case could have had a different outcome.

On the other hand, it is worth sharing the successful experience Brazilian prosecutors and judges had in the last five years with the only liaison prosecutor seated in Brazil, a French colleague who is able to provide a desirable direct contact with all Brazilian law enforcement and government authorities, reducing drastically the time of international cooperation proceedings. This liaison magistrate follows up on French outgoing requests to Brazil to ensure adequate execution. This officer has jurisdiction in Suriname, Guiana and French Guiana, an overseas department of France. Situated on the northeastern coast of South America, French Guiana shares a frontier of 730 km with Brazil. So it is necessary to stress the importance of involving such liaison officers and prosecutors when it comes to prepare a formal MLA request and during its execution.

As for corruption probes, it is important to rely on the United Nations Convention Against Corruption (UNCAC) and OECD Anti-Bribery Convention. The 1992 Inter-American Convention on Mutual Legal Assistance in Criminal Matters and a dozen bilateral treaties signed by the Federative Republic of Brazil also played a role in recent cross-border anti-corruption investigations.

As a civil law country, a request for cooperation can be executed pursuant to an MLA treaty or on the basis of reciprocity. If a foreign government so requests, there is information sharing for intelligence purpose. In some cases, regarding the specialty principle, the cooperating authority may establish conditions or limitations on the use of the evidence requested. So investigators and prosecutors must be in a position to comply with these conditions, after signing a specific undertaking.

According to this principle, the central authority of the requested State may demand that the requesting State not use any information or evidence obtained following an MLA request in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested State. In such cases, the Requesting State shall comply with the conditions.

Finally, let us discuss a very effective technique to coordinate cross-border investigations. Pursuant to Article 49 of the United Nations Convention against Corruption and Article 19 of the United Nations Convention against Transnational Organized Crime States that parties may conclude agreements or arrangements to establish joint investigative teams (JIT) on a case-by-case basis. A similar provision exists in other treaties. JITs are very useful when the same facts or intertwined events are under investigation in two or more jurisdictions.

In such cases, the competent authorities may establish joint investigation bodies with regard to the common criminal investigations. A standard memorandum or agreement must have provisions on definitions, scope, duration, operational arrangements, leadership of the team, powers of the members and seconded members, civil and criminal liability, confidentiality, restriction on the use of information, treatment of evidence, data protection, costs etc.

VI. CONCLUSION

It is important to say it one more time. Fighting corruption is an indispensable step to tackling organized crime. Furthermore, corruption has a devastating impact in developing countries, which bring us back again to the 2030 Agenda and its 17 SDGs. According to the OECD, "corruption in the public sector hampers the efficiency of public services, undermines confidence in public institutions and increases the costs of public transactions. Integrity is essential for building strong institutions resistant to corruption"[9].

In the Doha Declaration of 2015, the United Nations reiterated "the importance of promoting peaceful, corruption-free and inclusive societies for sustainable development, with a focus on a people-centred approach

[9] *Fighting corruption in the public sector*, OECD <www.oecd.org/corruption/ethics> accessed 27 Oct. 2017.

that provides access to justice for all and builds effective, accountable and inclusive institutions at all levels"[10]. Having this in mind, the world leaders decided:

> To make every effort to prevent and counter corruption, and to implement measures aimed at enhancing transparency in public administration and promoting the integrity and accountability of our criminal justice systems, in accordance with the United Nations Convention against Corruption[11].

There are some good ideas to be implemented both regionally and internationally. For the Americas, Transparency International, Atlantic Council and other NGOs have been suggesting the adoption of institutional mechanisms, such as a rapporteur on corruption and human rights at the Inter-American Commission on Human Rights, as well as to institutionalize hybrid investigatory mechanisms, such as the International Commission Against Impunity in Guatemala (CICIG), or even "establishing a roster of anti-corruption advisors, investigators and prosecutors to support States with investigations upon request"[12]. There is much work to be done. There is no other way to achieve government integrity and corruption-free societies without autonomous, transparent and committed institutions and, more importantly, without the incessant oversight of citizenship.

[10] *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation*, § 4.
<https://www.unodc.org/documents/congress/Declaration/V1504151_English.pdf> accessed 10 Oct 2017
[11] *Idem*, § 5.b
[12] *Meeting of experts on democratic governance against corruption*, Lima, Nov. 2017.

EFFECTIVE MEASURES FOR ASSET RECOVERY: THE BRAZILIAN APPROACH

*Vladimir Aras**

I. INTRODUCTION

Brazil still occupies a quite uncomfortable position in the International Corruption Perception Index (CPI). However, through the years there has been a remarkable advancement regarding the Brazilian anti-corruption policies. Many good practices were adopted to fight corruption, money laundering, terrorism financing and to trace and seize proceeds of crime.

The Car Wash Case ("Lava Jato", in Portuguese), one of the largest corruption investigations in Latin-American history, and a great number of previous and current criminal probes came to demonstrate that co-ordinating civil and criminal investigations and using international co-operation requests produces excellent results, when it comes to asset recovery.

A huge corruption scheme was found within one of the most important oil companies in the world, PETROBRAS. This state-owned company has always been very close to Brazilians' hearts. Investigations showed that the corruption scheme was dependent on the participation of many Brazilian and foreign construction companies, which signed fraudulent contracts with Petrobras. Huge amounts of public money were diverted from the company to politicians, financial market operators and lobbyists. From day one, it was clear that prosecutors and police officers would have to face a great challenge: to trace the assets in Brazil and abroad and to get them back to the government and to that state company itself.

In this essay, my aim is to verify how the Brazilian law enforcement confronted that challenge and the results so far.

II. BEST PRACTICES OVERVIEW

One of Brazil's most successful practices in this regard has been the co-ordinated action amongst federal and state agencies, civil society and the private sector, all integrated into the National Strategy against Corruption and Money Laundering ("Estratégia Nacional de Combate à Corrupção e à Lavagem de Ativos", in Portuguese) or ENCCLA. This expert policymaking group was brought together by the Ministry of Justice in 2003, and its purpose was and is to improve legal provisions which regulate various segments of financial and economic activities. Many very effective laws were enacted during the last decade as a result of ENCCLA's efforts. One of these efforts, was the reform of the Anti-Money Laundering Law, in 2012, when the National Congress passed a modification to suppress the list of predicate offenses, making it easier to investigate and prosecute this felony and the crimes associated to it, bribery included.

The Federal Prosecution Service (MPF)[1] has led some of the changes the Brazilian criminal justice system passed in the recent years. Since 1988, under the new Constitution, the Prosecution Service is an independent agency. This is a key feature of the prosecutorial organization. This autonomy buys some space for prosecutors both at the state and federal level to investigate and indict very powerful targets, politicians, entrepreneurs and businesspersons, without suffering any undue influence from the government.

Many offices of the MPF across Brazilian lands created special units, comprised of adequate personnel to

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[1] Ministerio Público Federal, in Portuguese.

investigate and prosecute criminal and non-criminal corrupt practices. Corruption (passive and active), embezzlement and other crimes against the interests and monies of the Administration are dealt with by the Criminal Code.

Nevertheless there is a key act in Brazil which empowers prosecutors to bring law suits against corrupt agents as well. Working outside of the criminal field, before civil courts, the MPF and the 26 State mirror-entities may rely on the 1992 Administrative Improbity Act. This legislation stems from article 37 of the Brazilian Constitution, and it is intended to protect public funds, promote integrity and transparency, and to prevent illicit enrichment of public officials or third-parties when involved with public procurement or with the government. This 1992 Improbity Act provides for very hard sanctions for civil liability, including but not limited to compensation, retribution, fines, debarment, disgorgement, suspension of political rights for a time period (right to vote and to run for elections).

The MPF has offices in all the 26 Brazilian States and in the Federal District, where Brasília is located. In those offices there are specialized anti-corruption units known as "Núcleos de Combate à Corrupção" (NCC). The prosecutors working there are entitled to adopt this approach when handling corruption cases. The 26 Prosecution Services of the States have their own organization charts and may establish similar, specialized units, usually known as "Promotorias de Defesa do Patrimônio Público", loosely translated as the Office of the Prosecutor for the Protection of Public Property.

Once a public servant, a mayor, a businessman or even a corporation engages in an improper, illegal relationship and causes harm to a state-owned entity, to a city or to the federal government or their properties, the perpetrator will be investigated and can be prosecuted before a non-criminal court pursuant to the Improbity Act. If this conduct is also a crime, the same federal prosecutor, when it comes to the federal judicial systems, will be responsible for the criminal investigation and the prosecution before a criminal court. This concentrated-management for adjudicating corrupt practices saves resources and time, and it is a very effective manner of producing and handling evidence. This practice facilitates the asset search and investigation for a future recovery.

One last thing must be noticed. Under this law, private companies and other legal entities (not only individuals) may be sued for corrupt practices; this is very important because in Brazil there is no criminal liability for legal persons, except in environmental crimes. For this reason, Brazil is considered a compliant country when its judicial system is confronted with article 26 of UNCAC:

> Article 26. Liability of legal persons
> 1.Each State Party shall adopt such measures as may be necessary,
> consistent with its legal principles, to establish the liability of legal persons for participation in the offenses established in accordance with this Convention.
> 2.Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.
> 3.Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offenses.
> 4.Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

This is now even more a reality since the Congress passed a new law in 2013 to tackle corrupt practices from private companies in public procurement and other kinds of relationship with the government. The so called Clean Compact Act (Federal Law No. 12,846 of 2013) grants powers to state and federal regulators to investigate and impose administrative sanctions to legal entities which engaged in corrupt practices describes therein.

These investigative tactics allow prosecutors to identify large corruption schemes, usually designed to pay hundreds of millions of dollars in bribes and kickbacks by means of over-priced contracts and through bid rigging. Unfortunately, schemes like that are very hazardous for any country, as they undermine the economy and paralyze construction work and infrastructure building.

The Federal Prosecution Service has also been successfully using international co-operation requests to obtain evidence abroad, to arrest fugitives, and above all things, to track down, freeze, confiscate and repatriate assets stemming from corruption.

In this context, one must also mention a new element of anti-corruption good practices that Brazil now adopts: the co-ordination between investigations carried out by the Federal Prosecution Service and those undertaken by private investigators hired by the companies involved in the corruption schemes. This new practice has become very evident, especially in relation to three cases: Petrobras, Odebrecht and Embraer. This co-ordination allowed for the return of hundreds of millions of dollars to Petrobras, as its assets had been embezzled by corruption performed by its former heads of departments. Such a positive result has been achieved for the first time in Brazilian history.

In order to promote integrity, the Office of the Prosecutor-General of the Republic, which is the head of the Brazilian Prosecution Service, has signed partnerships with the World Bank and with the Inter-American Bank for Development through memoranda of understanding so as to ensure the adequate use of public money for works and projects financed by these institutions in Brazil.

Taking into consideration its articulation with the civil society, the Federal Prosecution Service has also signed an operational agreement with Transparency International in order to house projects in common to prevent and fight corruption.

With the purpose of informing the population about dishonest practices, the MPF sponsored the campaign *Corruption No* during the Brazilian presidency of the Ibero-American Association of Prosecution Offices (which brings together 21 prosecution services). The campaign's targeted audience were teenagers and young adults, who are perceived as culture-changers across the region.

In the technology field, the MPF have developed their own investigation systems for tracking illegal financial transactions. SIMBA is an example of such technology. This software is now largely used by other control agencies in Brazil to manage and control bank data acquired in compliance with court orders.

The lessons learned in the last decade and the good practice developed by Brazilian law enforcement have been instrumental for the advancement of the investigative procedures. But there are many challenges to address. For that reason, the MPF sponsored a public campaign to get support from citizens enlisted to vote to present a bill of popular initiative. Known as the Ten Measures against Corruption, this bill was intended to implement new legislation on whistleblower protection, statutes of limitations, right to habeas corpus, and illicit enrichment of public officials. One of the proposals targeted political parties involved in corrupt practices. The parties could be held liable for this kind of conduct if they are financed with slush funds or off-the-books assets. The ninth measure would allow courts to remand or send to preventive detention a defendant trying to conceal or dissipate ill-gotten gains. According to the MPF, this would help prevent the laundering of proceeds of crime and prevent defendants from disappearing.

For the purpose of this essay, the tenth measure was the most important one. The idea was to enhance the asset recovery proceeding, by allowing the court to confiscate assets when the individual under investigation could not demonstrate their lawful origin.

III. STRATEGIES AND TECHNIQUES: LESSONS LEARNED

The negative relationship between corruption and organized crime is remarkable. Therefore, it's very important to craft a strategy to the effectiveness of a complex investigation or prosecution, especially when it comes to investigate corruption, money laundering and white collar crimes in a transnational context and to confiscate ill-gotten assets. Long-standing Brazilian experience in this field shows how useful UNTOC and UNCAC provisions are as a legal ground for investigation and international cooperation in a huge criminal case, including for asset recovery.

Starting in March 2014, Switzerland and Brazil have been investigating criminal offenses in connection with the activities of PETROBRAS, a state-owned Brazilian company, and several construction companies. It is true that an investigation like that entails hard enquiries having links with the other country, requiring

coordinated, concerted action and a particularly close cooperation between the involved law enforcement and prosecutorial authorities.

In the Car Wash case (or *Petrobribe*), the MPF prosecuted hundreds of individuals, including senators, representatives (deputies), members of the cabinet, public officials and businesspersons. Politicians and political parties used to take bribes from contractors to facilitate their business with the public sector. Several individuals were indicted for different crimes, as large-scale corruption, financial crimes, cartels, money laundering and racketeering.

The strategy adopted by the federal prosecutors in charge of this investigation was very adequate for this kind of probe. The Car Wash strategy relies on five pillars: training, collaboration, coordination, transparency and international cooperation, enforcing a new legal framework provided by punctual legislative reforms and the implementation of at least three UN and OECD conventions.

As commented before, one of the most important pillars of the MPF strategy is to handle criminal and civil cases at the same time using criminal laws and civil statutes, for example, the Improbity Act (Administrative Malfeasance Act) of 1992. Since 2014, the prosecutors in that task force have been conducting criminal and civil probes on the same facts and have brought complaints against several persons and legal entities.

Additionally, there three separate but coordinated teams of prosecutors and police officers, that work together in different Brazilian cities (Brasilia, Curitiba and Rio) to tackle the scheme known as the Lava Jato case. Since 2014 more than 40 sub-operations (called phases) were carried out to arrest politicians, former lawmakers, contractors, CEOs, public servants and hawala operators. A great number of search warrants and detention orders were executed.

The task forces also work in close relationship with the federal government, regarding the administrative investigations performed by the Ministry of Transparency and of the Comptroller General of the Union (CGU), the Federal Revenue Service and the Federal Court of Accounts (TCU).

Its of paramount importance the coordination between the Federal Prosecution Service, the Federal Police and the Brazilian federal government to investigate this huge corruption scheme.

Technology and technical tools are very useful as well. In the technology field, the MPF has developed its own investigation systems for checking illegal financial transactions. As stated before the software known as SIMBA is now largely used by many law enforcement agencies in Brazil to manage bank data acquired in compliance with court orders, so as expert reports can be released. Another computational system changed the landscape of the financial crimes investigations in Brazil. In 2003 the National Database of Clients of the Brazilian National Financial System (CCS) was established. It allows prosecutors, police officers and judges to have direct access, pursuant a court order, to bank accounts of any individual living in Brazil. CCS and SIMBA play a very important role in asset recovery.

Relying on experts' networks is also a good practice. The GAFILAT Asset Recovery Network (RRAG) is one fruitful way to trace assets abroad. Each country has two or three points of contact on the network. Those officials connect investigators across the region facilitating the tracking of legal or illegal assets.

Now we come to another important pillar of the FPS strategy: the intensive use of the special investigation techniques provided by the Brazilian law on criminal organizations, of 2013. Many of these legal tools were useful in the Car Wash case and other probes, especially the use of cooperating defendants. The defendant is entitled to many different legal benefits when he or she decides to plead guilty and become a cooperating witness.

The requirements to craft a deal like that are described by the Brazilian law. The assistance provided must be substantial. The defendant should express his/her consent prior to the execution of the deal. On the other hand, by offering a plea agreement the prosecutors' aim is to identify co-conspirators, clarify the timeline, places and conduct related to a set of criminal acts; prevent new crimes; save or protect the victims' lives or health and, finally, recovery assets and proceeds of crime.

Prosecutors may combine plea agreements with natural persons and leniency commitments – a kind of non-prosecution agreement (NPA) – with legal entities they work for. The possibility of achieving settlements in the criminal and non-criminal jurisdiction makes a difference, because this combined approach potentialize the workload of evidence delivered in exchange of the agreement, and the amount of assets returned.

The use of cooperating witnesses in connection with MLA tools in the Car Wash case was also of great importance. Currently (as of October 2017) the Lava Jato task forces signed more than 180 plea agreements with different defendants or suspects. Another 300 defendants await their trials. There are almost a dozen NPAs entered with corporations. Several defendants were convicted by lower courts, and the amount of assets frozen or confiscated is really impressive.

The traditional legal basis for recovery in Brazil is the confiscation of proceeds of crime after a conviction. Here, if the decision is not final it is not possible to confiscate the illegal assets of the defendant. In general, it takes too long for a decision to become final, because there are too many appeals available for the defense in the four levels of the Brazilian court system.

The Brazilian criminal justice system is full of examples of conviction rulings waiting for more than a decade to be confirmed by the Brazilian superior courts.

The difference with the Car Wash case was the use of the plea agreements – or collaboration agreements – to make the recovery faster. The defendant waives his/her right to appeal and agrees to return the assets to Brazil. A mutual legal assistance request is filed through the central authority. Then the foreign prosecutor and the local central authority can handle the request, check the waiver and send the assets back more rapidly. This proceeding is also valid and applicable domestically, not demanding an MLA request, of course.

Some of the suspects used to maintain their funds hidden abroad. As a result of two dozen MLA requests received from Brazil and due to their own probes, Swiss authorities have frozen millions in assets tied to the PETROBRAS and ODEBRECHT[2] corruption scandals, and have discovered hundreds of accounts at Switzerland's banks used to funnel bribes as part of the wrongdoing at Brazil's state oil company and other Brazilian entities. According to its 2016 activities report released in March 2017, the *Ministère Publique de la Confédération* (MPC), the Swiss federal prosecution authority, the findings and results so far are quite impactful.

> 3.7 Petrobras / Odebrecht proceedings
> In connection with the corruption scandal relating to the semi-state-owned Brazilian company Petrobras, the OAG has been conducting investigations since April 2014 in relation to money laundering and acts of bribery in particular. In 2016 some 20 fresh criminal investigations were instigated in these proceedings, as a rule following corresponding reports of suspicion from the MROS. This increased the total number of criminal investigations conducted by the OAG in this context to more than 60. The investigations in Switzerland are being conducted, above all, into Brazilian officials on the suspicion that they had bribes paid to them in accounts in Switzerland in return for awarding public procurement contracts in Brazil, but also into Brazilian construction and supplier companies on the suspicion that they paid bribes via these account structures in Switzerland and unjustly enriched themselves in numerous cases.
> In this process, the OAG seized and has largely examined banking documents relating to far more than 1,000 accounts. To date, assets in the total amount of CHF 1 billion, converted, have been confiscated, of which some CHF 200 million has already been returned to the Brazilian law enforcement authorities on request and with the consent of the account holders concerned. A special focus of the OAG's investigations was on the proceedings being conducted since summer 2015 into the Odebrecht conglomerate based in Brazil, which is active, among other things, in construction, petrochemicals, energy, engineering, infrastructure and property management. In the criminal investigations into Odebrecht, other companies and numerous private individuals, a key employee of Odebrecht was arrested and interrogated in Switzerland in February 2016. In March 2016 the OAG managed to seize

[2] ODEBRECHT is one of the major construction companies in Brazil. The company is also a holding doing business in many sector of the Latin American and African markets.

> a server system featuring key evidence with the support of the FCP in Geneva and analyzed at least part of the data. The investigations into Odebrecht in Brazil also progressed, and at the start of the year initial judgments were handed down against executives of Odebrecht, sentencing them to several years of imprisonment for corruption, among other things. Odebrecht subsequently decided to co-operate with the law-enforcement agencies, and the investigations conducted against it in Brazil, the US and Switzerland were brought to a conclusion.
> Odebrecht was found guilty in Switzerland by penalty order under Article 102 Swiss Criminal Code and fined CHF 4.5 million. By sequestration and determination of a corresponding compensation claim, Odebrecht was obligated in Switzerland to refund proceeds from crimes in the amount of CHF 200 million. Another USD 1.8 billion in total is to be repaid on the basis of corresponding agreements with or rulings of the competent authorities in Brazil and the US. The co-ordinated conclusions of the proceedings in Switzerland, Brazil and the US are a success for the international combating of corruption and the result of close co-operation and co-ordination of the law-enforcement authorities in charge.[3]

From March 2014 until now, the prosecution task force has issued or received more than three hundred incoming and outgoing MLA requests addressed to 40 different countries and territories spread throughout the world, in the Americas, Africa, Europe and Asia, in order to gather or provide evidence, arrest fugitives and get assets frozen and repatriated. This is for sure the major transnational probe in the Brazilian history.

Many of these MLA requests were prepared after informal, direct contact between Brazilian prosecutors, police attachés and the competent authorities of the requested countries. On this ongoing investigation, many MLA requests have been issued pursuant to UNCAC provisions, including the ones relevant to asset recovery.

In addition to this, for the first time in Brazil, the MPF has signed two memoranda of understanding to refund US$ 80 million to Petrobras, the main victim of this graft scheme. This was the greatest compensation to a state-owned company in a criminal case in Brazilian history.

But there are still other challenges. Considering that the targets of this investigation are politicians and powerful businessman, pushback may come. Some backlashes already happened. Currently there are bills to prevent prosecutors from cutting deals with arrested defendants and to remove some powers of prosecuting authorities. Another bill makes it a crime broadly defined as abuse of function specifically tailored to target prosecutors and judges.

Commenting on the joint settlement among Brazil, Switzerland and the United States, prosecutor Deltan Dallagnol, coordinator of the MPF task force in Curitiba stated:

> These leniency agreements expand the boundaries of the Car Wash investigation and the prosecutors' ability of obtaining evidence on more crimes. This kind of settlement also provides a way for companies who commit malpractice to assist the authorities, to conduct their business under the law and to invest, which contributes to the maintenance of jobs and to the economy itself".[4]

His colleague Paulo Galvão, also a member on the Lava Jato task force with headquarters in the southern city of Curitiba, stresses the relevance of this kind of settlement:

> Moreover, the commitments undertaken before the Brazilian Federal Prosecution Service foster a new business culture in the construction sector, establishing a new relationship between the public and the private sectors, thus hedging the companies against the influence of cartels and corruption. Under that light, the companies who enter leniency agreements are regarded as catalysts of the renewal of practices and the increase of competitiveness in the market. With the strengthening of the market, efficient companies find better conditions to develop and therefore compete in the global market.[5]

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[3] MPC 2016 Activities Report, <www.ministerepublique.ch> accessed 3 Nov. 2017.
[4] MPF press release, <www.mpf.mp.br> accessed 10 Nov. 2017.
[5] Idem.

IV. ASSET RECOVERY BY MEANS OF LENIENCY PROGRAMS AND COLLABORATION AGREEMENTS

When it comes to evidentiary international cooperation and asset recovery the Brazilian legal framework comprises provisions on the use of civil and administrative proceedings against corruption along with provisions pertinent to criminal matters.

Brazilian legislation provides for two different sorts of settlements. The 2013 Anti-Bribery Act – also known as Clean Company Act – permits leniency agreements for companies, as a non-criminal tool to fight corruption, dealing with civil and administrative liability.

The 2013 Brazilian Organized Crime Law allows cooperation agreements to be signed with witnesses or defendants in criminal proceedings.

Both instruments are effective, and its results are visible, mainly in recent years, asset recovery activities included. Before the Car Wash case, Brazil had recovered no more than US$15 million, because of statutes of limitations and flaws in the appellate system, which makes it too long to solve a case. In the Car Wash case alone, until 2017 federal prosecutors recovered over US$250 million and an estimated US$600 million in frozen assets are abroad, which represents a significant example of the effectiveness of mutual legal assistance.

A leniency agreement must be understood as an investigative tool and not as a primary instrument to resolve financial problems. It is also a way to impose fines for the wrongdoings, recover damages, make the legal entity comply with the legislation, conduct internal investigations to unveil other malpractice, and implement compliance and integrity programs for their boards and employees. Another key obligation is the establishment of corporate anti-bribery and anti-corruption (ABAC) monitoring, which can be kept for two or three years, under the scrutiny of the prosecution service. The independent monitor is hired by the company which entered into the agreement.

To obtain the legal benefits stemming from a leniency program a corporation must fully cooperate with the authorities and regulators, admit and cease its involvement in the wrongdoings, and provide full restitution for the damages it caused. The benefits of different natures include, but are not limited to, reduction of fines and the prevention of debarment. The leniency also is intended to avert the company from going bankrupt.

In 2016 the Brazilian Federal Prosecution Service (MPF) entered into huge global leniency agreements with ODEBRECHT and BRASKEM. The companies admitted to having committed wrongdoing to obtain illicit gain to companies belonging to their economic group.

According to the statement of facts accepted by the aforementioned corporations, one of the victims of this scheme was Petrobras. The representatives of the legal entities reported crimes committed by politicians from Brazilian federal, state, and local governments, also from foreign governments. Odebrecht former CEO and former directors established a Department of Structured Operations, as a division of the Odebrecht group, in order to manage the bribes and kickbacks to be paid to politicians and other corrupt official across the region.

According to the MPF, these are the largest settlements ever signed in a corruption case.
Both agreements are part of a broader covenant undersigned by the corporations themselves with Brazilian, Swiss and American authorities. Although the main reason why these leniency agreements are signed in the first place is for obtaining information and documents regarding malpractices (to which end company co-operation makes all the difference), the companies have also committed to paying damages and compensation for victims and to the Brazilian public coffers. BRASKEM agreed to pay as much as BRL 3,131,434,851.37 due to its leniency agreement. Of this amount, approximately BRL 2.3 billion will be due to Brazil for the payment of damages to victims. As for ODEBRECHT, it has agreed to pay BRL 3,828,000,000.00, of which approximately BRL 3 billion will be also allocated to Brazil so as to compensate victims. The values shall be paid when due, as stipulated on the agreement signed. At the time of payment, monetary adjustment may increment the amounts to be paid to Brazilian authorities. For example, the sum of the installments concerning the agreement signed by

ODEBRECHT (after applying the correction rate called SELIC) results in the final payment of BRL 8, 512, 000, 000. 00, which corresponds to approximately USD 2. 5 billion. If considered together, the amounts paid due to the leniency agreements signed with both ODEBRECHT and BRASKEM constitute the largest leniency agreement ever paid in connection with a corruption and bribery case in the world.[6]

This kind of leniency agreement – which is very similar to a non-prosecution agreement – is usually combined with cooperating agreements entered with individuals related to the company. Also known as "acordos de colaboração premiada", those agreements must be approved in court. The Federal Law 12,850 of 2013 (Organized Crime Act) provides that a cooperating defendant has the right not to be prosecuted (immunity), or to a reduced sentence.

V. OTHER USEFUL MEASURES TO RECOVER ASSETS

In some jurisdictions, like the United States, there are administrative injunctive measures or cease and desist orders to prevent illegal conduct of companies and individuals. Regulators may also impose the disgorgement of illegal gains (or of the losses avoided), civil monetary penalties, claw-back suspensions, and debarment of a lawyer or an accountant or a director from appearing or practicing before the agency.

The disgorgement targets the illegal profits from legal violators. The idea behind this kind of remedy is to take all the profit out of violations. A disgorgement looks at the gains of the violators, not to the losses of shareholders. The violators must be deprived from the profits of their misconduct. In some jurisdictions the law may also provide for orders requiring the defendant or the respondent to lay ill-gotten gains or unjust enrichment, so as the crimes do not pay[7].

A civil monetary penalty is a pecuniary sanction imposed on a company or a natural person who has committed a violation. This kind of remedy is not intended to compensate a victim or the state. It has the purpose of deterrence, but the funds derived from it may be sent to the government or to a victim.

VI. CONCLUSION

The impacts of corrupt practices in organized crime are very clear. There is a direct effect between them and a symbiotic relationship. Criminal organizations make money. Those proceeds of crime are laundered and used to bribe public officials, and they, in their turn, have to launder it again. So there is a never ending vicious cycle which ties organized crime to corruption.

Corruption undermines enforcement strategies established by the government to prevent criminal organizations from maintaining their illegal businesses and thus can be identified as one of the underlying factors that affects the rule of law and the fight against organized crime.

On one hand, criminal organizations profit from crime. Corrupt politicians and public officials take bribes. Then criminal organizations make more money. And when organized crime gets stronger, the rule of law is endangered.

[6] Ibidem.
[7] See for example the StatOil case, a company from Norway, <https://www.sec.gov/litigation/admin/2006/34-54599.pdf> accessed 27 Sept. 2017.

AN OVERVIEW OF SINGAPORE'S ANTI-CORRUPTION STRATEGY AND THE ROLE OF THE CPIB IN FIGHTING CORRUPTION

*Vincent Lim**

I. INTRODUCTION

Corruption is a serious offence. It is important to fight corruption since it has serious repercussions which can lead to a breakdown in social order, increase the cost of doing business, tarnish the reputation of an entire country and worse, result in the loss of human lives. Singapore is fortunate that corruption is now not a way of life there. However, we recognize it as a fact of life since we cannot eradicate human greed, and that is why we continue to remain vigilant against corruption.

My paper will look into the history of Singapore's fight against corruption, our national strategies to deal with the corruption threat and the role and structure of the Corrupt Practices Investigation Bureau (CPIB).

II. EARLY STRUGGLES

During the British colonial rule of Singapore, corruption was a way of life. There was a law against corruption called the (Prevention of Corruption Ordinance 1937); however it was not effective at all. The post-war period was no better. Corruption was entrenched in government, businesses and the society because of the rising cost of living.

In October 1951, there was a case of opium robbery worth $400,000. There was, however, no harsh punishment meted out to the group of robbers consisting of 3 police officers. The British government then realized the need for an independent body to fight corruption effectively. CPIB was thus established in 1952.

However, even with the establishment of CPIB in 1952, nothing much was changed. The situation was still as bad. The turning point only came when the current Singapore Government assumed office in 1959.

The Singapore government resolved early on to fight corruption as a strategic imperative to sustain a healthy state of governance, rule of law and economic and social development. From the early days of self-government, the new political leaders took it upon themselves to set good examples for public officers to follow. They created, by personal example, a climate of honesty and integrity, and made it known to public officers in no uncertain terms that corruption in any form would not be tolerated.

The government's stand against corruption was also made clear in 1960 when the Parliament enacted a revised anti-corruption law, the Prevention of Corruption Act (PCA), to replace the Prevention of Corruption Ordinance. New sections in the PCA made anti-corruption enforcement and prosecution easier. Since then, the Prevention of Corruption Act had undergone various amendments to increase the power of investigation of the CPIB officers, and to enhance the punishment for corruption and plug any loophole to prevent exploitation by criminals.

The policy that the perpetrators should not benefit from corruption was further fortified by the enactment of the Corruption (Confiscation of Benefits) Act in 1989. This Act has been replaced by the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act in 1999. The Act provides the Court with powers to confiscate properties which a person convicted of a corruption offence cannot satisfactorily account for, or when the properties are found to be benefits of corruption offences. The

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legislative framework sets the boundaries of conduct and defines the offences which the society frowns upon.

III. SINGAPORE'S CORRUPTION CONTROL FRAMEWORK

Singapore is now well regarded globally as one of the few countries in the world with a low incidence of corruption. In 2016, Transparency International's Corruption Perceptions Index (TI-CPI) ranked Singapore as the 7th least corrupt country in the world and the least corrupt Asian country with a score of 84 out of 100[1]. The Political and Economic Risk Consultancy (PERC) also ranked Singapore as the least corrupt country in Asia in 2016[2], a position Singapore held since 1995. Over the years, Singapore has established an effective anti-corruption framework which has seen it transform from a country rampant with corruption to one of the least corrupt nations in the world.

A. Root Causes of Corruption

Before we touch on any corruption control framework, it is important to identify the root causes of corruption so as to understand why our framework worked for Singapore. According to a study by Dr Leslie Palmier, the key reasons for corruption were: "Low Salaries, Ample Opportunities for Corruption and Ineffective Policing"[3].

I do not hold the sole wisdom to state these are the main reasons for corruption, but these were issues that Singapore recognized and took measures to address so that corruption can be mitigated. This approach can be best described by Dr Jon S T Quah. In the 60s, the current Singapore government tackled corruption by adopting a two-prong strategy:

(a) Reducing the opportunities for corruption through strengthening the existing legislation to fight graft, and increasing the penalty for corrupt behaviour;

(b) Reducing incentives for official abuse by "improving salary and working conditions in the civil service."[4]

B. Corruption Control Framework

Singapore's strategy on anti-corruption can be illustrated through diagram A, which consists of four pillars of corruption control, underpinned by strong political will.

Diagram A. Singapore's corruption control framework

1. Political Will

The political will to eradicate corruption was established by Singapore's founding Prime Minister, Mr Lee

[1] Refer to www.transparency.org/news/feature/corruption_perceptions_index_2016.
[2] Refer to www.asiarisk.com/subscribe/exsum1.pdf.
[3] Refer to Dr Leslie H Palmier, The Control of Bureaucratic Corruption: Case Studies in Asia 1985.
[4] Refer to Dr Jon S T Quah, Corruption in Asian Countries: Can't It Be Minimized? December 1999.

Kuan Yew, when the People's Action Party (PAP) was elected into government in 1959. The PAP was determined to build an incorruptible and meritocratic government and took decisive and comprehensive action to stamp out corruption from all levels of Singapore's society including within their own ranks. The party to date has not blocked any investigation by CPIB on PAP leaders and that includes the Minister for National Development, Tan Kia Gan, in 1966; Minister of State, Wee Toon Boon, in 1975; Phey Yew Kok, an MP and trade union leader, in 1979; and Teh Cheang Wan, the Minister for National Development, in 1986.[5]

This determination is further demonstrated when Phey Yew Kok, who absconded in 1980 and was on the run for 35 years overseas, surrendered himself in 2015 at the age of 81. His case was re-opened by the CPIB and he was subsequently prosecuted for 34 charges involving more than $450,000, almost 5 times the $100,000 in union funds he was originally charged with misappropriating in 1979. Phey Yew Kok pleaded guilty and was sentenced to 60 months in jail.

As a result of the government's unwavering commitment and leadership, a culture of zero tolerance against corruption became ingrained in the Singaporean psyche and way of life.

2. Effective Laws

Singapore relies on two key laws to fight corruption: the *Prevention of Corruption Act* (PCA), and the *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act* (CDSA). The PCA has a wide scope which applies to persons who give or receive bribes in both the public and private sector. The CDSA, when invoked, confiscates ill-gotten gains from corrupt offenders and this includes not only confiscating benefits from the receiver but also profits that were made by individuals or companies due to bribery to win contracts.

Together, the two laws ensure that corruption remains a high-risk, low-reward activity. Upon the conclusion of investigations by the CPIB, all alleged corruption cases will be handed over to the Attorney-General's Chambers (AGC), the prosecutorial arm of the Singapore Criminal Justice System, to obtain the Public Prosecutor's consent to proceed with Court proceedings.

3. Independent Judiciary

In Singapore, an independent judiciary provides insulation from political interference. The Chief Justice is appointed by the President on advice from the Prime Minister and the Council of Presidential Advisers. State Court judges and magistrates are appointed by the President with advice from the Chief Justice. Various provisions of the Constitution also guarantee the independence of the Supreme Court judiciary. Transparent and objective in its administration of the rule of law, the judiciary recognises the seriousness of corruption and adopts a stance of deterrence by meting out stiff fines and imprisonment towards corrupt offenders. This is important as both investigation and prosecution, no matter how effective, must, however, be complemented by subsequent court conviction and the appropriate punishment to deter corruption.

4. Responsive Public Service

The Singapore Public Service is guided by a Code of Conduct, which sets out the high standards of behaviour expected of public officers based on principles of integrity, incorruptibility and transparency and this is enshrined in the Government Instruction Manual (IM), as follows:

a. a public officer cannot borrow money from any person who has official dealings with him;
b. a public officer's unsecured debts and liabilities cannot at any time be more than three times his monthly salary;
c. a public officer cannot use any official information to further his private interest;
d. a public officer is required to declare his assets at his first appointment and also annually;
e. a public officer cannot engage in trade or business or undertake any part-time employment without approval;
f. a public officer cannot receive entertainment or presents in any form from members of the public.

[5] Refer to Prof Jon S.T. Quah, "Curbing Corruption in a One-Party Dominant System: Learning from Singapore's Experience" in Ting Gong and Stephen k. Ma (eds), Preventing Corruption in Asia: Institutional Design and Policy Capacity: London: Routledge, 2009. Chapter 9.

The commitment of Government similarly resulted in the establishment of administrative measures to reduce the chances of public officers getting involved in corruption and wrongdoing. These measures include:

a. streamlining cumbersome administrative procedures and slashing red tape to provide an efficient and transparent civil service so that no one needs recourse to corrupting civil servants to get things done;

b. reviewing public officers' salary regularly to ensure that they are paid adequately and comparable to that of the private sector;

c. reminding Government contractors at the time when contracts are signed that bribing public officers administering the contract may render their contracts to be terminated. A clause to this effect forms part of the standard contract conditions.

A case in point is when the Singapore government implemented e-services to enhance the accessibility and convenience of government services. Now thousands of government services can be transacted via the internet in the comfort of the homes. A national ICT masterplan was put in place since the 1980s, updated over the years to enable government to exploit technology to benefit the country and to spur economic growth. An example is GeBIZ, the government's online procurement portal. Today, all government procurement is done through the internet. The procurement specifications are posted on the Internet for all to see, including international businesses which wish to take part. Transparency and efficiency are enhanced, and opportunities for abuse and corruption are in a way reduced.

The systems and processes put in place by government to promote excellence in government services do have an impact upon the culture of anti-corruption. By making systems efficient and transparent, the public is more aware of what can be done and what is acceptable. The greater knowledge translates into greater vigilance and ability to report when there is corruption encountered by the public.

5. Effective Enforcement

The Corrupt Practices Investigation Bureau (CPIB) is the only agency authorised to investigate corruption offences under the Prevention of Corruption Act (Chapter 241) and other related offences. It is a government agency under the Prime Minister's Office, operating with functional independence and is helmed by a director who reports to the Prime Minister. The CPIB acts swiftly and vigorously to enforce the tough anti-corruption laws impartially for both public and private sector corruption. During the investigation process, the CPIB will work with various government agencies and private organisations to gather evidence and obtain information.

IV. STRUCTURE AND ROLE OF THE CORRUPT PRACTICES INVESTIGATION BUREAU

The organization chart of our Bureau is illustrated in Diagram B. Assisting the Director are the 3 departments which consists of the Operations Department that houses the Intelligence Division and the Operations Management & Support Division. The Corporate Affairs Department houses all the other staff support divisions like the Finance & Administrative Division, the Planning, Policy & Corporate Relations Division, the Information Technology Division as well as the People Management & Development Division. Our core business lies in the Investigation Department where it is further segregated into Public and Private Special Investigation Branches, General Investigation Branches and a Financial Investigation Branch.

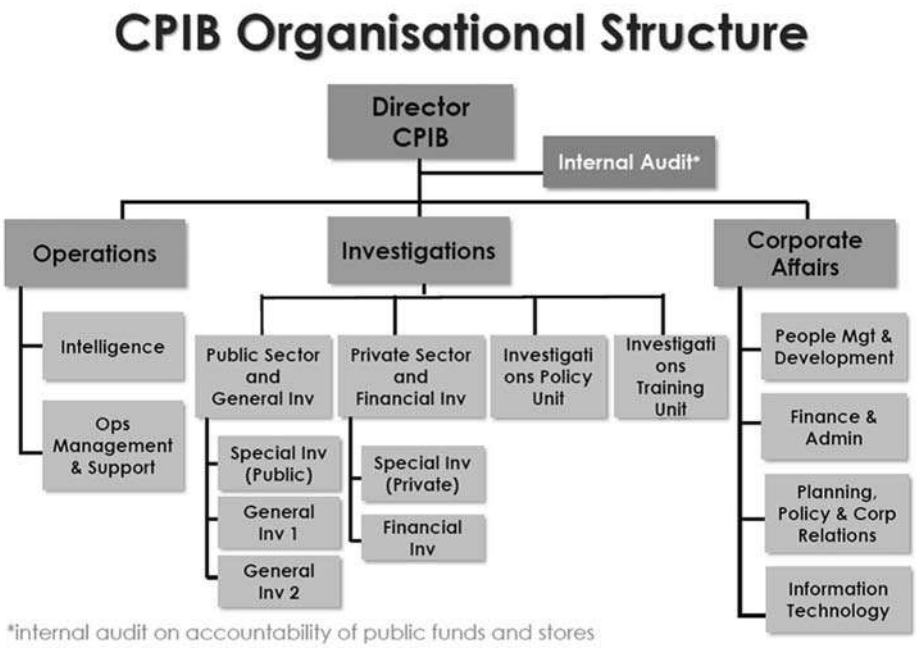

Diagram B

The current CPIB staff strength stands at 220, where about 60% lies in the Investigation and Operations Department.

A. Role of the CPIB

As stated earlier, the CPIB is a government agency under the Prime Minister's Officer but operates with functional independence. Nonetheless, the Singapore government in 1991 further strengthened this independence, during the amendment of the Constitution of Singapore to establish the Elected President, whereby Article 22G empowers the CPIB's Director to investigate ministers and senior bureaucrats without the Prime Minister's consent if he obtains the consent of the Elected President. That means that the CPIB can investigate the Prime Minister if it obtains the Elected President's permission to do so.[6]

CPIB is the sole agency responsible for combating corruption in Singapore in both the public and private sectors. The Bureau is also empowered to investigate any seizable offences which may be disclosed in the course of their investigation into corruption. As such, CPIB officers are also deemed to be officers not below the rank of inspector of police.

1. Public Sector

One of the core values of the Singapore Public Service is integrity. Therefore, the CPIB places a certain emphasis on the public sector in its efforts to eradicate corruption. Particular attention is paid to officers who, by nature of their jobs, are more susceptible to the crime. Although public sector employees formed the minority of individuals prosecuted for corruption in Singapore, the Bureau does not rest on its laurels in educating this group on the ills of corruption through regular talks/workshops/conferences and other prevention initiatives. Each government agency in Singapore has a point of contact in the CPIB of which advice and consultation could be easily sought and given. Through the Singapore Government's and the Bureau's relentless efforts, the number of prosecuted public employees remained low at an average of less than 10% for the last three years.

Alongside statutory measures dealing with corrupt offenders in the public sector, when CPIB comes across cases which reveal corruption-prone areas or loopholes in the government departments, the Bureau will, based on its findings, review the department concerned, point out weaknesses and recommend changes

[6] Ibid.

in their procedures.

2. Private Sector

Singapore's effort to curb corruption is not solely confined to its public sector. Since 1970s CPIB have been taking action against corruption in the private sector as well. In this regard, Singapore is a pioneer. Action taken goes beyond simply prosecuting members of public involved in bribing public officers but also a member of the public bribing another member of the public in relation to one's principal affairs. This is commonly referred to as "commercial bribery" in layman's term.

In the modern economy, corruption in both the public and private sectors is increasingly dynamic and is inter-coupled, i.e. failure to effectively control corruption in one sector will result in an increase in the overall corruption situation. The public and private sector divide is not a very clear thing in the world of corruption. In today's interconnected world, one cannot afford to ignore either area.

The sum of public and private sector corruption will contribute to the general anti-corruption climate in an economy, and maintaining and taking action against the two hand in hand is crucial. Failure to do so will have an adverse impact on economic growth, efficient leadership in both the public and private sector domains and, in the long term, the quality of life will deteriorate. In fact, the World Bank lists corruption control as one of the 6 key fundamentals of good governance and their studies show that countries that have corruption under control are more developed and ahead of the rest.[7]

In Singapore, corruption control goes beyond ensuring having competent and incorruptible public officers. An effective corruption control regime will first create an incorruptible and competent public service. This is the very bedrock of any development in a country. Only when this is in place, will the rule of law prevail and the society function in a manner that the law intends it to be. A predictable and stable environment will in turn attract investment and contribute to sustainable economic development. In the long run, it creates a level playing field for all, whether for a Singapore citizen or a business entity with an interest in investing in Singapore. This can best be summed up in the speech by Mr Lee Kuan Yew which he made in 1979 and which is still very relevant in today's context.

> Only when we uphold the integrity of the administration can the economy work in a way which enables Singaporeans to clearly see the nexus between hard work and high rewards. Only then will people, foreigners and Singaporeans, invest in Singapore; only then will Singaporeans work to improve themselves and their children through better education and further training, instead of hoping for windfalls through powerful friends and relatives or greasing contacts in the right places.

3. Public Support

Public support, so vital in any anti-corruption programme, is best won through successful action against the corrupt, regardless of colour, creed or status and executed without fear or favour, firmly and fairly. Public support cannot be taken for granted. The Bureau makes itself readily accessible to the public. Anyone with a complaint of corruption has many easy means to lodge the complaint. They can go through the Internet (www.cpib.gov.sg), through walk in to the Bureau, through phone calls, through letters and faxes. As we are accessible, we even find the public coming to us with problems which are not corruption matters, but matters more appropriately handled by other government departments such as the Police, Immigration or Ministry of Manpower. Our Bureau will not turn away these complainants but will take down the information and pass on to the relevant department. This is in line with the spirit of the government's "No Wrong Door" policy. This approach helps to keep the public's faith in the Bureau and in the government. In order to ascertain that we continue to be effective and trusted, public perception surveys are done regularly by the Bureau to gauge public sentiments.

4. Prevention, Outreach and International Engagements

The CPIB provides corruption education and prevention programmes to various local and foreign audiences including students, public sector officers, private sector organizations and foreign visitors. In 2016, the Bureau hosted 44 visits. The 783 foreign delegates had hailed from different parts of the world comprising

[7] Refer to Daniel Kaufmann, Myths and Realities of Governance and Corruption, 2005.

the Kingdom of Cambodia, Republic of Tatarstan, Republic of Madagascar, Ukraine, State of Qatar and the Republic of the Union of Myanmar etc. Keeping in mind that the bulk of corruption cases in Singapore continue to come from the private sector, the CPIB will continue to focus our engagements on the industry players and business communities to educate private sector employees.

The CPIB also actively engages the industry and business communities. One of such initiatives is the ISO37001 on Anti-Bribery Management Systems which was launched by CPIB and Spring Singapore on 15 October 2016. This is a new standard to help businesses and companies implement an anti-bribery compliance programme. In addition, a new guidebook, *PACT: A Practical Anti-Corruption Guide for Businesses in Singapore* has also been developed to help local business owners reduce the risk of corruption in their companies. As part of CPIB's ongoing anti-corruption efforts, a Corruption Reporting & Heritage Centre (CRHC) was also set up and officially opened by Prime Minister Lee Hsien Loong on 6 June 2017. The CRHC serves as a convenient and accessible space for members of the public to lodge corruption complaints and to learn about corruption matters. As part of its continuing efforts to provide greater transparency and promote a culture of zero tolerance against corruption, CPIB has been releasing detailed corruption statistics on Singapore annually since 2015. The latest corruption statistics, which shows trends spanning 2012 to 2016, can be accessed online – https://www.cpib.gov.sg/press-room/press-releases/corruption-singapore-low-levels.

The CPIB plays an active role in the international community's fight against corruption and regularly represents Singapore at various international anti-corruption platforms. These include the United Nations Convention Against Corruption (UNCAC)[8], the Asian Development Bank (ADB)-Organisation for Economic Cooperation and Development (OECD) Anti-Corruption Initiative for Asia and the Pacific, the South East Asia — Parties Against Corruption (SEA-PAC) meetings between parties of a regional Memorandum of Understanding (MOU), the Asia-Pacific Economic Cooperation (APEC) Anti-Corruption and Transparency (ACT) Experts' Working Group, and the G20 Anti-Corruption Working Group. CPIB is also one of the pioneer participants of the International Anti-Corruption Coordination Centre (IACCC) that was launched in July 2017 to improve fast-time intelligence sharing and assist countries in tackling allegations of grand corruption. In 2016, the CPIB hosted 801 foreign delegates from different parts of the world who were interested to learn about Singapore's experience in combating corruption.

V. CONCLUSIONS

Political will is the bedrock that a country must start with for a successful anti-corruption programme. It's only when the country establishes this foundation that the systems and institutions they have built to tackle corruption can succeed.

Equally important is growing the economy of the country so that the people's standard of living, including the public servants, can be improved and when this is coupled with an effective enforcement strategy, it will in turn increase the opportunity cost for anyone contemplating to indulge in bribery. The importance of economic growth also brings me to reiterate the need for corruption to be dealt with not only within the public sector but also the private sector so that investors will be attracted to your county knowing that they can compete in an environment of a level playing field based solely on the price and quality of the products or services they provide.

As such, it is clear that there are multiple factors in a successful anti-corruption strategy, which requires a comprehensive approach. One cannot deal with the scourge of corruption with isolated initiatives, no partnership and without understanding the nature of corruption. An integrated national plan incorporating the whole government and the private sector is necessary to increase the chances of success in fighting corruption.

[8] A major milestone was the completion of the review of Singapore's implementation of UNCAC Chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation) in 2015. The executive summary and full country report has since been published on the UNODC website (refer to https://unodc.org/documents/treaties/UNCAC/CountryVisitFinalreports/2016_07_06_Singapore_Final_Country_Report.pdf).

SINGAPORE'S EXPERIENCE IN INVESTIGATING AND RECOVERING PROCEEDS OF CORRUPTION CRIMES

*Vincent Lim**

I. INTRODUCTION

One of CPIB's strategies to rip corruption at its core is to disgorge the criminal gains of the corrupt through strict enforcement of money laundering offences and rigorous asset recovery efforts. These, coupled with strong political will and other definitive measures, have abated the corruption situation in Singapore. The majority of the corruption cases are from the private sector. The public-sector cases are typically petty corruption by low or mid-level public officials.

CPIB also lends support to international asset recovery efforts and investigates into laundering of criminal proceeds of foreign origin. This is part of Singapore's national anti-money laundering and counter financing of terrorism policy objective to seize and restrain proceeds and instrumentalities of crime or property of equivalent value to prevent dissipation, regardless of the origin of the predicate crime.[1]

This paper sets out our experience and practices in investigating and recovering proceeds of crimes in Singapore and our legislative framework that has supported us in this endeavour. We are cognisant that the same set of practices that work in Singapore may not achieve the same result in another country, and vice versa. An effective system is often the result of an interplay of myriad measures taking into account the unique circumstances of the country. Nevertheless, it is hoped that through this paper, lessons can be drawn and further discussions facilitated on the subject of asset recovery as a means to combat corruption.

II. SINGAPORE'S LAWS IN SUPPORT OF MONEY LAUNDERING INVESTIGATION AND ASSET RECOVERY

The foremost underpinning of our successful asset recovery efforts is our legal framework that allows for expeditious seizure and restraint of proceeds and instrumentalities of crime or property of equivalent value, and secureing of evidence thereof.

A. Prevention of Corruption Act

In Singapore, investigators in CPIB are empowered under our Prevention of Corruption Act (Chapter 241) to arrest, search and seize properties related to the commission of corruption offences. Additionally, they can also exercise general police powers to seize or prohibit disposal of or dealing in any assets to prevent the assets from being dissipated, without the need to obtain any court warrant, so long as there is sufficient information that an offence has been committed and that the assets are linked to the criminal activity. However, as a check and balance, such seizure has to be reported to the Magistrate when the property is no longer relevant to investigation or one year from the seizure date, whichever is earlier.

The Prevention of Corruption Act (Chapter 241) also encourages financial investigation to be conducted against the corrupt. Evidence adduced of accused in possession of pecuniary resources or property that is disproportionate to his known income and that he cannot satisfactory account for, or that he had accumulated

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[1] During the Second Reading of our primary anti-money laundering law, Corruption Drug Trafficking and other Serious Crimes Act (Amendment) Bill on 7 July 2014, the Minister for Home Affairs stated that it is:-

"*in our national interest to participate pro-actively in the global effort against cross-border crime and money laundering. And this affirms our strong stance against such crimes, and sends a clear signal that illicit assets do not have safe harbour in Singapore, upholding our status as a well-regarded and well-regulated financial centre.*"

during the material period of the offence, may be used as corroborating evidence that the accused had received bribes, under section 24 of the Act.

Lastly, section 13 of Prevention of Corruption Act (Chapter 241) has an in-built mechanism to recover and disgorge criminal proceeds from corrupt receivers. Anyone who is convicted of corruptly receiving any gratification in contravention of the Act, and if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall order the person to pay a penalty equal to the amount of gratification received. The imposition of penalty under this Act is not a discretionary judicial measure but a mandatory one that has to be imposed in addition to any other punishment such as fines or imprisonment term that the court may mete out.

B. Corruption Drug Trafficking and other Serious Crimes Act

The Corruption Drug Trafficking and other Serious Crimes Act ("CDSA") (Chapter 65A) is the primary legislation in Singapore that criminalises the laundering of criminal benefits and provides for the investigation and confiscation of such benefits. The Act provides for a wide range of serious offences for which an ML charge can apply. (As of last update on 1 September 2017, there are 460 serious offences listed in the CDSA schedules.) It provides for heavy penalties for money laundering offences, with imprisonment up to 10 years and/or fines up to $500,000 for natural persons and S$1 million for legal persons.

CPIB investigators are "authorised officers" under this Act and thus are also empowered to investigate money laundering offences and conduct asset recovery under this Act.

CDSA has a more extended reach for asset recovery, as it also goes after assets that are not directly traceable to a criminal offence. Under the Act, the court may make restraint orders or charging orders on any property owned or linked to a person, as long as the court is satisfied that there is a reasonable cause to believe that benefits have been derived from his criminal conduct. In the eventuality that the person is convicted of a serious offence such as corruption as specified in the CDSA's schedule, a confiscation order may be obtained against the defendant for the benefits that he derived from the criminal conduct. The confiscation order can extend to any property or any interest therein (including income accruing from such property or interest) held by or linked to that person that is disproportionate to his known sources of income, the holding of which he cannot explain to the satisfaction of the court, and thus is presumed to have been derived from criminal conduct.

Singapore generally adopts a conviction-based confiscation regime. Having said that, there are allowable exceptions to this rule. For example, if a person cannot be found, apprehended or extradited at the end of six months from the date on which an investigation was commenced against him, he shall be taken as having absconded and thus deemed to be convicted of the offences for which he was investigated. In this way, a confiscation order can still be obtained against fugitives.

To illustrate the application of CDSA to recover assets from an absconded person, we have the case against Ng Teck Lee ("Ng"), who was the Chief Executive Officer and President of Citiraya Industries Limited, a publicly-listed electronic waste recycling company, at the material period of offence. Before CPIB commenced a corruption investigation against Ng, he fled Singapore with his wife. He was placed on Interpol' s wanted person list and his whereabouts are still unknown to this day.

Notwithstanding his absence, investigation by CPIB has adduced sufficient evidence that Ng had misappropriated and diverted the electronic scrap to overseas syndicates for repackaging and sale as standard products, and bribed various parties to keep the scam under wrap. The Court was satisfied that CPIB had exhausted its efforts to locate Ng and pronounced Ng an absconded person under CSDA and by that note, deemed to have been convicted of the alleged serious offences. Subsequently, a confiscation order of US$ 51 million was issued against Ng for the benefits known to be derived by him through his criminal conduct. This was feasible even though Ng was never apprehended.

The same legal provision can be relied on to recover assets of international fugitives who have evaded investigation or prosecution in foreign jurisdictions and whose assets are still in Singapore.

III. CPIB'S EMPHASIS ON MONEY LAUNDERING INVESTIGATION AND ASSET RECOVERY

Aligned with its strategic direction to cripple corruption through disgorgement of criminal proceeds, CPIB set up a Financial Investigations Branch in June 2011 as a specialised unit within its Investigations Department to lead money laundering investigations, as well as in the recovery and confiscation of benefits derived from corrupt proceeds. CPIB also aspires to have all its investigators adequately trained in financial investigations by year 2020, so that asset recovery and money laundering investigation will, in the near future, be performed as part of corruption investigation.

Internally, CPIB has also put in place processes throughout investigative phases to ensure that cases that involve significant proceeds are identified early, so that financial investigations can be triggered and conducted in parallel alongside predicate corruption investigations, so that proceeds and instrumentalities of crime can be identified, traced and seized promptly to prevent dissipation.

To enhance effectiveness in asset recovery, CPIB has invested in technology so that the financial investigators have the necessary intelligence analytical tools to analyse complex fund flows. CPIB also subscribed to third party solutions to allow for corporate and person screenings and risk screenings so that investigators can gain early insight into the relationships and interconnections between persons or entities of interest. More recently, CPIB is also enhancing its case management system to allow for more active tracking and managing of assets recovered.

IV. LEVERAGING ON FINANCIAL INTELLIGENCE TO DETECT OFFENCES AND IDENTIFY PROPERTY LINKED TO CRIME

In Singapore, there is a statutory obligation on everyone to file suspicious transaction reports ("STRs") with our Financial Intelligence Unit ("FIU") if, in the course of one's work, one has reason to suspect that any property is linked to crime, irrespective of the quantum of criminal proceeds or property involved. Due to extensive outreach efforts on the part of our FIU, there has been a significant increase in the STRs filed. In 2016, there were 34,129 such reports filed, of which one third were filed by the banking sector and another two-fifths from casinos, moneychangers and remittance agents.

In addition, anyone who brings cash into or moves cash out of Singapore in excess of S$20,000, or any precious stones and metals dealer that conducts a cash transaction with a client in excess of $20,000, or any casino operator that conducts a cash transaction with a patron in excess of $10,000, are also compelled to filed cash movement and transaction reports with our FIU.

These STRs contain important information on red flags and potential leads that enforcement authorities can leverage for detection and pursuit of money laundering offences. Together with the cash movement and transaction reports, they are a rich source of financial intelligence. They can shed light on beneficial ownership of accounts and transaction details that can lead to identification of assets related to criminal activities. They can also lead to disclosure of corruption or money laundering offences which could have remained undetected if not for the STRs.

For this reason, CPIB has for many years been leveraging financial intelligence for early detection of offences and for asset tracing.

A. Financial Intelligence as a Detection Tool

CPIB works closely with the FIU to scope the types of corruption-related financial intelligence that are relevant to CPIB. Based on the agreed understanding and pre-defined parameters, our FIU disseminates to CPIB a filtered list of corruption-related STRs fortnightly. A team of financial intelligence analysts in CPIB will then systematically review these STRs to detect if any corrupt proceeds of foreign or domestic origin were laundered in Singapore. The team will also identify whether any offence of corruption and money laundering has been disclosed in the STRs to warrant domestic investigation.

This proactive effort has yielded some positive results. There was one such case in 2010 where the proactive use of STRs by CPIB led to identification of a transnational crime and money laundering offences

that implicated a foreign head of state. Investigation was immediately mounted against the two co-accused in Singapore. They were apprehended, prosecuted and eventually convicted of fraudulently benefiting US$3.6 million from a community project overseas through the use of false invoices issued under the name of a British Virgin Islands registered company. The accused were sentenced to jail for 60 to 70 months and the assets of the shell company and the foreign politically exposed person over $2 million dollars were forfeited to the state.

B. Financial Intelligence as an Investigation Tool

Singapore does not have a central beneficial ownership database, but this does not significantly impact on our effectiveness in enforcing money laundering offences or asset recovery. If we require beneficial ownership information, we can order the corporate secretarial agents and banks to produce such information. Furthermore, through experience, it is found that FIU's financial intelligence of suspicious transactions may be more relevant and critical information for money investigation and asset tracing.

Therefore, in CPIB, as part of our standard procedures for money laundering investigation and asset recovery, we will screen against our FIU database all persons of interest and their related family members and entities, to uncover leads on financial assets and transactions that may be linked to the crime. This is particularly important if there is no prior information on how the corrupt proceeds were received or passed.

Take for example, in 2013, CPIB received information that a foreign national had assisted foreign politically exposed persons to receive bribes and part of the bribes might be laundered through Singapore. The foreign national has absconded and been placed on Interpol's wanted person list. Acting on the information, CPIB commenced a money laundering investigation immediately. A screening against the FIU's database revealed several bank accounts in Singapore that were beneficially owned by the foreign national abettor. The financial intelligence, supplemented with other reliable sources of information, led to CPIB's seizure of close to S$100 million in these bank accounts that were reasonably suspected to be criminal proceeds. At the material times, the fugitive was in the midst of moving his funds out of Singapore. Had there been no STRs filed on the bank accounts linked to the fugitive or no screening against the FIU's database, CPIB would not have been able to so quickly recover the assets.

In another case, CPIB opened an investigation against a person linked to bribery of foreign public officials in that country. Based on open source information, the accused had paid bribes directly through his company. However, through the STRs, CPIB identified that the bribes were probably paid through another company owned by his mother, as banks have disclosed in their STRs that a significant amount of cash was withdrawn by his family members from the company of the accused's mother.

V. INTERNATIONAL COOPERATION IN MONEY LAUNDERING INVESTIGATION AND ASSET RECOVERY

Besides enforcing against the laundering of proceeds originating from domestic corruption, the CPIB also proactively detects and investigates money laundering offences involving corrupt proceeds of foreign origin. About 70% of assets recovered by CPIB are linked to foreign corruption cases.

To this end, all requests for assistance received by CPIB are reviewed to determine whether any person or property in Singapore may be linked to crimes of foreign origin that warrant a domestic investigation. If sufficient information of a domestic offence is disclosed through the requests, CPIB will liaise with the foreign authorities for the purpose of investigation and asset recovery efforts.

The bedrock to a successful international asset recovery is trust and cooperation among the foreign enforcement authorities. If this foundation is absent or weak, cross-agency information sharing will be impeded and asset recovery action cannot be taken as quickly. With this in mind, in July 2017, CPIB joined other law enforcement agencies from Australia, Canada, New Zealand, the United Kingdom and the United States of America in the launching of the International Anti-Corruption Coordination Centre (IACCC) which was set up to serve as a platform for enhancing international cooperation against grand corruption.

At this point, I wish to share a case to underscore the need for close cooperation and trust among foreign law enforcement agencies to allow for sharing of financial intelligence and, at times, investigation findings to

enable prompt action to be taken to arrest the illicit fund flow.

Last year, in 2016, through review of a suspicious transaction report, CPIB came to know that a Singapore bank account might be used as a conduit to receive funds intended for bribing foreign politically exposed persons. The filer informed that the bank account was featured in a foreign adverse news and there were suspicious bank transactions passed in the bank account. CPIB then, through the FIU, immediately alerted the foreign authorities and sought their confirmation whether the bank account was featured in their corruption investigation. The foreign authorities were also aware of the urgency of the matter as the beneficial owner was making plans to move the funds out of Singapore. Within a day, the foreign authorities responded and produced court affidavits to show that the bank account was complicit in a foreign offence. With the information, CPIB immediately launched a money laundering investigation and seized close to US$16 million in the account.

Almost a year later, the foreign authorities followed up with a formal mutual legal assistance ("MLA") request to Singapore to restrain the bank account. Had CPIB not acted to seize the assets earlier, the funds in the bank account would have been dissipated by the time the MLA request reached Singapore.

VI. EFFECTIVE MANAGEMENT OF SEIZED ASSETS

A. Preserving Value of Seized Assets

Through our experience, it is not ideal to seize and hold the tainted assets until the conclusion of the prosecution against the accused and through the protracted asset confiscation process that might take years to conclude, during which the values of the seized assets such as real estate properties, vehicles, precious metals and stones or luxury items, might have depreciated and dwindled. The conditions of the seized property might also be impaired if not properly maintained and safeguarded during the passage of time.

Therefore, in recent years, CPIB started to take a more proactive approach to preserving or realizing the value of the seized property, by working with the defendant, victims and other stakeholders to agree on an arrangement to realize the value of the seized property early.

Such an approach was adopted in realizing the seized assets of one accused person who was investigated by CPIB in 2015 for conspiring with others to cheat her company through use of fictitious quotations and invoices and from which she benefited about S$ 5 million. Financial investigation against the accused revealed that she had an obsessive spending behaviour and would use the criminal benefits derived from cheating her company to purchase luxury items such as branded watches, jewellery, branded handbags and clothes, amongst other things. She also invested in a few properties in Singapore and offshore. During the course of investigations, CPIB had seized four properties, three bank accounts, two insurance policies and numerous luxury items and branded apparels.

The luxury items are of particular concern to us. Care has to be exercised to prevent loss and damage and thus they were catalogued meticulously, individually photographed and stored in a strong safe. Consideration was also taken to ensure that the seized assets were stored in optimal conditions (e.g. in a room with lowered humidity to prevent damage to luxury items) in order not to cause impairment to the seized property.

After the investigation into the predicate offences was substantially completed, CPIB started to engage the accused person to secure her agreement to liquidate the luxury items and branded apparel. Eventually with her consent and assistance of the accused's employer who was victimised in this cheating scheme, a public auction was called to liquidate the seized items. Altogether, over 500 items of luxury watches, jewellery and branded bags were sold through the public auction and the liquidated value recovered from the auction was close to half a million Singapore dollars. It is noteworthy that the public auction was conducted months before the accused was finally charged for the cheating and money laundering offences in December 2016.

For this particular case, CPIB also secured the agreement from the developers of two properties owned by the accused, to return to the state the sums that the accused had contributed towards the properties, as a condition to lift the caveats that were placed on these properties. Negotiation is still ongoing with respect to the liquidation of two other properties owned by the accused.

B. Avoiding Holding and Maintenance Costs

Asset seizures also do not come without cost. It will be ineffectual against the asset recovery cause if the cost of holding and maintaining the asset seizures were to outweigh the value that can be realised from them.

Therefore, another practice of CPIB with respect to seizures of assets particularly those that have significant holding cost attached thereto, was to avoid taking physical possession of the seized assets, whilst applying the necessary safeguards to prevent dissipation and negotiating with the owner to liquidate the assets.

For example, if an accused was found to acquire luxury cars using criminal proceeds, the risks associated with holding these valuables may outweigh the benefits of taking physical possession of such assets. Instead of physically seizing the cars, CPIB investigators may decide to exercise their powers to order our land transport authorities to prevent transfer of ownership of the vehicles, which will effectively prevent the accused from disposing the vehicles.

VII. CONCLUSIONS

Monetary gratification remains the primary drive behind corruption. Tough actions must be taken and be seen to be taken against the laundering of criminal proceeds and to disgorge criminal benefits of the corrupt in order to deter and abate corruption.

Money laundering investigation and asset recovery however often entail an arduous and lengthy process even with the most effective legislative framework in place. The process can be even more resource intensive for transnational laundering or asset recovery cases.

Therefore, from CPIB's experience, it is more effective for law enforcement authorities to adopt a more collaborative and proactive approach towards asset recovery; through cooperation from law enforcement agencies but also from the accused person and key stakeholders of the assets. The assistance from the latter group is paramount to secure early preservation of the value of the assets seized and to overcome any operational constraints perennial in cross border asset recovery.

PARTICIPANTS' PAPERS

OPERATION CARWASH AND THE FIGHT AGAINST CORRUPTION

*Frederico Skora Lieberenz**

I. OPERATION CARWASH

Operation Carwash, as several actions against corruption in Brazil and abroad have become known since March 2014, all started with the arrest of a former senior director of the national oil company for his involvement with a group of money launderers. It has been going strong for three-and-a-half years at the time this paper was being written, and even though it is showing signs of slowing down, it is safe to assume that it was a major step forward in the fight against corruption in Brazil and the recovery of the proceedings from those crimes.

A. Early Developments

Before the success of Operation Carwash, several other operations that investigated rampant corruption in the country had failed to stand in the superior courts. It was a known fact in Brazil that crime paid off if you were a politician or a high government official, and that the chances of conviction were minimum. This scenario started to change in 2005.

1. The Scandal of the Mensalão

In the year 2005, a Brazilian politician took the stand in Congress to report on what came to be known as the Mensalão: legislators were being paid a monthly amount by their parties to vote according to the interests of the government. The money came through fraudulent contracts with marketing companies and was suspected to have paid off more than half of the Congress. After these revelations, the second most powerful politician in the Labourer's Party of Brazil, which ruled the country, was removed from office, never to regain his former status. Several other politicians floundered but managed to come once more into office in the next legislature. In the end it amounted to a political earthquake, but economic gains and an increase in popular programmes managed to keep the government of the Labourer's Party of Brazil in power despite the heavy toll on its public image.

2. The Popular Revolts of 2013

In 2013, there were several popular uprisings in the country, the most famous of which began in Rio de Janeiro after an unpopular increase in the prices of public transportation. What at first was a movement of students suddenly started to congregate several groups, which were out to demonstrate their disapproval of the current government of both the state and the city of Rio de Janeiro. The movement culminated with the "walk of the two hundred thousand", one of the largest public demonstrations in Brazilian history, which took place in one of Rio de Janeiro's largest avenues downtown. Legislators, terrified of the public uprisings, among other measures approved several pieces of anti-corruption legislation, which had been put away in their office desks for more than a decade.

3. The Supreme Court Judgement on the Mensalão Scandal

It was not until 2013 that the Mensalão Scandal was finally mature for trial by the Supreme Court of Brazil. Since several office holders such as deputies, senators and ministers were involved in the corruption and money laundering schemes, the constitution demanded that the case had to go to trial in the highest court in the country, the Supremo Tribunal Federal.

The judgement exposed the Supreme Court judges and was entirely televised; public opinion was a definite factor in the decision taking of the judges, as they would have to answer for their opinions in court.

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The meticulous tracing of the money used to purchase votes in Congress and the adoption of the Theory of the Domain of the Fact as derived from Claus Roxin's exposition on Mediate Authorship[1] also led ultimately to the conviction and incarceration of several high-office-holding individuals and entrepreneurs, something unheard of in the country thus far.

B. The Operation Begins

What began as an investigation on general money laundering schemes in Brasília, the country's capital city, suddenly took a turn towards what came to be the greatest corruption scheme in the country.

1. Paulo Roberto Costa, Former Director of Oil and Gas of Petrobrás

Mr. Paulo Roberto Costa was early in his retirement after a successful term as Director of Oil and Gas of Petrobrás, the country's largest and most traded national public company. Such a position had put him in close proximity with Brazil's most powerful politicians and businessmen, including the former President of the Republic Mr. Luiz Inácio Lula da Silva and at-the-time current President of the Republic Mrs. Dilma Rousseff.

Until one day, at the beginning of March 2014, Mr. Costa was on the passive end of a judicial search and seizure warrant for allegedly receiving a luxury automobile as a donation from Mr. Alberto Youssef, one of the country's most well-known money launderers. This discovery had been possible through the tracing of one of Mr. Youssef's bank transactions, and the vehicle was ultimately found parked in front of Mr. Costa's house. Investigators were intrigued as to the reason a former high-office-holding public servant would have for receiving such a gift, and suspicions of corruption came to mind, but nothing could be proven at the time. However, the fact that more than one million Reais (approximately five hundred thousand dollars at the time) in cash was found in a safe in his residence brought more questions that required answers.

The turning point in the investigation came quickly, when it was discovered that relatives of Mr. Paulo Roberto Costa had been in one of his offices during the same morning of the search and seizure warrant at his home and took several documents and possibly money to an unknown location. Rather than suffer his family's incarceration, Mr. Costa began negotiations with the Prosecutor's Office of Brazil for a "Colaboração Premiada", Brazil's form of plea bargaining. He finally delivered testimony that put several politicians and other high-ranking officials in prison, including his former colleague Mr. Renato Duque, Director of Engineering of Petrobrás. From that point on, the scope of the operation escalated quickly, making full use of its momentum.

2. Pedro Barusco, Former General Manager of Engineering of Petrobrás

As the investigations advanced, in March 2015, a former General Manager of Engineering of Petrobrás, rather than face imminent arrest, decided to come forward and offer the Prosecutors a deal. Mr. Pedro Barusco proposed to repatriate more than one hundred and eighty million Reais he had stashed in a secret bank account in Switzerland and explain the whole scheme of corruption in Petrobrás if he could get immunity from prosecution. The deal was considered and the Prosecutor's Office decided it was worth it. Renato Duque was arrested a second time, after having been released once by the Supreme Court. It had been discovered through spontaneous international cooperation with Switzerland and Monaco that he had tried to take money from his bank accounts in the former country's financial institutions to the latter's. Differently from Paulo Roberto Costa, Renato Duque refused to cooperate with Brazil's authorities in the investigation for more than a year, before giving in and confessing his crimes in court in exchange for a reduction of his sentence.

3. The Labourer's Party of Brazil's (PT) Involvement in Carwash

It was already suspected, but due to constitutional immunities regarding the prosecution of legislators and ministers, it was a difficult case to take to court. It was easier for politicians to expel the accused from their parties and revoke their mandates, but once the investigation came too close to the leaders of the parties, including former President of the Republic Luiz Inácio Lula da Silva, it was decided that a change in strategy was necessary.

[1] Also known as the Control Over the Organization Theory.

In fact, the second arrest of Renato Duque, the director that had been appointed by the Labourer's Party, and veiled threats by his family that he would cooperate if he was not released, made it only a matter of time before the party's connection was put to light. Financial operators of other parties, including the most powerful, the Democratic Movement Party of Brazil (PMDB), had also been incarcerated and could decide to come clean to the authorities at any moment. The investigators' experience in other money laundering cases made them experts in following the money, and international cooperation, especially with Switzerland and the United States, had borne fruit. The situation was desperate for the survival of the parties.

It was at this already delicate time that several contractors with the government became targets of the investigators. Several publicly traded companies, multinationals of the oil and gas and construction businesses suffered search and seize judicial others. It had been discovered that all those companies involved had some kind of department for handling the payment of bribes to politicians and other public officials. Brazil's largest construction firm, Odebrecht, with business all over the country and the world, after a long incarceration of its president, finally decided to collaborate with the prosecutors and revealed their "Department of Structured Operations", or the bribe payment and accounting department, which ran parallel to the corporation's regular operations. Their computer servers were encrypted and housed in a computer farm in Switzerland. Once the proper key was inserted, it revealed a world of bribes.

Testimony by Odebrecht and other companies' highest officials revealed what had long been suspected in Brazil: that the very structure of democracy in the country had been tainted by corruption since time immemorial. The president at the time, Mrs. Dilma Rousseff from the Labourer's Party, was impeached from office following constitutional dictates. The vice-president, Michel Temer, was seriously assailed afterwards, but has managed to hold on to his office despite public opinion at the time of the writing of this paper.

II. MEASURES FOR TRACING PROCEEDS OF CORRUPTION

Several instruments for tracing the proceeds of corruption are available for use in Brazil, and all of them have been used in Operation Carwash.

A. SARs (Suspicious Activity Reports)

Known as RIFs (Relatórios de Inteligência Financeira), reports from Brazil's Financial Intelligence Unit (Conselho de Controle da Atividade Financeira, or COAF) are some of the best means of tracing the proceeds of corruption. Financial institutions in the country are required to report any suspicious activities to COAF or run the risk of facing severe fines and other penalties according to the Anti-Money Laundering Statute. SARs can be used as evidence; however, this is not encouraged by the FIU as it exposes investigative techniques. Additional information can be retrieved by the Group of Egmont, a network of FIUs from all over the world.

B. Lifting of Bank, Tax and Phone Record Secrecy

Judges and prosecutors, to a lesser extent, can lift the secrecy of bank and tax statements and telephone records. Specialized computer software and investigators can then help trace the relations between certain transactions and individuals and expose corruption and/or money laundering schemes.

C. Organized Crime Legislation

Laws against Organized Crime in Brazil, especially the Act of 2013, have made it clearer to judicial authorities that Plea Bargaining and Controlled Delivery can and should be used to trace the proceedings of corruption. Means of finding evidence, such as the Colaboração Premiada (plea bargaining), are essential as they paint a much clearer picture than investigators can usually reveal using only the other means available and are often the only means to go into the deepest depths of the companies' and parties' money laundering operations. Controlled delivery can be used to trace the route used by money launderers to escape the authorities' watch and find the final recipients, those that are usually too far from the corruption act itself to be convicted otherwise.

D. Task Forces

Special judges, prosecutors and investigators have been designated by their own organizations to work in strict cooperation and in special cases. Without this joining of efforts it would not have been possible for investigations, prosecutions and convictions to happen in such short times; usually a corruption case in Operation Carwash is investigated, indicted and presented to an individual judge and tried in under a year.

Meanwhile, most of the indicted have been incarcerated for the time being due to the potential to escape and to interfere with the investigation. Cases are made strong, carried by specialized authorities and rarely suffer from nullities. Tracing and seizing of assets are done in the proper moments so it is made harder for criminals to move the proceedings from their crimes before they are taken from them. Investigations also run in secrecy until the serving of the search and seizure and arrest warrants.

E. Central Bank of Brazil

The Central Bank of Brazil keeps a record of all the financial institutions and their account holders in Brazil. This means that investigators, prosecutors and judges may at any time request information on the account holders. This is usually restricted to their names and social security numbers (CPFs), but from that small piece of information, an investigator could build up a case and request a court order to lift the bank secrecy and get the statements. The Central bank also demands that information passed by the financial institutions come in an orderly, predetermined fashion, so it can be easily run through computer software that analyses and cross references the information as to make it useful for the investigations.

F. Direct International Cooperation

Several treaties have already been signed by Brazil in the areas of Money Laundering, Corruption and the Tracing and Freezing of the proceedings from those crimes. This allows for spontaneous assistance by countries often targeted by money launderers such as Switzerland, Luxembourg and Monaco as well as direct cooperation through national central units. In Brazil the Departamento de Recuperação de Ativos e Cooperação Internacional receives both domestic and international requests for cooperation and distributes them accordingly. Statutes demand that the requests follow international guidelines and the nation's fundamental principles regarding human rights.

G. INTERPOL

As a part of INTERPOL, Brazil has an international network of police organizations at its disposal and may use it to find and arrest criminals abroad, request intelligence on individuals and companies, try to find works of art that might have been used to launder money, etc. Since corruption and money laundering is already an international crisis, police cooperation through INTERPOL has been growing in scope and is an integral part of Brazil's Federal Police structure.

H. Rogatory Letters

Once a judicial decision has been made final, it is not a matter of direct cooperation anymore. Brazilian court sentences that must be served abroad and international sentences that must be served in Brazil have to go through the country's highest courts. The long time it usually takes for a court decision to become final in Brazil, however, causes Rogatory Letters to become limited in their use against corruption and money laundering, which require quick action if they are to be effective against organized crime.

III. PROBLEMS WITH OPERATION CARWASH AND ITS FUTURE

The many investigations that have taken place since March 2014 have run into several difficulties in the judicial, political and social levels in Brazil.

A. Court Privilege

Several authorities in Brazil, not only presidents but also all ministers, presidents and governors, some secretaries, legislators, judges, prosecutors, among other authorities, all have court privileges: they must be tried by a superior court, which are generally ill suited for investigations. Usually cases tried in the first instance in superior courts go nowhere and get tangled in politics and bureaucracy. Superior courts excel in appeals but are not investigative courts. This causes office holders and other high officials to escape convictions that expire through the statute of limitations, and they often get to keep their ill-gotten gains.

B. Difficulties in the Suspension or Revoking of a Term of Office

Only legislators can suspend or revoke the Terms of Office of their peers. This causes deputies and senators with little in-house support to be ousted quickly, to appease public opinion, but those with a lot of support, such as party leaders, are usually protected from such measures, no matter the crime or how clearly it was exposed.

C. Social Partisanship

As Operation Carwash started, the country was under the rule of the Labourer's Party. President Dilma Rousseff, while she counted with the support of the extremely popular former president, Luiz Inácio Lula da Silva, did not have much charisma or support from the parties. The Labourer's Party also suffered from prejudice, being the country's only party of the masses, dedicated to the proletarian causes. Once President Dilma lost the support of Congress, it was a matter of time before the Labourer's Party was removed from office and the Democratic Movement Party of the vice-president Michel Temer was instated to resume the mandate. This has caused much belligerence between supporters of PT and those who were against it, and so the whole discussion on corruption became secondary.

In practical terms, investigations in the superior courts ran much more quickly and had more support when PT was being targeted more often. Now there is a general feeling in the country that investigations go slower and that the government is removing investigators, prosecutors and judges from Operation Carwash.

IV. CONCLUSION

There is a major election next year, and society is very polarized. Former President Mr. Luiz Inácio Lula da Silva has announced he shall be running for office once more, and there is a chance he can lose his political rights before the elections. Meanwhile candidates from the extreme right movements, which had never been seriously considered for the highest office in the country, suddenly seem to be the only alternative to Mr. Lula for some.

There is also a serious discussion as to whether the current political scheme should be kept or changed to another configuration, and as to whether companies should be allowed to pay for office runners' campaigns or not. The focus is on the next elections and the means to balance public opinion and the legislators' survival instincts.

Meanwhile, efforts to stop corruption and to seize the proceedings of the crimes continue in Brazil and abroad, but legislators are not keen to give up their court privileges and thus allow the cases against them to be handled by singular, experienced judges. Only public pressure and serious discussions of the ways to leave this standstill can move the authorities to go against their own wishes and respect those of the general populace.

ENHANCING SYNERGIES: THE MULTI-AGENCY EXPERIENCE IN FIGHTING CORRUPTION IN KENYA

*Caroline Nyaga**

I. INTRODUCTION

During the Second State of the Nation Address to Parliament[1], the President took an unprecedented move by tabling a confidential report on corruption cases under investigation by the Ethics and Anti-Corruption Commission (EACC) and directed all the Public and State Officers implicated in graft to step aside pending the outcome of the ongoing investigations. He further directed the Office of the Attorney General & Department of Justice to undertake a thorough review of the legal, policy and institutional framework for fighting corruption in Kenya. A Task Force[2] was formed to oversee the whole process and it drew its membership from all Ministries, Departments and Agencies charged with fighting corruption in Kenya including the enforcement, investigative and prosecutorial agencies.[3] One notable recommendation that arose was the lack of proper coordination among agencies and duplication of efforts by various agencies thus making the investigation and prosecution of corruption cases an uphill task due to lack of a coordinated framework for reporting corruption, information gathering, intelligence sharing, cooperation in investigations, prosecutions joint trainings, among other areas.

Despite the myriad of laws in place to combat corruption, Kenya still ranks highly in the *Corruption Perception Index*.[4] The Task Force recommended institutional collaboration and partnerships among agencies to enhance the fight against corruption.

II. LEGAL FRAMEWORK FOR ASSET RECOVERY IN KENYA

The *Proceeds of Crime and Anti-Money Laundering Act* (POCAMLA) is the main legislation that provides for the offence of money laundering and introduces measures for combating the offence, the identification, tracing, freezing, seizure and confiscation of the proceeds of crime. It establishes the Assets Recovery Agency[5] and the Financial Reporting Centre. Others include the *Mutual Legal Assistance Act of 2011* that governs the mutual legal assistance to be given and received by Kenya in investigations, prosecutions and judicial proceedings in relation to criminal matters. The Attorney General's Office acts as the Central Authority. *The Foreign Judgements (Reciprocal Enforcement) Act, 2012*, also makes provisions in Kenya for the enforcement of judgements given in countries outside Kenya which accord reciprocal treatment to judgements given in Kenya. Others include: The *Anti-Corruption and Economic Crimes Act, 2003; the Anti-*

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[1] This was on 26th March 2015. (Art 132 (1)(c) of the Constitution of Kenya, 2010 requires the President to, annually, give a State of the Nation Address on all the measures taken and the progress achieved in the realization of the national values referred in Article 10.)

[2] *Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (2015)*, see Gazette Notice No. 2118 of 30th March 2015.

[3] The exercise culminated in the *Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (2015)*. (The Task Force gave various recommendations for various agencies including the Asset Recovery Agency, Financial Reporting Centre and others and most have been implementing them as part of their work plans. When coming up with the recommendations, the Task Force considered: (i) The UNCAC Country Review Report (ii) The Draft National Ethics and Anti-Corruption Policy (iii) Memoranda from member institutions, public organizations, civil society organizations and select individuals.)

[4] The 2016 Transparency International Corruption Perception Index ranks Kenya at No. 145/176 www.transparency.org

[5] The ARA is an autonomous body whose mandate is to identify, freeze and seize assets which are proceeds of crime and to combat money laundering. The EACC also has a department that recovers assets. The Agency was also established in further fulfilment of the national obligations under UNCAC.

Counterfeit Act, 2008; the Counter-Trafficking Persons Act, 2010; the Prevention of Organized Crimes Act, 2010, the Prevention of Terrorism Act, 2010, the Wildlife Conservation and Management Act No. 47 of 2013, The Penal Code, Cap 63 Laws of Kenya.[6]

In the asset recovery chain, the agencies involved face various challenges ranging from: complexities of cases; inadequacy of capacity especially if the same involves recovering assets stashed in other jurisdictions, lack of witnesses to support applications therefore implying that they are not sustainable before court, the time frame for processing Mutual Legal Assistance requests is sometimes protracted and thus the requirement for interagency cooperation.

The punishments under Kenyan Law for corrupt practices include:

- Imprisonment
- Hefty Fines
- Debarment from holding public office
- Compensation orders on conviction
- Forfeiture of unexplained assets.

III. THE FRAMEWORK FOR COOPERATION

In regard to asset recovery and prior to the Task Force undertaking its assignment, there were various fragmented avenues of institutional collaboration between agencies, for instance:

A. The Office of the Director of Public Prosecution (ODPP) Vs. The Ethics and Anti-Corruption Commission Collaboration (EACC)

The ODPP is mandated to prosecute all criminal cases while EACC is the main enforcement agency on matters of corruption. In order to achieve success in the investigation and prosecution of these cases, the two have to worked together. This has been achieved through joint trainings of investigators and prosecutors, joint forms and prosecution-guided investigations. Through this initiative, the Guidelines for the Investigation of corruption and Economic Crimes and the Guidelines for the Prosecution of Corruption and Economic Crimes have been developed and implemented by both agencies.

B. The Financial Reporting Centre (FRC)

The Proceeds of Crime and Anti-Money Laundering Act also establishes the FRC[7] whose main objective is to assist in the identification of the proceeds of crime and the combating of money laundering and the financing of terrorism. It is mandated[8] to:

- Make information collected by it available to investigating authorities, supervisory bodies and any other bodies relevant to facilitate the administration and enforcement of the laws of Kenya;
- Exchange information with similar bodies in other countries regarding money laundering activities and related offences;
- Ensure compliance with international standards and best practice in anti-money-laundering measures.

The FRC collaborates by assisting in the tracing of illicit financial flows relating to corruption and liaising with sister agencies outside the country on sharing of information related to corruption investigations. It has concluded MOUs with the Central Bank of Kenya, the Insurance Regulatory Authority and the Capital

[6] All these pieces of Legislation can be accessed from www.kenyalaw.org.
[7] Section 23 of the POCAMLA.
[8] Receive and analyze: reports of unusual or suspicious transactions submitted by reporting institutions; cash transactions made by reporting institutions; cash declaration forms received from border points: Disseminating of reports received to appropriate law enforcement authorities or other supervisory bodies for further handling: Make information collected by it available to investigating authorities, supervisory bodies and any other bodies relevant to facilitate the administration and enforcement of the laws of Kenya; undertaking inspection and supervision of Reporting Institutions to ensure compliance with AML/CFT reporting obligations as prescribed in POCAMLA: facilitating exchange of information on money laundering activities with other financial intelligence units in other countries: Developing AML/CFT Regulations to provide guidance to support implementation of the Act: Developing AML/CFT training programmes for Reporting Institutions.

Markets Authority.

C. Anti-Money-Laundering and Combating of Financing of Terrorism Round Table Meeting

This forum brings together financial sector stakeholders with the aim of creating awareness on anti-money-laundering issues. It also trains reporting entities, law enforcement authorities and personnel in the FRC on anti-money-laundering issues. The Round table is now a national forum for information sharing, developing common approaches to issues and promoting desirable policies as well as standards. It draws membership from: the Ethics and Anti-Corruption Commission; Office of the Attorney General & Department of Justice; Office of the Director of Public Prosecutions; National Intelligence Service; Kenya Revenue Authority; Central Bank of Kenya; Asset Recovery Agency; Insurance Regulatory Authority; Directorate of Criminal Investigations; Banks; Mobile Money Service Providers.[9]

D. The Birth of the Multi-Agency Team (MAT)

The Multi-Agency Team is not anchored in law and was born out of a Presidential directive in November 2015. This was around the same time the Task Force submitted its Report to the President who directed that the recommendations be implemented fully. It had been noted that the lack of synergy and inter-agency cooperation among law enforcement agencies was compromising the fight against corruption, economic crimes and other related crimes. The areas of focus are:

- Corruption
- Economic crimes
- Other organized crimes
- Cartels and syndicates

The essence of the MAT is to ensure that corrupt individuals have no leeway to escape when caught. All agencies go for the culprit simultaneously, for instance: the DCI and EACC will conduct the investigations, the police would arrest, the KRA will go after taxes and revenue, the ARA/EACC will trace, identify, freeze and preserve or recover assets. Therefore, this would corner the culprits and ensure they cannot run.

1. The Composition and Mandate of MAT

It is worth noting that the country has faced serious challenges with corruption whereby assets and money are stashed abroad. During the Third State of the Nation Address[10], the President reported that the Government has invested in preventive measures as well as tracking, seizing and confiscating the proceeds of corruption. A total of Kshs. 1.6 billion was allocated to the multi-agency institutional framework to support its operations. The membership comprises the following institutions:

- Ethics and Anti-Corruption Commission
- Office of the Director of Public Prosecutions
- Directorate of Criminal Investigations
- National Intelligence Service
- Financial Reporting Centre
- Asset Recovery Agency
- Kenya Revenue Authority
- Office of the President

2. Terms of Reference

The terms of reference of the multi-agency team are:

- To enhance cooperation, coordination and collaboration among the agencies
- To engage other relevant agencies in order to enhance the effectiveness of the graft war
- To identify resource needs for each agency and lobby for the same
- To develop effective communication strategies for awareness creation on the gains and achievements made in the fight against corruption.

[9] Report of the Task Force on the Review of the Legal, Policy and Institutional Framework for Fighting Corruption in Kenya (2015).

[10] The Third State of the Nation Address made by the Parliament in March 2016.

3. The Benefits of the Multi-Agency Team[11]

The Multi-Agency Team has accomplished the following since its inception. They include:

- Better coordination, cooperation and collaboration among agencies. There have been joint trainings to increase the capacities of officers handling corruption-related cases.
- Joint investigations and operations among the agencies therefore pooled resources, synergy and avoidance of duplication of efforts. The MAT has undertaken joint sting operations through which contraband cargo has been seized in Mombasa.
- Real time information gathering and intelligence sharing.
- Co-option of other agencies on an as needed basis into the MAT, for instance Kenya Wildlife Services, National Transport and Safety Authority, the National Land Commission, among others. There are times when the agencies lend resources (human capacities) to each other as needed.
- Replication of the MAT collaboration in the counties
- Engaging other stakeholders to enhance the fight against corruption including the Judiciary, Parliament, donors and foreign missions.
- Simultaneous actions, for instance: prosecution, civil proceeding, administrative action, asset recovery, protection and freezing

In March 2017, the President reported that approximately 3 billion shillings had been recovered or preserved[12]. The positive result of this is that the MAT has managed to marshal up resource allocations and increased their visibility. Further, the MAT enjoys support and good will from the Government, donors and international agencies.

So far, the MAT has been in charge of some of the following major cases and investigations:

S/No.	Case Details/Particulars	Outcome/Status
a)	**NYS:** Investigation into allegation of embezzlement of funds in excess of **Kshs 1.5 billion**	● Assets, movable and immovable properties, worth **Kshs. 421 million** were either recovered/frozen/seized as proceeds of crime. ● Various applications to vary or discharge preservation orders defended before various courts. ● **26 suspects charged** in court in predicate offence of stealing, attempted stealing, conspiracy, tampering with a public officer. ● **11 suspects have been charged** with money laundering.
b)	**Nairobi City County:** Investigation against the former Finance Director and others	● Assets worth **Kshs. 1.3 billion** were frozen ● The suspect charged in court
c)	**Eastleigh Mall Ltd:** Investigations into tax evasion in excess of Kshs. 386 million	● Company charged in court for tax evasion, along with **8 directors**:
d)	Contraband Goods: 194 containers were seized at Mombasa Port, made up of: – 75 containers of sugar – 69 containers of ethanol	● 127 containers were destroyed, made up of: – 18 containers of sugar – 59 containers of ethanol – 50 containers of rice ● Estimated Customs value of the destroyed goods: 214 million ● 67 containers are under investigation and prosecution,

[11] These achievements were reported by MAT during the *National Governance and Accountability Summit* at the State House, Nairobi on 18th October 2016

[12] This was reported during the Annual State of the Nation Address in March 2017, http://www.the-star.co.ke/news/2017/03/15

	– 50 containers of rice Estimated Customs value: 359 million Estimated tax amount: 517 million		made up of: – 57 containers of sugar – 10 containers of ethanol ● 2 suspects charged with respect to 5 containers of sugar: ● Accused out on bond. **11 suspects charged** with respect to 5 containers of ethanol:
e)	**National Youth Development Fund:** CEO of the Youth Enterprise Development Fund in collusion with Board Members schemed to defraud Kshs. 181 million		● **4 Persons Charged:** ● Charges: unlawful disposal of public property through unlawful payment ● Case is still before court
f)	**Tax evasion on Imported Motor Vehicles:** Impounded high value motor vehicles which were allegedly stolen/improperly registered		● 121 registration number withdrawn ● **5 Suspects charged** ● All accused out on bond. ● **Warrants obtained for 3 suspects,**
g)	**Theft of containers in the port -** 124 containers removed from the port without payment of taxes		● Loss of **121 containers** under investigation. ● **16 suspects** charged (3 stolen containers):
h)	**Fuel Adulteration:** Sale of adulterated fuel without licenses.		● Rampant in Eldoret, Malaba and Nakuru ● **12 suspects charged** in Court in Nakuru on 2nd September, 2016. ● All accused out on bond. Warrants obtained for 1 suspect.
j)	**Imperial Bank Case:** *W. E. Tilley* case where the directors fraudulently withdrew funds contrary to the banking regulations.		● **5 Suspects charged:** Suspect charged with: conspiracy to defraud, fraudulent accounting by officers, stealing, money Laundering
k)	**Eurobond:** Allegations that not all the moneys realized through the Eurobond issue could be accounted for, and that payments were made from an offshore account without authorization.		● The investigations by EACC did not establish any wrong doing, and a recommendation was made for closure of the file. ● The DPP concurred with EACC recommendation for closure and advised that the matter be referred to the Kenya National Audit Office.
l)	**Tatu City:** Fraudulent change and/or transfer of shares, shareholding and directorship in Purple Saturn properties and forgeries.		● Joint investigation team (EACC, DCI and DPP) formed ● The matter is still under investigation
m)	**Wildlife Crime**	***Feisal case:*** Feisal and others were charged with dealing with pieces of elephant tusks.	● Convicted with jail term of **20 years** and fined **Kshs. 20 million**

		Thailand Ivory Case: Case no. 1132 of 2015 where a consignment of 511 pieces of ivory weighing 3127kg said to have originated from Kenya and confiscated in Thailand	● **10 Persons charged: -** ● Case Pending Before Mombasa Court Mutual Legal Assistance is ongoing

MAT has enhanced the institutional arrangement and administrative actions geared towards streamlining and enhancing the fight against corruption and other organized crimes. These include:

i. Development of CBK guidelines on large cash transactions: The Central Bank of Kenya issued additional guidelines in respect of large cash transactions to tighten compliance with the POCAMLA.[13]
ii. Establishment of a High Court Division on Anti-Corruption and Economic Crimes: The Chief Justice established the Anti-Corruption and Economic Crimes Division to expedite the hearing and conclusion of cases.[14]
iii. Appointment of additional special magistrates: an additional 13 special magistrates were appointed to specifically deal with corruption and economic crimes cases. They ensure the cases are heard on a daily basis.
iv. Prosecution guided investigations: The ODPP has assigned special prosecution counsel to specifically deal with corruption and economic crime cases. The Prosecutors liaise with investigators thus shortening the period that would be spent in reviewing the investigation reports before a decision on whether or not to prosecute.
v. Establishment of a specialized prosecution unit for corruption offences in the ODPP.
vi. Establishment of a centralized government data platform: MAT is overseeing a project to establish a centralized data platform held by all government agencies; spearheaded by the National Intelligence Service.
vii. Establishment of County MAT teams: the MAT initiative is replicated in all the 47 counties and these teams have been trained and their capacities built.
viii. Vetting of officers under MAT: The vetting process is continuous and all officers under MAT are vetted to ensure they are people of integrity.
ix. MAT has also contributed to the development of legislation that touch on anti-corruption matters including:
    a. Ethics and Anti-Corruption Laws Amendment Act, 2016, resulting in the number of Commissioners being enhanced from 3 to 5.
    b. Draft Anti-Corruption Laws (Amendments) Bill, which operationalizes the proposals made by the Task Force as well as recommendations of the 1st Cycle Review of Kenya under UNCAC. Most notably, it proposes amendments to the POCAMLA to allow the FRC to take administrative action; levy civil monetary penalties and clarify the operational independence of the FRC.[15]
    c. The Whistleblower Protection Bill: this will be overarching legislation that provides for the procedure of disclosure of information relating to improper conduct in the public and private sectors as well as for the protection of persons who make such disclosure against victimization.
    d. Computer and Cyber Crimes Bill, 2016: Stipulates the need to tame abuse of web-based systems, reduce or eliminate cybercrimes arising from increased use of new technology. It also seeks to protect online cash transactions.
    e. Bribery Act: this Act outlines stringent measures to check graft between the public and private

[13] Customers are required to declare names of beneficiaries of cash withdrawals above Kshs 1million and justify why such large transactions cannot be done using electronic transfer channels. The CBK Banking Circular No. 1 of 2016 'Additional Guidelines on Large Cash Transactions' is available on https://www.centralbank.go.ke/uploads/banking_circulars/.
[14] See Gazette Notice No. 136 of 11th December 2015.
[15] This is now catered for by Section 4 of the Proceeds of Crime and Anti-Money Laundering (Amendment) Act, 2017.

sector. It criminalizes both the offering and receiving of bribes by any person including local or foreign entities.

IV. CONCLUSION AND RECOMMENDATIONS

The MAT has been largely successful in recovering assets as outlined above. However, the biggest challenge facing it is the lack of legal anchorage in law and thus the legality of some MAT joint operations are challenged by culprits. There is need to anchor MAT in law to protect it from any external influences like change of Government. Sometimes, individual institutions face capacity constraints. It is recommended that there be continuous funding for the MAT to be enhanced. The capacity of officers under MAT agencies need to be built continuously through training and cooperation with other similar bodies. Moreover, there needs to be a central depository for data including cases, and other resources not only on asset recovery, but also economic crimes and corruption-related cases. All in all, it is a great step towards eradicating corruption and needs to be borrowed as a best practice for states that do not have such initiatives.

TRACING AND RECOVERY OF PROCEEDS OF CORRUPTON — THE MALDIVIAN CHALLENGE

*Mariyam Shahuma**

I. INTRODUCTION

Corruption is a global epidemic that has devastating effects on economies. Maldives is not immune from this epidemic. The country has been ravaged by corruption and embezzlement of millions in state funds. As Maldives is a developing country with limited resources and a heavy reliance on foreign aid, corruption greatly hinders economic development.

To fight and minimize corruption, three governmental agencies are involved in different stages of enforcement of anti-corruption laws. The Anti-Corruption Commission (ACC) established in 2008 is an independent agency mandated to investigate offences of corruption, conducting studies and research to detect and prevent corruption and raising public awareness on corruption[1]. The Prosecutor General's Office (PG Office) is the sole authority tasked with prosecuting offences of corruption[2] while the Attorney General's Office (AG Office) is the responsible authority for asset recovery. However, there is no clear and specific mandate on the AG Office and no specific and effective mechanism for asset recovery in corruption cases. The Auditor General's Office and Ministry of Finance and Treasury also play an important role in identifying cases of corruption. The efforts to recover stolen, embezzled and laundered state money has not been very effective to date mainly due to an inefficient legal framework for tracing and recovering proceeds of crimes. To address this default, on 20th July 2017, the President of Maldives established the Commission on State Assets Recovery for a one-year period to speedily recover millions of state funds misused, stolen and embezzled. Hence, the commission's mandate is limited to past cases only.

II. CHALLENGES IN TRACING AND RECOVERY OF PROCEEDS OF CORRUPTION

A. Existing Legal Framework

1. The Prevention and Prohibition of Corruption Act 2002

The Prevention and Prohibition of Corruption Act 2002 (PPCA) criminalizes various acts of corruption and bribery. The ACC is mandated to investigate acts of corruption and bribery and forward such cases with evidence to the PG Office for prosecution. In the investigations, the ACC identifies whether there are assets to be recovered and where there are assets to be recovered, ACC identifies the assets and amounts to be recovered. Upon receiving a case for prosecution, the PG Office assesses the evidence presented and pursues criminal charges if the evidence is sufficient to prove a preliminary case. The PPCA clearly states that property and money received through the commission of an offence stated in the Act, wherever the property is, whether sold or given to a third person can be confiscated only when the accused is convicted of such offence.[3] PPCA only provides for asset recovery through criminal proceedings and does not provide for recovery of assets through civil action by the government. Hence, if the PG Office declines to prosecute due to lack of evidence in a case of corruption or where a corruption charge could not be proved beyond a reasonable doubt, there are no avenues for asset recovery through PPCA. The Act does not stipulate means for the ACC to trace proceeds of corruption or to recover proceeds of corruption without a conviction.

2. Penal Code 2014

Chapter 510 of the Penal Code (the Code) specifies offences of bribery and official misconduct. Several of

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[1] Article 202, The Constitution of Maldives.

[2] Article 223, Constitution.

[3] Section 24, Prevention and Prohibition of Corruption Act 2002.

the acts criminalized under this Chapter coincide or conflict with offences under PPCA. The Penal Code provides that the Code shall take precedence in such cases of coincidence or conflict.[4] The Code does not provide for tracing and recovery of assets through criminal proceedings, but the Code does not bar, suspend or affect civil forfeiture or rights to recovery.[5]

3. Prevention of Money Laundering and Terrorism Financing Act 2014

The Prevention of Money Laundering and Terrorism Financing Act is an important piece of legislation which came into effect on April 2014. The Act provides for recovery of assets embezzled and laundered through predicate offences, which involve corruption.[6] The Financial Intelligence Unit (the Unit) which acts as a watchdog monitoring and collecting intelligence on financial transactions through various financial institutions, was established pursuant to this Act. Financial institutions are obliged to report any suspicious transactions to the Unit which collects the data and reports flagged transactions to investigating authorities.

The Act allows various actions to be legally taken in order to trace proceeds of corruption and other crimes. Court warrants can be obtained to:

- monitor bank accounts
- surveil computer systems, networks and servers
- tap or surveil telephone lines, fax lines, electronic transmissions and communication equipment
- record audio or video of conversations and actions
- intercept or forfeit letters and other communications[7]

Furthermore, the Act provides that the investigating authority may conduct covert operations and controlled delivery operations to trace proceeds of crimes.[8] Investigating authorities may also obtain temporary injunctions to freeze assets and bank accounts suspected to be proceeds of corruption and other crimes.[9]

The Act provides that the court shall order for proceeds of crime of money-laundering or money-laundering-related offences to be forfeited by the state. It is implied from the wording of the statute that such assets can be forfeited only upon criminal conviction.

4. Mutual Legal Assistance

More often than not, corruption offences are transnational in nature. Thus, recovery of assets is impossible without the assistance of other foreign jurisdictions involved as the Maldives cannot exert its jurisdiction on another country according to the long-established rules of international law. Until 2015, Maldives had no legislation to enforce seeking and providing mutual legal assistance. Law No: 2/2015 (the Mutual Legal Assistance Act) came into force in 2015, pursuant to which assets in foreign jurisdictions may be recovered. However, no request has been made yet to recover assets in a foreign jurisdiction obtained by way of corruption. Thus, this area of law remains to be explored.

B. Challenges in Existing Asset Recovery Mechanisms

1. Asset Recovery through Criminal Proceedings

Prior to 2014, it was the PG Office that sought recovery of state assets in corruption cases through criminal proceedings. As stated earlier, this was due to the fact that the PPCA provides for asset recovery only when there is a criminal conviction. Due to the low conviction rate and lack of enforcement mechanisms in the Criminal Court for asset recovery in cases that result in convictions, assets were not being recovered in a speedy manner. The PG Office, AG Office, ACC and the Ministry of Finance and Treasury held discussions in 2014 to determine a solution for speedy and wholesome asset recovery within the existing legal framework. It was decided between the parties that the solution was to seek asset recovery under Act Number: 3/2006 (State Monetary Act). Hence, since 2014 asset recovery has not been sought through

[4] Section 18, Penal Code 2014.
[5] Ibid, Section 14.
[6] Section 7, Prevention of Money Laundering and Terrorism Financing Act 2014.
[7] Section 49, Prevention of Money Laundering and Terrorism Financing Act 2014.
[8] Ibid., Section 50.
[9] Ibid., Section 51.

criminal proceedings.

The Criminal Procedure Code (Procedure Code) has come into effect since then on 2nd July 2017, and the Procedure Code stipulates that the court presiding over any criminal case resulting in a conviction shall make an order for recovery of assets if any is owed to the state.[10] As the Procedure Code came into force only recently, no such order has been made yet and the effectiveness of asset recovery through criminal proceedings under the new Procedure Code is yet to be observed.

2. Asset Recovery under Act Number: 3/2006 (State Monetary Act)

The State Monetary Act (SMA) is a statute prescribing rules and procedures to be followed by state authorities in conducting financial transactions. SMA provides only for recovery of funds and assets lost or damaged due to negligence of a responsible person or due to failure to observe the rules and procedures laid down by the statute.[11] However, it must be noted that action pursuant to SMA is not recovery per se, as the SMA provides for imposition of fines amounting to the funds lost, and not for recovery itself.

Pursuant to the decision made in 2014 that the AG Office shall seek recovery of proceeds of corruption under SMA, the PG Office forwards investigation reports of the ACC to the AG Office. The AG Office then analyses the evidence to determine whether the case falls under the circumstances for asset recovery under the SMA. So far 66 cases have been forwarded by the PG Office to the AG Office, but only 26 cases have been identified as cases capable of being pursued under the SMA. This is because the SMA is not legislation on recovery of proceeds of crimes and specifies only limited circumstances of state fund loss that warrant recovery action.

Where the AG Office determines recovery can be pursued, the AG Office notifies the Ministry of Finance and Treasury to impose a fine on the person or persons involved. The Minister may request the AG Office to seek civil action against the person or persons involved.[12]

The AG Office faces additional challenges as the investigation reports of the ACC are more focused on securing a conviction rather than asset recovery. In cases involving two or more accused persons, the investigation reports may not ascertain the amounts each one is individually responsible for. Thus, the AG Office is challenged in seeking recovery of assets as the AG Office cannot prove what amounts each individual person has embezzled.

Some cases of corruption come to light several years after the commission of the offence. This results in evidence being lost and the state failing to prove the amounts that have been embezzled.

In August 2016, the Ministry of Finance and Treasury fined and ordered several ex-government officials to pay funds owed to the government. They include the ex-President Mohamed Nasheed, four of his cabinet ministers and two others. The Ministry stated that civil action will be sought through the AG Office if the persons concerned fails to pay the money back. However, the concerned persons have not paid the amounts sought and the AG Office has not taken civil action against them to date.

3. Asset Recovery through Civil Action

The AG Office is the authority responsible for representing the State in civil actions by and against it. Thus, when it comes to recovery of assets through civil action, the AG Office is the responsible authority.

Initiating civil action for asset recovery is inefficient and takes a long time. This is due to lack of proper legal framework to allow the ACC to directly submit its investigation reports to the AG Office and seek asset recovery. Currently, the ACC submits its investigation reports to the PG Office seeking prosecution against accused persons. If the investigation report states that assets are to be recovered, the PG Office forwards the investigation report to the AG Office to take action for asset recovery. If assets or their equivalent cannot be recovered under the State Monetary Act as discussed above, the only choice left is to initiate a civil suit to recover the assets. As the investigations of ACC are criminal based, it takes additional time and further

[10] Section 156 (b) (10), Act Number: 12/2016 (Criminal Procedure Code)
[11] Section 24, Act Number: 3/2006 (State Monetary Act)
[12] Ibid., Section 48(b)

inquiries for the AG Office to gather information and evidence relevant to civil action. Furthermore, the AG Office may only seek civil action when a person accused of embezzlement is fined by the Ministry of Finance and Treasury as discussed above. Thus, the procedure for civil action is lengthy, involving several agencies, which limits the efficiency of civil action to recover state funds.

III. CONCLUSION

It is essential to have efficient legal frameworks to rapidly trace and freeze proceeds of corruption in order to successfully recover the assets and secure criminal convictions. Though the Prevention of Money Laundering and Terrorism Financing Act provides various avenues for such, the Maldivian legal framework still lacks efficient legal avenues for asset recovery including confiscation without a conviction and recovery through civil actions. The recent establishment of Commission on State Assets Recovery, though temporary, was an overdue important policy decision to recover assets. It is also crucial to enact specific legislation on recovery of proceeds of crimes that would enable recovery without the need for a conviction and establish permanent special asset recovery offices and build capacity of investigators, prosecutors and state counsellors.

REPORTS OF THE PROGRAMME

GROUP 1
METHODS OF INVESTIGATION FOR IDENTIFICATION AND TRACING OF THE PROCEEDS OF CORRUPTION AND INTERNATIONAL COOPERATION

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I. INTRODUCTION

This report is the result of the joint effort of all members of Group Workshop 1. Members of Group 1 started their first session on 17 November 2017. Mr. Harsha was elected as Chairperson and Mr. Fujioka as Co-Chairperson while Mr. Skora was elected as Rapporteur and both Ms. Mariyam and Mr. Christian were elected as Co-Rapporteurs. The Group was required to choose a topic which carries the theme of 20th UNAFEI UNCAC Training Programme. After many discussions, all the members agreed to the topic of "Methods of investigation for identification and tracing of the proceeds of corruption and international cooperation".

II. INVESTIGATION AND TRACING OF THE PROCEEDS OF CORRUPTION

A. Methods of Investigation

1. Whistle-Blowers

Usually witnesses of corruption and the laundering of proceeds do not feel secure to report cases to relevant authorities. In certain countries people feel reluctant to report corruption based on the belief that no action will be taken against the corrupt and that the one who reports would face retaliation. For instance, in the Maldives, the assistant bank manager who disclosed bank statements regarding a huge corruption scandal in 2016 was prosecuted for leaking confidential information. He was convicted despite his defence of being a whistle-blower and that he disclosed the information in good faith; his defence was not accepted by the courts, possibly due to political reasons.

2. Anonymous Letters, E-mails and Phone Calls

Anonymous reports are very important for intelligence gathering purposes but should never be fully relied upon in tracing proceeds of corruption as information from anonymous sources may be unreliable. However, these sources must not be disregarded and if possible, information from various sources should be gathered in a single database so it can be searched efficiently and used to corroborate where more reliable evidence is found later.

3. Witness Testimony

Like whistle-blowers, witnesses in general are rare for corruption cases. Also, it was pointed out that in some countries that rely heavily on witness testimony (e.g., Nepal) there is a large number of acquittals due to witnesses changing their testimony in the course of the investigation and lack of other forms of evidence to support the case.

4. Interrogations

Criminals involved in laundering proceeds of corruption can sometimes reveal their activities during

interrogation. However, this is not very useful or to be expected in most cases since suspects are usually advised by their lawyers to remain silent. In fact, in certain countries (e.g., Brazil) the right against self-incrimination is broadly interpreted by the supreme courts to an extent that suspects lying or giving false information during interrogations would not be considered as obstructing justice.

5. Plea Bargaining

Possibly the most essential and effective method for tracing proceeds of corruption is obtaining information from those involved in the corruption, who would have knowledge of how the money was moved and how properties were concealed. This method has been in use for several decades in the United States and other countries. However, plea bargaining is a rather new concept for other countries such as the Maldives or is yet to be implemented in some countries such as Japan which will introduce a procedure similar to plea bargaining in 2018.

6. STRs and Other FIU Documents

STRs and similar records are very important to the investigation of proceeds of corruption as financial institutions, registries and other institutions and corporation that deal in large sums can inform the authorities immediately when money is laundered. FIUs play a very important part in the discovery and disgorgement of illicit proceeds from criminal organizations for this very reason.

7. Bank Records

Basic financial statements and other banking documents can provide investigators with hard evidence of money laundering or just enough to trace the proceeds of corruption. However, in certain countries (e.g., Thailand) people can open several accounts in different banks in order to make several smaller transactions from different accounts instead of one large transaction so as to avoid detection and getting reported to the FIU. Also, officers in central banks do not have time to check all the KYC forms sent from the banks, and any person can have several bank statements and credit cards.

8. Tax Reports

Like bank records, tax reports are very useful for the investigation of proceeds of corruption and as evidence of the crimes connected since such reports are usually based on hard evidence and/or provided by the suspects themselves. However, this is another area very prone to the interference of the officials involved in making sure the reports are properly written and filed.

9. Media

The media is not only essential in raising public awareness of corruption but can also be very important in providing information on the whereabouts of the proceeds of corruption.

10. Controlled Actions

Controlled operations are one of several special means of investigation. When investigators are able to monitor and record money deliveries from beginning to end, it provides better evidence and broad insight into the criminal organization.

11. Undercover Operations

Undercover operations such as police or informant infiltrations, although possible, should be used only by the very experienced and trained.

12. Physical Surveillance

Monitoring meetings and the general ways of living of the suspects and family members can be very important in determining the locations of proceeds of corruption.

13. Electronic Surveillance

The increase in the use of smartphones and computers connected to the Internet makes electronic surveillance of suspects and family members very important, even though many programmes nowadays use some kind of encryption to protect communications.

14. Wiretapping and Examination of Call Records

Although still useful, the increase in the number of smartphones and the ease of use of encrypted

conversation applications results in only the sloppy or careless being caught discussing proceeds of corruption on the phone. On the other hand, examination of call records is still very useful to establish relations between people under investigation.

15. Search and Seizure and Proper Analysis of Material Seized

With the large amount of information being stored in smartphones and computers in recent years, search and seizures of such objects are extremely important. However, the huge amounts of data to be analyzed pose a challenge to investigators.

B. Challenges

1. Lack of Free Media

In some countries the media is not free. The media is an important tool in the fight against crime and must be free to be able to access and provide information to the public so as to pressure authorities. In Nepal, the recent Panama and Paradise Papers have forced requests through diplomatic channels since several members of parliament were on the lists that were released.

2. Lack of Political Will

The main difficulty in some countries is the lack of political will to fight corruption. In some countries this leads to many difficulties, such as challenges in the implementation of UNCAC provisions and fulfilment of its basic requirements in asset recovery. There needs to be proper legal and institutional mechanisms for it and also for international cooperation.

3. Lack of Focus on Asset Recovery

Investigators tend to focus on obtaining evidence to secure a conviction for an offence of corruption and focus less on tracing assets and obtaining evidence for recovery.

4. Low Level of Public Trust in Agencies Dealing with Corruption

In some countries there is a low level of public trust in the organizations that deal with corruption.

5. Cash-Based Economies

In some countries such as Tanzania, a cash-based economy makes it difficult to trace tainted financial transactions.

6. Lack of Know-How, Training, Special Techniques or Tools by Investigators and Prosecutors

Lack of know-how and training in modern investigation techniques results in ineffective investigations, and it is necessary that investigators learn how to effectively utilize the tools already in place. Furthermore, in certain countries such as Nepal and Maldives, the bodies tasked with investigating corruption and tracing proceeds do not have forensic or technical capabilities to conduct and make use of special investigative techniques. Those authorities only utilize traditional methods of investigation and when forensic or special investigative methods are required, corruption investigation authorities need to seek the assistance of other local or international authorities.

7. Political Appointment of Investigators, Prosecutors and Judges and Other Political Influences

In some countries commissioners are appointed on the basis of political ties instead of qualification, and even though they can be independent and may not be answerable to anyone, their political appointments usually still have influence over them. On the other hand, the grassroots are usually not independent from political influence, and that influence on the investigative, prosecutorial and judicial bodies is one of the most serious threats to the fight against corruption.

8. Culture of Impunity and Immunities for Certain Public Officials

Some countries have a culture of impunity for powerful figures and politicians and also of bribes by people in order to cut the red tape in government institutions, and a lack of accountability among the law enforcement authorities and other government institutions. Furthermore, corruption investigation bodies in some countries do not have jurisdiction over certain officials such as members of parliament.

9. Lack of Coordination Between Investigators and Prosecutors

Sometimes investigators conclude and forward serious cases of corruption for prosecution without prior

consultation with prosecutors which in some instances results in evidence being insufficient to prove all elements of the crime. A crucial technique of the Japanese police is to meet with prosecutors at the commencement of investigations and obtain their guidance, as prosecutors are equipped with necessary legal knowledge. While police just obtain guidance from prosecutors in some cases, in more complicated cases police and prosecutors conduct a joint investigation. It is crucial for investigators to obtain guidance from prosecutors to proceed with investigation in order to build an effective case for trial.

10. Non-Mandatory Confiscation of Proceeds after Conviction for Corruption

In some countries such as Japan, judges are required to order confiscation of the bribe if the bribe-taker is convicted of obtaining a bribe. However, in some other countries it is not mandatory for the judges to make an order for confiscation of a bribe or proceeds of corruption even upon a conviction, and authorities are required to seek asset recovery through other legal avenues.

11. Separation of Jurisdiction for Corruption and Asset Recovery

In some countries such as Maldives and Nepal, the asset recovery process is handled by agencies other than the investigative/prosecutorial bodies that deal with corruption.

12. Action against Investigators and Prosecutors in Case of Acquittals

Investigators in certain countries such as Laos face a penalty when the case they investigated results in an acquittal. Such a rule would unfortunately result in investigators being reluctant and afraid to initiate investigations for fear of job security since the political authority is the final governing body.

13. Conviction-Based Confiscation

While obtaining a conviction in corruption offences is a huge challenge due to various factors, some of which are discussed above, failure to obtain a conviction is an obstacle for asset recovery due to confiscation being conviction based in several countries. In order to secure evidence and for efficiency, it is important that money laundering is investigated simultaneously with the predicate corruption offence.

C. Proposals

1. Corruption Reporting Centres

Easily accessible corruption reporting centers independent of investigation and prosecution authorities should be established for the public to lodge complaints of corruption and obtain notices of progress of the cases they report. Such centres need to be less stringent and more public friendly as most public members are usually discouraged to report cases and obtain information from police or similar agencies due to their stringent administrative procedures.

2. Better Mechanisms for International Review of Independence and Technical Capability of Organizations Tasked with Fighting Corruption

Countries should implement UNTOC and UNCAC recommendations and establish truly independent commissions or investigative agencies, as well as prosecutors and judges. To this end, it is essential for there to be international bodies in place to supervise the independence of such agencies since one country cannot go against corruption alone: it needs the support of the others. Even though UNCAC provides mechanisms to review countries' compliance with the treaty, it is considered insufficient. In order to be considered compliant, countries should have sophisticated tools and trained personnel to investigate corruption and proceeds and also have independence from political interference.

3. Better Coordination Between Investigators and Prosecutors

Prosecutors and investigators should meet and share information on what evidence they have in corruption and asset recovery cases. In cases of serious crimes there should be prosecution guided investigations, so as to show investigators what would be needed in courts to obtain convictions.

4. Specialized and Independent Courts

There should be special courts for corruption cases with independence from political appointments, promotions and transfers and without pressure from powerful public officials, politicians and businessmen. Judges in such courts should receive specialized training in corruption and seizing proceeds.

5. Protection for Investigators

It was agreed that investigators whose cases fail in court and do not lead to convictions should have some degree of immunity as to make sure they are not intimidated from doing their jobs.

6. Public Trials

Publicity of trials is also relevant to provide independence to judges to rule against powerful officials and politicians. The media, both regular and social media, should be encouraged to report on official acts and trials of corruption.

7. Enactment of Legislation to Criminalize Illicit Enrichment and Corruption in the Private Sector, Witness Protection among Other Legislation Proposed in UNCAC

Legislation proposed in UNCAC but made optional for treaty parties should be enacted to facilitate the seizing of the proceeds of corruption.

8. Adoption of Non-Conviction-Based Forfeiture

In countries with only conviction-based forfeiture it is very difficult to trace and seize the proceeds of corruption. Thus, it is crucial for the law to provide for non-conviction-based forfeiture.

9. Promoting a Less Cash-Based Economy

Governments should not encourage cash-based economies as cash transactions are very difficult to trace.

10. Efficient Central Banks and Tax and Customs Agencies

Central banks and tax and customs agencies have a role that is essential for the investigation of the proceeds of corruption. Hence, in addition to investigation authorities, such agencies need to be efficient.

11. Transparency of Government Acts and Expenditures

It is crucial that all public transactions and government activities are transparent in order to eliminate any opportunities for public officials to engage in corruption. Thus, governments must establish systems for easy access to information on public affairs for the public and digitalize government transactions where possible.

12. Demanding Proper Explanation of Origin of Funds for Large Purchases

Buyers should be required to produce a certificate from tax authorities attesting to the buyers' financial capacity when making transactions of large amounts. Title to properties bought without producing such a certificate shall not pass to the buyer, and the buyer shall be liable for an offence under anti-corruption, bribery or illicit enrichment laws.

III. INTERNATIONAL COOPERATION

A. Methods

1. Informal Networks

All countries acknowledge the importance of informal networks for asset recovery: investigator, prosecutor and judicial informal international networks, such as AIAMP, IBER-RED, WACAP, REFCO; informal asset recovery networks, such as RRAG (GAFI-FATF Network for the Recovery of Assets); Carin (Camden Asset Recovery Inter-Agency Network); investigator, prosecutor and judicial attachés in embassies; among several others. It is believed that in the coming years there will be a greater reliance upon such networks, as seemingly local cases are becoming more international every year due to money laundering and international procurement. However, it was pointed out that if there was a common legal framework in all countries, such informal networks would not have to be used, and investigators could apply directly to the courts for assistance. Nevertheless, in the cases of countries that are not a part of UNCAC, such informal networks would remain useful, for it is important to know the systems of these countries in order to make requests, and even then, it is not guaranteed that it will be done.

2. Intelligence Gathering

Reliable information that can be used to initiate formal investigations can be obtained through Interpol and the Egmont Group of FIUs.

3. Formal Requests for Legal Assistance

Formal requests can be made through MLATs, UNCAC, UNTOC, other multilateral treaties and bilateral agreements and are processed by each country's central authorities.

B. Challenges

1. Slow or No Response to Assistance Requests

A major issue highlighted with regard to International Cooperation is that MLA requests are not responded to timely by requested countries, which effectively stops cases from advancing in court.

2. Different Authorities for Legal Assistance Requests and Asset Recovery

Also in some countries there is one central authority for MLATs (e.g., Prosecutor General's Office) but another authority (e.g., the Attorney General) for asset recovery. If this recovery of assets was also inside the structure of the investigative/prosecutorial bodies, it would be more effective.

C. Proposals

1. More Use of Joint Investigative Teams

Since crime has been without borders for a long time now and has managed to contaminate our economies and governments, large parts of our sovereignty are in the hands of criminals. It is also time for investigators, prosecutors and judges to become transnational as well. There is already a system for this underway in Europe, and international treaties already allow for Joint Investigation Teams (JITs), which in a sense are the embryos of the multinational institutions that we need. There should be international bodies of investigators to trace the proceeds of corruption. Countries that rate higher in the fight against corruption should assist in this matter.

2. More Investment in Major Foreign Languages

In order to achieve better integration, the language barrier between investigators, prosecutors and judges from different countries has to be destroyed. If they cannot communicate freely among themselves, it will be difficult to achieve any kind of collaboration. Although it is true that many central authorities have some kind of translation system for documents and requests, this is costly and ineffective. Investigators, prosecutors and judges should receive additional training in English, and new employees should be recruited taking into consideration their ability in a major foreign language.

3. More Spontaneous Collaborations from FIUs

There should be an increase in spontaneous collaboration between countries, especially from FIUs, since those are usually very important in speedily seizing the proceeds of corruption that can be easily transferred from country to country.

4. More Training for Authorities to Use International Collaboration

Many authorities make very little use of the international structure to fight corruption either because they do not know it is in place or due to the belief that international cooperation is a complicated process that will take too much time. However, the increasingly common usage of foreign bank accounts and the use of interposed persons make international cooperation a necessity to track and recover the proceeds of corruption. Therefore, there should be an investment in explaining to the authorities how they can make use of international cooperation and make this process more streamlined for them.

5. Common Legal Framework for Investigating Proceeds of Corruption

There is no formal mechanism to force international assistance. As corruption and money laundering are being committed beyond borders, it is crucial to have a mechanism that compels requests from foreign authorities to be processed and delivered. There should be a common framework so that informal networks do not have to be used and investigators can come directly to courts, such as the international mechanisms in place with regard to intellectual property laws. Due to the differences in criminal justice and basic legal systems of jurisdictions, UNCAC itself left some of its provisions as optional for Member States. However, due to the nature of corruption and money laundering offences, it is crucial to harmonize the corruption and anti-money laundering laws of all countries to ensure effective international cooperation.

GROUP 2

EFFECTIVE MEASURES TO INVESTIGATE THE PROCEEDS OF CORRUPTION CRIMES

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I. INTRODUCTION

Today in this globalized world, developing countries lose millions of dollars each year through corrupt practices. Most of the time criminals keep moving the proceeds of corruption crime through global financial institutions, changing them to legitimate assets or properties across the globe. The proceeds of corruption crime divert money from services such as healthcare and education, and also weaken public trust and threaten governance.

The United Nations Convention against Corruption (UNCAC) is the only legally binding universal instrument dealing with asset recovery. Chapter V of UNCAC establishes asset recovery as a "fundamental principle" of the Convention and provides the framework to recover the proceeds of corruption crime, requiring Member States to take measures to seize, confiscate, and return the proceeds of such offences. However, the biggest challenge is to turn UNCAC into an effective tool in recovering these proceeds.

The main focus of this paper is to discuss the effective measures to investigate the proceeds of corruption crime. Each member of the group contributed the current challenges they face in identifying, tracing and recovering the proceeds of corruption crimes. The group also discussed the possible measures they can take to resolve the current challenges under different circumstances and what will be the ideal way to identify, trace and recover proceeds of corruption crime that is suitable for each country to make the fight against corruption effective. The following are the main challenges and the solutions discussed among the group.

II. CHALLENGES IN THE EXISTING LEGAL FRAMEWORKS

A. Not Being a Member of UNCAC

In the group discussion, the members noticed that some participant's countries, like Chad, are not members of UNCAC. Also some of the countries which are members of UNCAC have not internalized some of the provisions of UNCAC in their domestic law. It is necessary to affirm that UNCAC is a very important legal tool which sets general provisions so that the State Parties can more effectively fight corruption and recover the proceeds of crimes.

Solution: All participants agreed that in order to investigate corruption crimes and also to identify, trace and recover assets it is very important to be party to UNCAC. Because UNCAC provides a framework to recover assets, those countries have a legal basis not only to investigate but to seize, confiscate and recover proceeds of corruption crime and extradite the offenders. Being party to UNCAC also entails a review and implementation mechanism which States Parties shall comply with. That mechanism is a useful tool to show the international community how each country is implementing the Convention's provisions.

B. Lack of Legislation to Criminalize Private Sector Corruption

Most of the participant's countries have not criminalized private sector corruption. Japan and Zimbabwe, however, have laws that do not specifically mention corruption in the private sector, but those countries' authorities can apply their existing legislation to corruption crimes committed in the private sector.

Solution: All participants of the group agreed that it is necessary to encourage the countries that do not have the power to investigate private sector corruption, to amend their existing laws to criminalize it and therefore enable confiscation and recovery of assets as proceeds of corruption crime.

C. Lack of Criminalization of Illicit Enrichment

Members discussed that in order to identify the proceeds of corruption it is necessary to criminalize illicit enrichment. For example, under the constitution of Maldives, the Executive Branch, Members of the Cabinet, Members of the Parliament and Judges are constitutionally obliged to declare assets annually. However, in Maldives illicit enrichment is not an offence under any law. Therefore, the fundamental purpose of asset declaration has been largely left unrealized.

Solution: The members of the group agreed that it should be mandatory for all government officials to declare their assets, criminalize illicit enrichment in domestic law and make any property that cannot be explained subject to forfeiture.

D. Whistle-Blower and Witness Protection

Group members discussed and agreed that whistle-blower and witness protection is very important as a tool to identify and trace the proceeds of corruption crime. Lack of these protection measures makes it more difficult to identify and trace the proceeds of corruption.

Solution: It was agreed among the participants that enacting and enforcing whistle-blower and witness protection laws will encourage people to come forward to the anti-corruption agencies or investigating authorities and provide information about the proceeds of corruption instead of being reluctant to share the information with the authorities in charge due to being afraid for their careers or even lives or safety.

E. Lack of Non-Conviction-Based Confiscation of Assets

All participants' countries except Zimbabwe have no legislation on non-conviction-based confiscation. Forfeiture actions depend upon the government's ability to demonstrate the relationship between the criminal conduct and the particular property subject to confiscation. Also, as a general rule those actions are limited to property traceable to the criminal offence.

Solution: Non-conviction-based forfeiture is civil in nature and the burden of proof is on a balance of probabilities. It does not depend on the conviction of the offender, and it can be resorted to where the offender is acquitted, deceased or is a fugitive.

F. Criminal Procedure Allows Multiple Appeals

Brazilian criminal procedure allows multiple appeals, even within the same court without limitation on the number depending on the case. It takes a long time to finalize corruption cases, even up to more than ten years. The system has been criticized by the courts, prosecutors and civil society. As a result, there is a considerable delay in recovering the proceeds of corruption crimes since a final decision by the judiciary is necessary. In the meantime, there is a possibility of dissipation of certain assets during the appeal period, which results in decreasing the benefit to the government of those assets.

Solution: All the members discussed this challenge faced in Brazil and agreed that Brazil and other countries need to amend their laws to limit the number of appeals in corruption cases in order to make the asset recovery process more effective.

G. Absence of Specialized Commissions or Agencies to Investigate and Prosecute Corruption Crimes

In some countries there are no specialized agencies to investigate and prosecute corruption cases. There are also no special departments to deal with asset recovery. All participants agreed that to investigate and prosecute corruption cases there is a need for special expertise.

Solution: Even if the country is not a member of UNCAC, it is very important to have a special agency to investigate corruption cases, and it is important to have a special court or judges appointed to deal with those cases.

The members agreed on the need of a special agency to investigate and a special court for corruption trials so that the people involved become specialized in the field of corruption, enabling more effectiveness in the asset recovery process. The members also agreed that specialized judges and prosecutors become quicker at identifying trial issues and more efficient and effective in the decisions taken in that regard. Also, the quality of work will be of a higher level due to the experience gained in dealing with corruption and asset recovery on a regular basis.

III. CHALLENGES IN INVESTIGATING PROCEEDS OF CORRUPTION CRIME

A. Lack of Special Investigation Techniques

Lack of legislation allowing the use of special investigative techniques such as wiretapping, telephone bugging and undercover operations is one of the challenges faced by most of the participants' countries to effectively investigate and trace proceeds of corruption crime.

Solution: All participants agreed that there is a need to allow special investigation techniques in corruption cases by amending existing law and by training investigators to deal with those techniques.

B. Difficulty in Accessing Bank Records

All participants except Japan agreed that they have difficulty in accessing bank records for domestic investigations or when responding to international cooperation requests. A court warrant is usually needed to obtain the bank information. Apart from the banks' delays in providing information, the documents are usually hard to be read and some banks do not transmit all the necessary documentation which causes severe delay to the investigation. It is also worth mentioning that Suspicious Transaction Reports (STR's) are not admissible as evidence in court, which makes it difficult for the prosecution to prove their case without calling for oral evidence.

Solution: Give the investigators and the anti-corruption agencies the authority to obtain bank records without court order. SIMBA, a software programme developed by the Brazilian Federal Prosecution Service, is a useful tool to gather bank statements, since it allows banks to transmit electronically the documents to the agency in charge, and it also controls the deadlines and creates graphics and information about the transactions in an easier way for the investigators and authorities to read. It is also important that STR's and information gathered by Financial Intelligence Units such as the one provided by Egmont Group members are admissible in court as evidence to expedite the proceedings.

C. Statute of Limitations

In some jurisdictions the statute of limitations is very short and some investigations need time to be conducted, especially when information from foreign countries is necessary.

Solution: Increase the statute of limitations to a longer period, enabling competent authorities to gather evidence in a reasonable time period. For example, in Zimbabwe the statute of limitations is 20 years for all offences except murder, and in Singapore there is no limit[1].

D. Budget Constraints in Tracing, Freezing and Recovering Assets

Lack of budget to investigate the proceeds of corruption crime is one the main challenges faced by most participants' countries. For example, in Indonesia the budget is limited, and they have difficulty in maintenance of the frozen assets, especially abroad.

Solution: Agencies should increase budgets to investigate corruption crimes and to recover assets. It also recommended that agencies be permitted to retain a certain percentage of the recovered assets to utilize in

[1] LIM, Vincent. *Effective measures for tracing proceeds of corruption crimes*. Lecture given for the 20th UNAFEI UNCAC Training Programme, 15 November 2017.

the business of the agencies.

E. Lack of Plea Bargaining

Plea bargaining is an agreement between the accused and the prosecutor in a criminal case to arrive at a satisfactory disposition of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offence or to one or some of the counts of a multi-count indictment in return for a lighter sentence. A majority of participants agreed that plea bargaining is not practiced in their countries.

Solution: The advantage of plea bargaining is that the prosecution secures a faster conviction and recovers the proceeds of corrupt practices. Also, UNCAC in Article 37(1) states that each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds[2]. It was agreed among the group to amend the domestic law to allow plea bargaining agreements to facilitate the recovery of proceeds of corruption crime.

F. Lack of Access to Most Databases

In countries like Maldives, Iraq, Japan, Zimbabwe, Nepal, Indonesia and Myanmar, the investigator does not have direct authority to access most of the government databases such as immigration, company registrations and transport registrations without making an official request. Due to the lack of direct access, investigators have to walk in to the relevant institutions with a warrant or request and get the information they need through the requested department staff. However, in Brazil investigators have direct access to a centralized government database, and there is no need of a warrant or request to do so.

Solution: All participants agreed that it would be easier to identify and trace proceeds of corruption crimes if investigators had direct access to a centralized government database without a court order or a formal request.

IV. POLITICAL CHALLENGES

A. Lack of Political Will

Lack of political will and government support to pursue asset recovery and deal with corruption issues is one of the main challenges faced by many countries. The participants agreed that even though there are laws, there is reluctance by politicians to enact and enforce the laws. The political will of both the victim country and the countries where the proceeds are located is necessary for asset recovery to materialize.

Solution: It was agreed among the group that in order to have political will, there is need to raise public awareness about corruption through education, media, seminars etc. Also, pressure from civil society is necessary for parliament to pass and enforce the necessary laws.

B. Political Influence in the Appointment of Anti-Corruption Commission Members

In order to identify, trace and recover proceeds of corruption crime, it is important that the anti-corruption officials be independent and free from political influence or pressure. In most of the countries there is political influence in appointing anti-corruption commission members. As a result of this, there is the possibility of political influence in investigating cases where politicians are involved.

Solution: All participants agreed that those who fight against corruption need to be independent from all political influence. Their appointment could be done by a committee of the parliament instead of the executive branch. Participants also agreed that members of the anti-corruption agency could also be elected by the people.

[2] United Nations Convention against Corruption, Article 37 (1).

V. PERSONNEL CHALLENGES

A. Shortage of Trained Staff

In most of the countries there is a shortage of trained staff such as judges, prosecutors and investigators to deal with corruption cases.

Solution: If the authorities dealing with corruption cases are well trained and experienced, the quality of work will be high and the job will be done more effectively. All participants agreed that job training for existing staff is necessary to improve their skills, and it is also important to increase funds for the agencies that deal with corruption, permitting them to hire more staff or to have officers seconded to the anti-corruption agencies.

B. Low Salaries and Privileges (for Those Who Fight Corruption)

The participants noted that salaries and benefits of anti-corruption officials are usually low in all countries. Investigators and officers are not provided with adequate benefits to carry out their duties.

Solution: All participants agreed to improve the salaries and benefits for officials who fight against corruption to encourage them and motivate them. Increased remuneration and benefits could be a preventive measure against their becoming corrupt.

C. Existence of Corrupt Officers among Those Who Fight Corruption

In some countries it is also perceived that those who fight corruption are also corrupt, which affects the effort to recover proceeds of corruption crime.

Solution: It is necessary to have an internal reporting system within the anti-corruption agency to monitor the officials. The participants also agreed to have high standards and requirements for hiring officials and to make sure that those officials should be of high integrity and responsible people in the community. It was also agreed to have a transparent and clear reporting system to communicate if such crimes are committed by anti-corruption officials.

VI. CHALLENGES IN INSTITUTIONS/AGENCIES

A. Lack of Cooperation between Organizations (Task Forces and Joint Units)

The participants agreed that lack of cooperation between organizations is a main issue in identifying, tracing and recovering proceeds of corruption crime.

Solution: It was agreed that, having joint task forces or liaison officers from anti-corruption agencies in other organizations will help with the lack of cooperation between agencies.

B. Bureaucracy

In most countries the investigators face challenges to identify and trace proceeds of corruption due to unnecessary and excessive administrative procedures and authorizations.

Solution: The participants agreed it is important to remove unnecessary bureaucratic steps to communication channels and to give authorization to administrative personnel to disclose necessary information to anti-corruption agencies instead of meeting with high-ranked officials to get the information needed.

C. Lack of Equipment (Surveillance Vehicles, Software, Computer Hardware)

In most of countries there is a lack of equipment such as surveillance vehicles, forensic resources, software and modern equipment in the agencies investigating corruption crimes. Due to the complexity of corruption crime, the lack of such equipment affects the effectiveness of investigation of the crime and tracing of proceeds.

Solution: All the participants agreed it is important to have adequate equipment and other means for investigation to enhance the recovery of proceeds of crime.

D. Lack of Sufficient Authority (Arrest/Seizure, Prosecution, Requesting Information from Abroad)

It was noted that in some countries the anti-corruption agency does not have the power to arrest, seize, prosecute or request information from abroad.

Solutions: The participants agreed that anti-corruption bodies should have sufficient authority to arrest/seize with or without court orders. For example, in Indonesia the anti-corruption agency can arrest suspects with enough evidence, even without a court order, as corruption crimes are considered as extraordinary offences. Therefore, extraordinary measures are used to deal with corruption cases.

VII. INTERNATIONAL COOPERATION

A. Dual Citizenship

In some countries, the investigators and prosecutors face challenges to investigate and prosecute offenders that have dual citizenship because they flee to the other country where they are nationals. Some countries refuse to extradite the offender as he/she is the citizen of that country.

Solution: The participants agreed that in this case, it is important to use the provisions of UNCAC to extradite or prosecute offenders who commit crimes abroad. As Article 42 and 46 of UNCAC provide that dual criminality should not be an obstacle to rendering assistance to other countries.

B. Different Legal Frameworks

Some countries face difficulty in international cooperation due to different legal frameworks, such as incompatibility of legal proceedings in the requesting and requested states.

Solution: The participants agreed to encourage establishment of MLA agreements to facilitate and to implement some compatibility between legal systems, to recover assets and to gather evidence from abroad. States should be encouraged to enforce non-conviction-based forfeiture orders from foreign jurisdictions.

C. Failure to Acquire Assets from Non-Responsive Jurisdictions

One of the main challenges to recover the proceeds of corruption crime is that anti-corruption agencies fail to acquire the assets from non-responsive jurisdictions.

Solution: International cooperation is very important in addressing corruption crimes because in most cases the assets illegally obtained are transferred to other countries. Therefore, it is crucial to cooperate with foreign requests for evidence and asset recovery even in the absence of Mutual Legal Assistance Treaties, using the principle of reciprocity as a legal basis to execute other countries' requests.

D. Lack of Familiarity with the Process of Mutual Legal Assistance Requests

It was noted that most of the time the barrier to recovering proceeds of corruption crime is that the anti-corruption agencies are not familiar with MLA requests and other ways to get legal assistance.

Solution: Having international cooperation units within the agencies with trained staff in that regard is a key factor for obtaining information from overseas. Also important is using informal contacts between international agencies and INTERPOL to gather intelligence and evidence and to bypass lengthy formal procedures. Networks such as CARIN[3], RRAG[4], ARINSA[5] and StAR[6] are useful tools to trace proceeds of corruption crimes.

VIII. CONCLUSION

Corruption is a serious offence and fighting it and recovering assets are difficult tasks faced by the majority of countries in the world. In order to better fulfill their duties, investigators, prosecutors and judges need adequate staff, budget, equipment and training. Corrupt criminals often abuse loopholes in the legal

[3] CARIN–Camden Assets Recovery Inter Agency Network
[4] RRAG–Asset Recovery Network of GAFILAT (Financial Action Task Force of Latin America)
[5] ARINSA–Asset Recovery in South Africa
[6] StAR–Stolen Asset Recovery Initiative

frameworks. Thus, in order to tackle corruption and recover the proceeds, we need to establish adequate legal frameworks.

But most important is political will to pass laws to enable investigations and fair decisions and the enforcement of those decisions. The role of civil society and the media is crucial to providing pressure on the Parliament and Cabinet members. In the globalized world we are living in, international cooperation between nations is no longer just a formality but a key factor to establishing an adequate response and obtaining reparation for the society that had its money diverted from public use.

To complete the fight against corruption, State Parties to UNCAC and countries that are not signatories need to vigorously pursue the proceeds of corruption crime across borders, ensuring that their countries are not perceived as safe havens for the proceeds of corruption crimes. States should endeavour to the best of their abilities to seize, confiscate and recover proceeds of corruption crimes. The use of non-conviction-based confiscation and forfeiture is the best tool in this regard. States should also assist in enforcing orders from other jurisdictions in order to make asset recovery a success.

GROUP 3
DOMESTIC AND INTERNATIONAL COOPERATION APPROACHES FOR INVESTIGATION OF PROCEEDS OF CORRUPTION CRIMES

Rapporteur: Ms. Caroline Nyaga (Kenya)
Co-Rapporteurs: Mr. Kazuo Akagi (Japan)
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Mr. Desmond Mwayawa (Papua New Guinea)

Chairperson	Mr. Abdelazim Mohammed Elzaki	(Sudan)
Co-Chairperson	Mr. Tandin Penjor	(Bhutan)
Members	Mr. Mohamed Abdelhamid Elhamady	(Egypt)
	Mr. Sovann Srin	(Cambodia)
	Mr. Mohammad Ibrahim	(Bangladesh)
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	Prof. Nozomu Hirano	(UNAFEI)

I. INTRODUCTION

Following a series of lectures, Individual Presentations and study trips focused on the theme of "Effective measures to investigate the proceeds of corruption crimes", the participants were asked to retreat into groups so as to exchange experiences, share best practices, identify challenges and consider practical recommendations that would help them resolve the identified issues. Group 3 decided on the topic of "*Domestic and International Cooperation Approaches for Investigation of Proceeds of Corruption Crimes*".

There is need for domestic and international cooperation due to the complexities of corruption crimes, challenges of capacity constraints of individual agencies and emerging transnational trends that result in suspects transferring assets across borders. At the domestic level authorities charged with prosecuting and investigating corruption crimes cooperate in conducting joint inquiries and sharing information.

Internationally, states cooperate with one another through:

a. Establishing channels of communication between authorities, agencies and services to secure and facilitate rapid exchange of information;

b. Conducting inquiries with respect to identification, whereabouts and activities of suspects and movement of property and proceeds of crime;

c. Providing, where appropriate, necessary items or quantities of substances for analytical or investigative purposes, among others.

This cooperation will assist states in sharing information on a real-time basis and will enhance the tracing, freezing, confiscation and recovery of proceeds of corruption crimes.

It was agreed that the deliberations would take the following outline:

1. Introduction

2. Information and detection of corruption
   a. Whistle-blowers
   b. Financial intelligence units
   c. Other agencies

3. Investigation
   a. Special investigative techniques
   b. Tracing, freezing and confiscation

4. International cooperation
   a. Bilateral and multilateral agreements
   b. Joint investigations

5. Challenges

6. Recommendations

II. INFORMATION AND DETECTION OF CORRUPTION

Corruption is mostly a "silent" crime with no crime scene and no clear evidence. The perpetrators act in private, hence the importance of whistle-blowers, FIUs and other agencies in the detection and reporting of corruption cannot be understated. This leads to efficient recovery of proceeds of corruption crimes.

A. Whistle-Blower Protection

A whistle-blower is a person who exposes any kind of information or activity that is deemed illegal within an organization or public office, in this instance, corruption. Therefore, to enhance reporting, a whistle-blower must be protected from any harm or victimization that may befall him as a result of exposing corruption, such as dismissal from work, harassment, death or harm to his life or family. Members reported that most agencies had put mechanisms in place to enable corruption reporting, including websites, phone calls, anonymous reporting or emails. All reports whether anonymous or not have to be verified.

Most countries have specific whistle-blower protection laws while others have provisions in various laws for the same purpose. It was noteworthy though, that for some, whistle-blowers are protected but must appear as witnesses in court. On the other hand, in Bhutan, whistle-blowers' identities are withheld, and their names are not disclosed to any other person or brought to court. If it is extremely necessary for them to appear, they are put in separate rooms and they testify on different days from the rest of the witnesses. Other forms of protection offered to whistle-blowers include protection from victimization at their work places and dismissal.

B. Financial Intelligence Units

All countries in this group have Financial Intelligence Units (FIU) established in accordance with UNCAC due to the rising cases of money laundering activities by corrupt individuals who either stash money in foreign countries or have secret accounts used to conceal proceeds of crime. Some FIUs are independent while others operate under the police service or the national or central bank.

The main responsibility of the FIUs include: to receive, process, analyse and disseminate information relating to suspicious transaction reports (STRs), and to provide such information to enforcement agencies. Also, FIUs transmit the same information simultaneously to foreign FIUs they collaborate with. The FIUs also work in collaboration with investigation authorities. For some states, however, any information must be relayed through the ministry in charge of foreign affairs. In Bangladesh, Tajikistan, Bhutan, Papua New Guinea, Sudan, Egypt, Cambodia, Japan and Kenya, the FIU may enter into Memoranda of Understanding with other foreign FIUs for purposes of easier collaboration and also to direct banks to freeze accounts until the STRs are investigated.

C. Other Agencies

Other agencies identified as sources of information include banks and other financial institutions, tax agencies, customs, securities exchange, audits, and the media. The group was informed that the banking institutions cooperated with enforcement agencies and most of them report any suspicious transactions, and some have power to freeze accounts for a period of time until investigations are completed. In some countries, the banks are required to report to the Central Bank regularly, which flags any suspicious transactions.

In Bangladesh, the banks are required to report to the Central Bank at the end of each day, and it flags

any suspicious transactions and freezes the account for an initial 30 days (maximum of 6 months).

Asset declaration was also a tool used to detect corruption and trace proceeds of crime. In most states, certain or all public officers are required to submit wealth declaration forms, whether digitally or manually, on a regular basis; annually or biannually. Various agencies are charged with the responsibility of safeguarding records of the declarations. Officers who fail to declare are punished administratively.

In Egypt, appointed and elected officials, including large contractors or suppliers to any public agency, are required to declare and justify their assets to the Illicit Enrichment Organization administratively. Failure to do so will result in prosecution for the crime of illicit enrichment. In Japan, only politicians are required to declare their assets and liabilities.

III. INVESTIGATION

Using the information received from the sources outlined above, the prosecutors, police or investigators in the anti-corruption agencies, as the case may be, employ various techniques to trace, freeze, seize and confiscate proceeds of crime that may be concealed either domestically or in foreign jurisdictions.

The members shared the practices from their countries on how investigations are conducted. As per UNCAC, special investigative techniques were identified. These methods allow investigators to gather further information useful to freeze, seize and confiscate proceeds of corruption crimes. Papua New Guinea does not recognize or use special investigative techniques. For Cambodia, there has to be a clear hint of corruption in order for such techniques to be used. As per UNCAC, these special investigative techniques include:

a) Controlled delivery—In most countries, controlled delivery is allowed. However, these techniques require supporting evidence and are not given much weight to guarantee convictions; therefore, controlled delivery is not very effective.

b) Electronic or other forms of surveillance—This is an effective method of investigation. In some jurisdictions, a court order has to be obtained as it borders on infringement of privacy, which is a constitutional guarantee. In Sudan, only the Special Court can issue the warrant allowing the use of these techniques. In Egypt and Tajikistan, wiretapping is only allowed after obtaining a court order/warrant. In Bhutan, the Chairman of the Anti-Corruption Commission has the power to issue a warrant for wiretapping and has to inform the Court within 24 hours of the same. Japan does not allow use of wiretapping for corruption crimes.

c) Undercover operations—All countries, except Japan, use this special technique. However, it is a requirement that undercover operations must be carried out within the ambit of the law.

➢ **Freezing, seizure and confiscation of proceeds of corruption crime**

Freezing is an effective method in the process of recovery of proceeds of corruption crimes. In some countries, court orders are required while in others, orders from the heads of the anti-corruption agencies, prosecution agencies, police commissioners and registrar of titles suffice. It was noted that most confiscations were conviction based and only non-conviction based where a person fled the country or was deceased. The issue of liquidation of depreciating assets or those that were perishable so as to maintain value also posed a challenge to some states due to lack of cooperation by the suspect. All states have legislation on anti-money laundering that stipulates the procedure to be followed in the process of recovering proceeds of crime. Moreover, some countries have special agencies whose function is to recover assets. In Kenya for instance, there is a Multi-Agency Team that is composed of various investigative and enforcement agencies that work simultaneously in these cases through real-time sharing of information. This has enhanced the conviction rates and asset recovery, as all necessary information and evidence is shared and simultaneous actions are taken by the various agencies to enable cases to be water tight.

IV. INTERNATIONAL COOPERATION

In the course of investigations, it may be found out that the suspect has assets concealed in foreign

jurisdictions. Therefore, there may be need for mutual legal assistance and joint investigative techniques to be employed. Moreover, states reported that most of them are members of organizations that enable them to collaborate, including: Interpol, the Egmont Group, the East Africa Police Chiefs Organization, among others. States reported that most of them offer MLA on the basis of reciprocity and dual criminality. Others have concluded bilateral and multilateral agreements that enable them to seek assistance as well as conduct joint investigation teams with their counterparts.

The Central Authorities for purposes of MLA were shared including the Office of the Attorney General, the Prosecutor General and the Ministry of Foreign/International Affairs (through diplomatic channels), the Ministry of Justice and the Ministry of Interior in all countries. In Cambodia, the Anti-Corruption Unit (ACU) cooperates with its foreign counterparts based on its membership in the South East Asian Parties Against Corruption (SEA-PAC) and through MoUs. In practice, if MLA is required, the anti-corruption agency of a foreign state can directly send a request to the ACU. Upon receiving the request, the ACU will undertake measures on a case-by-case basis.

V. CHALLENGES

A. Difficulties in Gathering Information from the Public

UNCAC obligations on whistle-blower protection guarantee that people with information can come forward with information for which the full protection of the law is guaranteed to such persons afterward. Without the existence of such protection, persons with information fear that their personal, economic and job security will be at risk when information is given to authorities. Inadequate laws and mechanisms of whistle-blower protection posed a challenge for some countries because whistle-blowers are afraid to report to authorities. Public awareness on whistle-blower protection is important because lack of cooperation by whistle-blowers with the authorities was also identified as a challenge.

B. Balancing between the Right to Privacy and Investigation of Proceeds of Corruption Crimes

Discussions among group members also point to the fact that access to information may infringe the right to privacy in some countries. UNCAC obligates member states to put in place legislative measures to ensure bank-client privileges relating to privacy are overridden when information on bank accounts is requested by authorities. In some countries banks may willingly provide a client's banking information. In some countries, a court warrant has to be obtained for banks to provide such information as well as wiretapping into private communications. As courts are independent, applications to obtain banking information and private communications may not be provided in instances where the case is not properly argued with all relevant background information being presented. Such instances hamper the likelihood of success in any investigation for a successful conviction. Although the importance of such measures is noted in gathering information against a suspect, the discussions pointed to the fact that some countries view this as infringing privacy rights.

C. Special Investigative Techniques

It was noted that not all countries implement controlled delivery, undercover operations and surveillance provisions under UNCAC. This is largely due to lack of technological requirements, capacity requirements or a legal basis to authorize such measures. In PNG, all of these measures are not utilized because of privacy issues and the lack of a legal basis. Appropriate training and technological resources would follow suit in the event that laws are amended to provide a legal basis.

D. Lengthy Court Processes

In some jurisdictions, court processes hamper obtaining important warrants to complete investigations. An application may be made *ex parte* or *inter parte* in some jurisdictions. The decision made is subject to a number of instances for appeal and may take some time before the final result is known. In countries where there are no special corruption courts, this may take longer. In freezing assets, where it is not possible to administratively freeze a bank account, the funds may be transferred before the warrant to freeze is obtained and any appeal is decided on.

E. Lengthy MLA Processes

Although UNCAC obligates member states to offer assistance in an timely manner, practically such assistance may take years, or a request may not even be responded to at all. As the laws relating to

production of evidence in a requesting State may differ drastically to those of the requested State, the time taken to obtain court warrants may be an issue. In some instances, conflicting laws in gathering evidence may result in MLA requests being refused.

In some countries, the primary administrative process of putting together an MLA request from the police or anti-corruption agency for the MLA authority is an issue. Because of the non-uniformity of MLA authorities among countries, the administrative approvals required and the channels such approvals have to go through before the actual request is sent may deter investigators. This may be the same for the requested country. It is hoped that countries will reduce bureaucratic procedures to ensure that MLA requests remain a productive tool in international cooperation.

F. Immunities

In some countries, high-ranking officials are provided immunity from investigations or being charged for an offence. In such instances, vital information required for an investigation may not be obtained. Where the office holder has immunity, it is not possible to charge that person for a corruption crime. Hence, the assets which he illegally holds may not be recovered until such time as the person leaves office and loses the immunity. Other countries hold the view that no one is above the law. Hence, no immunity is provided to any office holder. Associated issues with immunities therefore require political support to change laws. However, that may not be possible in most instances where lawmakers are vested with immunity.

G. Conflict of Laws

As mentioned earlier, UNCAC requires cooperation amongst its member States. However, in MLA and extradition requests, dual criminality requirements and conflicting laws for obtaining evidence may result in refusal of requests for assistance. The UN recognizes this as a problem which still requires more discussions among Member States before a resolution on a way forward is passed. The timeframe for this still remains indefinite.

H. Lack of Capacity

It is noted that it is vital that officers in anti-corruption agencies and FIU's are well trained to ensure effective results in the fight against corruption. In-house training, on-the-job training and international training courses are required to achieve this. Hence, there should be adequate funding put in place for training and appropriate administrative support to ensure training remains an integral component in the fight against corruption. Attending UNCAC training is seen as an important capacity-building tool. Officers who attend such international training must therefore take it upon themselves to train fellow colleagues in their home states.

I. Lack of Centralized Databases

It was noted that Brazil has a centralized database from which anti-corruption investigators easily search assets in the form of bank accounts, real property, movable property etc. In almost all other countries, this tool does not exist. Hence, investigators are required to conduct searches at the relevant land registry to obtain information about real property or at vehicle and vessel registries to obtain information on vehicles and vessels. Banking information may also require a court warrant. It was agreed that putting in place such a database requires Government support and may take time, if it can be done at all. However, it remains a vital tool for efficient and timely investigation where a country chooses to create such a database.

J. Lack of Stringent Punishment

It was agreed that punishment for corruption differs from country to country depending on the laws of each country. However, to ensure the fight against corruption, appropriate sentencing laws must be formulated to ensure deterrence. In countries where sentences are weak, corruption is not deterred. It is also noted that in some countries plea bargaining agreements or leniency programmes exist as a trade-off between a lighter sentence or immunity and the suspect providing information or transferring assets back to the State. Hence, there are advantages and disadvantages of plea bargain agreements or leniency programmes. These mainly exist to ensure assets are recovered as imprisoning the offender does not solve the issue of asset recovery where the asset cannot be located.

K. Restricted Media

Though media is an important source of information for reporting corruption crime, it may be restricted.

In Sudan, the media is restricted from reporting or publishing certain corruption cases, such as when a high-ranking officer is involved.

VI. CONCLUSION AND RECOMMENDATIONS

Corruption crimes are complex in nature and carried out in secret, sometimes across borders. The use of modern technology has made transferring proceeds of corruption crimes even easier both domestically and internationally. Cooperation assists in detecting and recovering of corruption proceeds that have been transferred or hidden. Therefore, it is important for agencies fighting corruption to cooperate both domestically and internationally. Given the foregoing, the members proposed the following recommendations:

i. There is need for joint trainings for capacity-building for judicial officers, investigators and prosecutors on modern trends in corruption. More international training programmes should be offered with financial support from the UN or donor agencies to countries in need;

ii. Governments should enhance public awareness efforts to educate the public to detect and report corruption crimes;

iii. More effort should be placed on discussions at the UN level to ensure harmonized laws in Member States to reduce instances of conflicts of laws. This includes laws relating to criminalization and evidence;

iv. The media is given freedom to report without influence from the government. The media must also be aware of international conventions and treaties to which its host county is a party; and

v. Governments should establish a central database for law enforcement agencies to gather vital information.

SUPPLEMENTAL MATERIAL

Report of the Third Word Congress on Probation
by the Third World Congress on Probation

Report of the Second Asia Volunteer Probation Officers Meeting
by UNAFEI

UNAFEI

SUPPLEMENTAL MATERIAL

REPORT OF THE THIRD WORLD CONGRESS ON PROBATION

From 12-14 September 2017, the Third World Congress on Probation (the "Congress") was held at the Shinagawa Prince Hotel in Tokyo, Japan, co-hosted by the Rehabilitation Bureau of the Ministry of Justice ("MOJ") of Japan, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders ("UNAFEI"), the Japan Rehabilitation Aid Association, The National Federation of Volunteer Probation Officers (Japan), The National Association of Offenders Rehabilitation Services (Japan) and the Japanese Association of Offenders Rehabilitation. The main theme of the Congress was "Development of Probation and the Role of the Community". Mr. Shoji Imafuku, Director of the General Affairs Division, Rehabilitation Bureau, MOJ of Japan and Ms. Minako Shoji, the government attorney of Rehabilitation Bureau, MOJ of Japan served as the Masters of Ceremonies.

Participants

1. 371 participants from 34 countries/regions attended this Congress. The participating countries and regions were: Australia, Austria, Belgium, Cambodia, Canada, Chile, China, Croatia, Georgia, Hong Kong, Ireland, Japan, Jordan, Kenya, Korea, Lesotho, the Netherlands, Malaysia, Moldova, Myanmar, New Zealand, Norway, the Philippines, Poland, Romania, Russia, Singapore, Sweden, Thailand, Taiwan, Uganda, the United Kingdom, the United States of America and Viet Nam.

Opening Ceremony

2. Ms. Naomi Unemoto, Director-General of the Rehabilitation Bureau of the Ministry of Justice of Japan, welcomed the participants to the Congress and expressed her hope that the Congress would lead to the development of probation and community corrections throughout the world. Ms. Unemoto concluded by declaring the opening of the Congress.

3. The Honourable Yoko Kamikawa, Minister of Justice of Japan, welcomed the participants attending the Congress from 34 countries and jurisdictions and thanked the many Japanese volunteers and practitioners who extended their support for the Congress. Minister Kamikawa recalled that Japan's long history of offender rehabilitation dates back to the late nineteenth century, explaining that current efforts are supported by Japan's community volunteers, including 48,000 volunteer probation officers ("VPOs"). She also noted that these efforts are founded on the principle that "No one will be left behind", which is the essential idea of the "Sustainable Development Goals". Finally, Minister Kamikawa expressed her hope that this Congress will strengthen probation and community corrections and the development of personal and professional networks.

4. Welcome remarks were also delivered by Mr. Gerry McNally, President of the Confederation of European Probation ("CEP"); Ms. Erica Preuitt, President of the American Probation and Parole Association ("APPA"); Ms. Anne Connell-Freund, President of the International Community Corrections Association ("ICCA"); and Mr. Peter van der Sande, President of the International Corrections and Prisons Association ("ICPA").

Keynote Speeches

5. Dr. Frank Porporino[1], Senior Partner, T^3 Associates Training and Consulting, Inc. (Canada), presented on the theme of "Developments and Challenges in Probation Practice: Is There a Way Forward for Establishing Effective and Sustainable Probation Systems?" Acknowledging that probation and community corrections face a number of challenges, including the current political environment, insufficient financial resources, overburdened and undervalued staff, the lack of statistics on community corrections, and so on, Dr. Porporino observed that modern probation practice is struggling to define its proper aim. There is a growing consensus among experts in the field that probation must engage communities and families in providing support to offenders, focusing on achievements and strengths rather than just targeting deficits, imbuing the system with the core values of justice, fairness and respect, and creating a truly integrated, evidence-informed model of

[1] Dr. Porporino's presentation material is available on the Congress website:
http://www.moj.go.jp/HOGO/WCP3/program/pdf/Speeches_FJP.pdf

practice. Dr. Porporino proposed extending this model by offering five additional themes: 1) challenging the trend of mass probation and the "net-widening" effect; 2) challenging the value of intensive supervision and surveillance, replacing invasive monitoring with voluntary, self-imposed compliance; 3) coupling procedural justice, in which offenders have fair opportunities to provide their side of the story with the belief that the authorities will listen, with skilled and personalized care and support; 4) defining occupational professionalism by awakening a "relational revolution" in probation practice in which practitioners are expected to relate to offenders through acceptance, respect, support, empathy, and belief; and 5) enhancing leadership among practitioners to drive change. To achieve this change, importance must be placed on leveraging relationships with offenders.

6. Prof. Peter Raynor[2] of Swansea University (United Kingdom) presented on "Effective Practice: The Past, Present and Future of Probation Research". When modern probation began in the 1950s in a period of optimism, probation was viewed as the conditional suspension of punishment coupled with personal care and supervision by a court welfare officer. From the '70s into the '90s, probation experienced a period of pessimism resulting from the 1974 publication of Martinson's famous "Nothing Works" article, followed by a period of research-based optimism through 2003. Now probation is in a period of evidence-based realism, in which research is focused on measurement of inputs and outcomes and comparison of results, but what is missing is a clear understanding of the activities and needs of probationers, making it necessary to widen the scope of research from program design to focusing on skills and implementation. These skills include listening, understanding (empathy), helping, being reliable and consistent, modeling and reinforcing appropriate thinking and behavior, and appropriate challenging. Probationers need help and support from others rather than monitoring and surveillance. To provide this support, probation staff need to receive appropriate training, be empowered, and take responsibility for the outcomes. Studies focusing on skills used by probation officers show differences ranging from 12% to 32% in the effectiveness of probation officers trained in certain skills (such as pro-social modeling) compared to those who were not. In the new political climate, we must beware of "post-truth" policymaking, as evidenced by the privatization of probation in England and Wales. As post-truth policies will ultimately fail, priorities for future research include: continuing to examine skills and implementation—how and what works; learning from ex-offenders about their pathways out of crime and how we can help to support desistance; studying how successful policies achieve support and legitimacy—from judges, politicians, and communities affected by crime; understanding the activities and needs of probationers; and measuring and comparing practices to ensure effective probation practice.

7. Prof. Todd Clear[3] of Rutgers University (United States) presented on "Imagining Community Justice Values in Probation Practice", introducing "community justice" as a transformative model for probation practice. Recounting his early experiences working in prisons, Professor Clear found that prisons are not places where rehabilitation is possible. Throughout his career, and despite efforts to abolish prisons, the United States experienced the largest period of growth in its penal population. The prison system continued pursuing the objective of controlling offenders inside and outside of prison, as well as control of correctional officers, while the 40-year goal of U.S. probation has been to turn community corrections into community incarceration. Citing the recent report published by the Harvard Executive Series on Community Corrections, which represents a consensus on the role of community corrections in the twenty-first century, Professor Clear explained that the report has planted a stake in the ground that calls for a transformation of community corrections, which he would call "community justice". Community justice stresses three core values: 1) the well-being principle, 2) the harm-avoidance principle, and 3) the human dignity principle. This statement of orienting principles should be deemed as radical, at least from the perspective of the United States. Professor Clear urged practitioners to become agents of community justice, not just community corrections, by focusing on public well-being rather than merely public safety. Thus, community justice is in the change business, not the control business. Rather than focusing on the reduction of recidivism, practice and reform should focus on helping people become better parents, siblings, and neighbors. The

[2] Professor Raynor's presentation material is available on the Congress website:
http://www.moj.go.jp/HOGO/WCP3/program/pdf/Speeches_PR.pdf
[3] Professor Clear's presentation material is available on the Congress website:
http://www.moj.go.jp/HOGO/WCP3/program/pdf/Speeches_TC.pdf

community justice movement promotes success rather than punishing failure and pursues goal-based, strengths-based, victim-centered, family-inclusive and community-based approaches to rehabilitation. To foster change in others, we must proceed on the core assumption that it is the natural state of a person to want to live a better life, to be a positive influence on others, and to be respected by peers. This creed should guide us in practice toward achieving public well-being.

8. Ms. Tomoko Akane[4], Ambassador for International Judicial Cooperation of Japan, presented on the theme of "The Future of Probation: Asian Experiences and the Role of the Community", which considered improving the future of probation through the engagement of the community, such as through the efforts of VPOs in Japan. While the Tokyo Rules have long established non-custodial measures and public participation as global norms in community corrections, implementation varies significantly throughout the world. Too often, incarceration leads to social isolation, radicalization, and recidivism. To mitigate or avoid these negative impacts of incarceration, Ambassador Akane offered a three-pronged model for the future of probation. First, involvement of community volunteers, such as VPOs and cooperative employers, is crucial. For example, Japanese VPOs meet with offenders as individuals, not as probationers, and build close personal relationships based on trust, leading probationers toward the path of desistance, while cooperative employers offer juveniles and adult offenders employment despite prior criminal records. The importance of active engagement of community volunteers was emphasized, introducing a wide range of activities of VPOs in East and Southeast Asia. Second, broader public engagement by reaching out to all segments of the community is an important step toward building resilient and sustainable communities, which Japan is pursuing through its high-level governmental commitment to the "Movement for a Brighter Society" in an effort to promote a culture of lawfulness. Third, cooperation among criminal justice agencies is important to determine which persons are suitable for probation or community corrections, as is sharing information and cooperation among criminal justice agencies to achieve rehabilitation of individual offenders, citing the example of collaboration between prosecutors and probation officers in Japan. Ultimately, people are inspired to change not through systematic control but through personal relationships and patient encouragement and support from people they respect and trust.

Workshop Sessions

9. Twelve workshop sessions[5] were held during the Congress, which provided opportunities to more deeply explore policies, practices and research on probation and community corrections from around the world. The overarching themes addressed during the workshops included the development of policies and practices, evidence-based theories and practices, offenders with special needs and the role of the community. Around 70 academics and practitioners presented during the workshop sessions, detailing the community corrections practices from 17 countries.

Special Speech

10. Mr. Ryohei Miyata, Commissioner for Cultural Affairs, Japan, delivered his special speech on the role of art in offender rehabilitation, reviewing his activities to promote and enhance the presentation of Japanese culture. He stressed the importance of working directly with each person, including offenders, to nurture their creativity and spirit of self-expression and to use creativity to turn initial failure into success.

Opening Remarks on September 14

11. Mr. Keisuke Senta, Director of UNAFEI delivered the opening remarks on September 14. Mr. Senta emphasized the significance of the Congress in sharing global knowledge and experiences. As well as summarizing the discussion of the previous days, he noted that community corrections has been a topic of great importance to UNAFEI for several decades, including the first drafting of the United Nations Standard Minimum Rules for Non-Custodial Measures — commonly known as the Tokyo Rules. He expressed his hope that this Congress will develop personal and professional networks which will lead to the expansion of many cooperative projects like UNAFEI has been conducting.

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[4] Ambassador Akane's presentation material is available on the Congress website:
http://www.moj.go.jp/HOGO/WCP3/program/pdf/Speeches_TA.pdf

[5] Most of the presentation materials presented during the workshop sessions are available on the Congress website:
http://www.moj.go.jp/HOGO/WCP3/.

Plenary Session

12. The Plenary Session,[6] on the theme of "Probation, Public Participation and Public Engagement", was moderated by Mr. Gerry McNally, President of the CEP, and Mr. Steve Pitts, Ambassador of the CEP. Mr. Pitts presented an introduction to the session, emphasizing the centrality of the public and communities in effective probation work, and the value of international learning.

13. Presentation 1[7], on "Volunteer Probation Officers in Japan—Community Volunteers Supporting Offender Rehabilitation", provided an overview of the activities of VPOs in Japan. Ms. Kimiko Iino presented a case study of a juvenile probationer and highlighted VPOs' continuous support, despite recommission of delinquency, of probationers and the use of affection, patience and community resources to allow the probationer to achieve success. Mr. Mitsuru Iino outlined the activities of Ryugasaki VPO associations focusing on the activities of Ryugasaki Offenders Rehabilitation Center, which provides parenting-skills classes, VPO training, and places where VPOs can consult senior VPOs for advice or meet probationers. VPOs are also engaged in crime prevention activities, collaboration with schools, and supporting at-risk youth through after-school programs. These activities help to identify at-risk youth and seek to establish inclusive communities.

14. Presentation 2[8] was presented by Dr. Naras Savestanan, the Director-General of the Department of Probation, Ministry of Justice Thailand, on the topic of "Development of Probation in ASEAN Countries", reported on the status of probation in ASEAN and presented the ASEAN Roadmap for the development of probation, which emphasizes knowledge sharing, capacity building and international cooperation. In ASEAN, the Philippines, Thailand, and Singapore have structured volunteer participation in probation, and all other ASEAN countries are working toward the establishment and implementation of probation laws, institutions and practices. In Thailand, to enhance public engagement, the minimum qualifying age for VPOs has been decreased, the amount of remuneration has been moderately increased, the appointment process has been expedited, and efforts have been undertaken to expand channels for recruiting.

15. Presentation 3[9] was presented by Mr. Clement Okech, Assistant Director of Probation and Aftercare Service, Kenya on the topic of "Facilitating Offender Supervision and Re-Entry through Community Support Service: The Role of Volunteer Probation Officers Program in Kenya", reviewed the concept and core functions of VPOs in Kenya and introduced the Kenyan government's Guiding Principles on Volunteerism. Volunteers are important in Kenya because of the need for a greater role of communities in the supervision and rehabilitation of offenders. To encourage public participation, Kenya provides structured training and public recognition to VPOs. The volunteer nature of VPOs, including the lack of compensation, is viewed as a challenge to effectiveness, yet public engagement in selection and recruitment has become a fundamental characteristic of the VPO system in Kenya.

16. Presentation 4[10] was presented by Ms. Audrey Alards, Circles Coordinator of the Dutch Probation Service, on the topic of "Best Practices of CoSA in the Netherlands", introducing the European model for circles of support, which is a citizen-based approach that includes the core member (the sex offender), volunteers, professionals, and the circle coordinator. Core members may volunteer to participate or are referred by professionals; they must be assessed as medium to high risk, and they must join voluntarily, accept responsibility for their conduct, and agree to the sharing of information among members of the circle. Volunteers must apply, be interviewed and undergo training. Three to five volunteers work as a group, and they form a circle supported by a coordinator. A key goal of the circles is to lead the core members to the realization that they have a place in society.

17. Presentation 5[11] was presented by Ms. Rosemary Caruana, Assistant Commissioner, Community

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[6] Biographies of speakers and abstracts of presentations are available on the Congress website: http://www.moj.go.jp/HOGO/WCP3/program/pdf/plenary_speaker.pdf

[7] For presentation materials, visit: http://www.moj.go.jp/HOGO/WCP3/program/pdf/SessionJapan.pdf

[8] For presentation materials, visit: http://www.moj.go.jp/HOGO/WCP3/program/pdf/SessionThailand.pdf

[9] For presentation materials, visit: http://www.moj.go.jp/HOGO/WCP3/program/pdf/SessionKenya.pdf

[10] For presentation materials, visit: http://www.moj.go.jp/HOGO/WCP3/program/pdf/SessionNetherlands.pdf

[11] For presentation materials, visit: http://www.moj.go.jp/HOGO/WCP3/program/pdf/SessionAustralia.pdf

Corrections, Corrective Services of New South Wales, Australia, on the topic of "Reducing Reoffending and Social Impact Investment in Australia", introducing a model for financing offender rehabilitation services that allocates the most resources to the offenders who have been assessed as having the highest risk of reoffending. Social Impact Investment (SII) takes an integrated approach to providing services to offenders in the community. SII operates in partnership with not-for-profit groups and the National Australia Bank. If the program is successful, the government will reimburse the initial investment required to deliver the service and share the net financial benefits generated by the program. Payment is outcome based as measured by reduction in reoffending. Thus, by establishing public-private partnerships, the risk of providing rehabilitation services is borne by all parties, i.e., the government, the service provider and the financier.

18. During the discussion, it was pointed out that there is tremendous innovation in public engagement. An important task is to determine how these various approaches can be shared and how they may be tailored for implementation in a way that reflects the social and cultural circumstances in each country or jurisdiction. The presentations demonstrate that there are tremendous opportunities for public engagement that offer the promise of successful offender rehabilitation and reintegration into the community with the support of the community.

Guest Speech

19. Mr. Asato Takasaka of Japan candidly described his experiences as a juvenile delinquent and an adult offender, and he graciously shared the very personal story of his path toward rehabilitation. Mr. Takasaka was motivated to change with continuous support of many people; his parents, a volunteer probation officer, a family court investigating officer and his lawyer. He believes that all juvenile delinquents can change themselves and their futures, but they cannot change themselves alone. Thus, he has dedicated himself to helping youth avoid delinquency and crime. He stressed the importance of not giving up on youth no matter how difficult the situation is and arranging support using a team-based approach.

Receptions

20. At the welcome reception on September 12, welcome remarks were delivered by Mr. Daizo Nozawa, the President of the National Federation of Volunteer Probation Officers of Japan, Mr. Masaharu Hino, Chairperson of the Asia Crime Prevention Foundation, and Dr. Zin-Hwan Kim, President of the Korean Institute of Criminology. In addition, letters of appreciation were presented from the Minister of Justice of Japan to APPA, CEP, ICCA, ICPA, and Dr. Frank Porporino for their contributions in offering support and advice throughout the preparation and delivery of this Congress.

21. At the reception on September 13, the Honourable Yoko Kamikawa, Minister of Justice of Japan, Mr. Fujio Mitarai, President of the Japan Rehabilitation Aid Association, Ms. Yuriko Koike, Governor of Tokyo, and Mr. Taichi Sakaiya, President of the Asia Crime Prevention Foundation delivered remarks. Cultural and other traditional activities and performances were held by the Volunteer Probation Officers Association in Support of UNAFEI's Activities and other volunteers. The participants were welcomed by musical performances of the Japanese harp (*koto*) and bamboo flute (*shakuhachi*), participated in a Japanese tea ceremony, received gifts of Japanese paper crafts (origami) and Japanese fans (*uchiwa*) with Japanese calligraphy, and enjoyed a Japanese drum performance by *Zuiho-Taiko* and traditional Japanese dance (*awa-odori*). In the reception hall, Japanese paintings (*ukiyoe*) were displayed by Tokyo University of the Arts along with a portable shrine (*mikoshi*) provided by the Japanese Correctional Association.

Closing Ceremony

22. Dr. Tetsuya Fujimoto, President of the Japanese Association of Offenders Rehabilitation, expressed his sincere appreciation to the many individuals and organizations that made the Congress a resounding success, particularly the high-level presentations delivered by the keynote speakers. Noting that attendance at this Congress was the highest in the series of congresses, he stated that the World Congress on Probation is clearly proceeding in the right direction and is succeeding in achieving its goals of strengthening international cooperation and broadening the global professional network. As probation practice must take each country's culture into account, diversity is a crucial element of the World Congress. Dr. Fujimoto expressed his hope that the World Congress will continue as a forum for

information sharing and ongoing consideration of the vision, mission and future of probation. In closing his speech, Dr. Fujimoto acknowledged that the Congress included presentations covering a wide range of topics from all over the world, and emphasized that the importance of the role of the community was the underlining principle throughout this Congress. Lastly, he confirmed the values of the community by explaining the logo design of the Third World Congress on Probation named the "Symphony of Three Rings", which consists of three rings representing community, people, and faith, belief and heart.

23. Following the speech, a brief handover ceremony was held to transfer the administration of the Congress to the host of the Fourth World Congress. Ms. Rosemary Caruana was invited to the podium for the handover ceremony. A plaque was presented to Ms. Caruana by Dr. Fujimoto.

24. Ms. Rosemary Caruana, Assistant Commissioner, Community Corrections, Corrective Services, New South Wales, Australia, thanked the organizers for their role as hosts of the Third World Congress on Probation and invited the participants to attend the Fourth World Congress on Probation, which will be held in Sydney, Australia in 2019.

Study Tours

25. Study tours were held on September 12, and they included visits to Offender Rehabilitation Facilities (Halfway Houses) ("Kawasaki Jiritsu-kai" and "Ryozen-kai"), Offender Rehabilitation Support Centers ("Kawasaki Nanbu Offender Rehabilitation Support Center" and "Ota Offender Rehabilitation Support Center"), Fuchu Prison, Tama Juvenile Training School, and the Tokyo Probation Office. The study tour also included home visits with Japanese VPOs, during which participants visited VPOs' homes, enabling them to experience Japanese culture and to learn how Japanese VPOs work with offenders.

Asia Volunteer Probation Officers Meeting

26. As a side event of the Third World Congress on Probation, the Second Asia Volunteer Probation Officers Meeting was held on September 12. The meeting was attended by VPOs and officials responsible for community corrections from the following countries: Korea, the Philippines, Singapore, Thailand and Japan. Observers from China and Kenya also attended the meeting. In total, around 200 participants attended the meeting. The details of the meeting can be found in the "Report of the Second Asia Volunteer Probation Officers Meeting".

Publications

27. The following publications were published by the Congress Organizing Committee and were distributed to the Congress participants:

1) "Volunteer Probation Officers and Offenders Rehabilitation" written in English includes an overview of the Japanese VPO system, case reports from Japanese VPOs, a research paper by Dr. Frank Porporino and Dr. Andrew Watson on the Japanese VPO system, and overviews of the VPO systems of Korea, the Philippines, Singapore, Thailand and Kenya.

2) "Sekai no Hogokansatsu (Probation Systems around the World)" written in Japanese outlines the probation and community corrections systems of 16 countries (Thailand, the Philippines, Korea, China, Singapore, New Zealand, Australia, the United Kingdom, the Netherlands, France, Romania, Germany, Finland, the United States, Canada and Kenya).

3) "When People Change" is a DVD in English that introduces probation and community corrections practices in Japan by interviewing the persons working with offenders in the community.

14 September 2017
The Third World Congress on Probation
Tokyo, Japan

REPORT OF THE SECOND ASIA VOLUNTEER PROBATION OFFICERS MEETING

The Second Asia Volunteer Probation Officers Meeting, hosted by the organizers of the Third World Congress on Probation, was held from 15:00 to 17:30 on September 12, 2017 at the Shinagawa Prince Hotel in Tokyo, Japan. Mr. Shoji Imafuku, Director of the General Affairs Division Rehabilitation Bureau of the Ministry of Justice of Japan presided over the meeting as Chair. The meeting was attended by volunteer probation officers (VPOs) and officials responsible for community corrections from the following countries: Korea, the Philippines, Singapore, Thailand and Japan. Observers from China and Kenya also attended the meeting. In total, around 200 participants attended the meeting.

1. Opening Addresses

Mr. Daizo Nozawa, President of the National Federation of Volunteer Probation Officers of Japan, extended his heartfelt welcome to the overseas participants and volunteer probation officers who participated in the meeting. At the first meeting three years ago, participants exchanged information about their respective volunteer probation officer systems, shared common challenges among the participating countries, and adopted the Tokyo Declaration, the first international declaration addressing the role of VPOs in offender rehabilitation. The purpose of the Second Asia VPO meeting is to assess the progress of the implementation of the Tokyo Declaration and to share best practices for enhancing public awareness and recognition of the role of VPOs.

Mr. Keisuke Senta, Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), welcomed the participants and introduced UNAFEI's activities to enhance the role of VPOs and community corrections. These activities focus on the exchange of information and experiences between Japanese VPOs and criminal justice practitioners from other countries.

2. Country Presentations

The Chair recalled that the purpose of the Tokyo Declaration, adopted at the First Asia VPOs Meeting, is to share information on VPO and similar systems in the participating countries and to the enhance public recognition of VPO systems.

JAPAN: Mr. Shojin KOBAYASHI, Vice President of the National Federation of Volunteer Probation Officers, summarized the characteristics of the VPO system in Japan and reported the challenges facing the current system, including the declining number of VPOs and increased pressure on current VPOs. In response, Japan has established Offenders Rehabilitation Support Centers to provide VPOs with a location where VPOs can meet and interview probationers, exchange ideas with other VPOs, consult experienced VPOs stationed at the centers, and so on. An internship program was also established to identify promising VPO candidates, and Japan has prioritized the engagement of younger generations in crime prevention activities with VPOs.

PHILIPPINES: Volunteer Probation Assistants (VPAs) in the Philippines amply the services provided to clients in the community and promote greater citizen awareness and involvement in the criminal justice system. Regular evaluation and recognition of VPAs are key measures for motivating VPAs. Challenges faced include community doubt of the effectiveness of community corrections and insufficient funds to train and sustain the VPA program. To further improve the VPA system, measures include providing continuous training for VPAs, enhancing public private partnerships in community corrections, and expanding the evaluation and recognition system for VPAs.

SINGAPORE: The delegation from Singapore introduced the recruitment process for VPOs, which allows ex-offenders to volunteer under certain conditions, and the training process, which includes both an e-learning module and seminar-style meetings. To encourage VPOs and enhance bonding among them, VPO committees organize events for VPOs, and VPOs are given awards and other forms of public recognition. The challenges faced by the VPO scheme include dealing with the evolving needs of probationers and balancing the organization's needs and volunteers' aspirations.

THAILAND: The delegation from Thailand introduced its VPO system based on the new legal framework resulting from the recent passage of the Probation Act. These changes include the lowering of the minimum age qualified to serve as a VPO from 25 to 20 because, like Japan, the average age of VPOs has been increasing, and some older VPOs have challenges relating to younger probationers. To enhance services and public recognition, Thailand also engages in evaluation and public recognition of VPOs. Among other roles, Thai VPOs are tasked with engaging in pre- and post-sentence investigations, supporting the work of the Probation Department, and so on.

KENYA: The delegation explained that the VPO program provides auxiliary support to relieve the problem of prison overcrowding, particularly for the many offenders who are imprisoned for minor crimes. VPOs enable the probation department to extend its reach into Kenya's villages, many of which are geographically isolated. Progress was reported in the fields of recruitment, organization and development, and public recognition. The programme had also developed system of working with Non –governmental organizations. In order to strengthen the VPO system in Kenya, recommendations include entrenching the VPO system in Kenya's laws and policies; enhancing recognition, capacity building, and government funding; and expanding coverage of the VPO system to all parts of Kenya.

CHINA: Community corrections has developed over the past two decades in response to the increasing prison population. As of 2016, China has 672,100 volunteers, such as retirees, college students and professionals, who provide a variety of services to rehabilitate offenders in the community. A number of models for treatment and support were provided, all of which draw on the support of community volunteers, criminal justice agencies and social support agencies. To identify and retain these volunteers, the volunteer system engages in recruitment, provides training, and offers commendations to outstanding volunteers. Challenges include the lack of funding, poor organization, including high turnover of volunteers, and insufficient training.

3. Plenary Discussion

The Chair stated that the theme of the plenary discussion would focus on enhancing public recognition of VPOs and that, to do so, it is important to engage a broader set of society. Before opening the floor to a broader discussion, the Chair asked the eminent experts in attendance to share their thoughts on the country presentations and on how to promote public recognition of VPOs.

Prof. Tatsuya OTA of Keio University (Japan) commented that recruitment is an important issue in Japan and pointed out that the VPO population in Japan is aging. Accordingly, Japan should reconsider how it recruits VPOs. He also stated that persons with professional experiences and knowledge, such as nurses, mental health practitioners, lawyers, etc., should be recruited as VPOs in order to provide special guidance and support to probationers. Furthermore, VPOs should operate in teams of two or three along with other professionals, and they should cooperate directly with social welfare agencies and other resources. In Japan, the statistics suggest that a majority of Japanese are aware of the role of VPOs, but there is a lack of understanding of community supervision in general.

Prof. Hiroshi SHOJIMA of Fukushima University (Japan) suggested that it is necessary to reconfirm the role of VPOs, particularly by focusing on their role in their communities. Certain offenders, such as sexual offenders, require specialized treatment, but most offenders require the support of the community to reintegrate. Building such understanding does not require expertise; it requires someone who has standing in the community and knowledge of local resources. Although confidentiality is important, the "visibility" of VPOs' non-confidential activities in the community is indispensable. Recently, open dialogue in our communities is important to enhance public recognition of VPOs and community-based treatment, while community-based monitoring is not an important factor.

Dr. Frank PORPORINO, Senior Partner, T^3 Associates Training and Consulting Inc. (Canada), stated that although the VPO approach is not known well on the international level, the Asian region should be proud of what VPOs have been able to achieve. Although each country applies its own variation of the VPO scheme, the essence of the VPO scheme is that it is there to support, not to enforce. The VPO scheme should not be viewed as a measure to save money, but rather it should be viewed as a culturally appropriate and evidence-based approach for working with offenders. While the term volunteer

sometimes implies "amateur", VPOs are professionals in their own way. Organizing the VPO system too much could result in losing its vitality and energy. It is very important to create an evidence base in the Asian region based on the practices related to VPOs: who is able to relate with offenders best, why and how. Also, Dr. Porporino suggested that ex-offenders might be excellent candidates for VPOs, because those who have traveled the path to rehabilitation know it best.

Director Senta of UNAFEI stated that the United Nations Congress on Crime Prevention and Criminal Justice will be held in Kyoto in 2020. Participants include ministers of justice, attorneys general, chief justices of Supreme Courts, as well as criminal justice practitioners and academics from around the world. The Congress will promote the building of peaceful and inclusive societies. During the Congress, some agenda items are closely related to VPOs' activities. UNAFEI will be in charge of the workshop on reducing reoffending, and the workshop's panelists will include experts or practitioners of community corrections. In addition, there will be more than 100 side events during the Congress. These events are excellent opportunities to promote the public recognition of VPOs nationally and internationally. Moreover, the Kyoto Declaration will be adopted during the 2020 Congress, and through diplomatic negotiation, the importance of community corrections and VPOs might be included.

Following the experts' remarks, the general discussion touched upon four key issues: (1) public understanding of the VPO concept and measures that should be taken at (2) the community and operational level, (3) the national level and (4) the international level. All participants agreed that these issues must be addressed in order to enhance public recognition of VPOs.

(1) Public Understanding of the VPO Concept
In countries with active VPO systems, the general public may have a basic understanding of the VPO concept, or at least the existence of VPOs. However, it was suggested that in most countries there is a lack of public understanding of the goals of community corrections. Consequently, it is important that actions are taken on all levels and by all countries to enhance public understanding of community corrections and, where applicable, the VPO concept. At the community level, this does not necessarily require expertise; rather, it requires someone who has standing in the community and knowledge of local resources. It was proposed that efforts to enhance public understanding should focus on open dialogue with members of the public, explaining that the role of VPOs is to provide offenders with support for their reintegration rather than monitoring them or enforcing compliance with conditions of probation.

(2) Community and Operational Level
A number of countries reported issues with the aging of the VPO population, stating that they faced challenges in the recruitment of VPOs at the community level. It was proposed that the engagement of youth as VPOs should be prioritized, citing the possible benefits of expanding the recruitment pool and that younger VPOs may relate better to younger offenders. However, it was also pointed out that older VPOs can still play an important role in mentoring younger offenders despite differences in communication style and technological ability. One innovative idea for recruitment is to allow community participation in the nomination and selection of VPOs, which would also enhance public understanding and acceptance of VPOs' roles. The discussion also addressed the question of whether former offenders should be allowed to serve as VPOs. Although differing perspectives were shared, some believe quite strongly that former offenders can be extremely effective at relating to offenders and showing them the path to rehabilitation and desistance based on their actual experience. From an operational perspective, a number of ideas were presented, including enhancing the professionalism of VPOs by recruiting nurses, mental health practitioners, lawyers, etc., encouraging VPOs to operate in teams of two or three, encouraging VPOs to work directly with social welfare agencies, partnering with NGOs, and expanding the use of offender rehabilitation support centers, which allow VPOs to conduct their work and meet with offenders in a safe, collegial environment.

(3) National Level
Some of the participants stressed the importance of enhancing national recognition of the efforts of VPOs. Measures discussed during the session included publication of annual reports on VPOs activities, strengthening press relations and communicating with the public through the media, establishing a national recognition day for VPOs, conducting law-related education for citizens, offering tax incentives to VPOs to encourage more working professionals to volunteer, and offering preference to students who

serve as VPOs when seeking government jobs.

(4) International Level

There was general agreement that the VPO concept is not so well known at the international level and that measures need to be taken to enhance awareness globally. One idea that garnered unanimous support was to promote the establishment of an International Volunteer Probation Officers' Day. It was also noted that countries with active or developing VPO systems should promote the concept at international conferences, including the United Nations Congress on Crime Prevention and Criminal Justice, which will be held in Kyoto, Japan in 2020. It was also suggested that the 2020 Congress presents the unique opportunity to hold the Third Asia Volunteer Probation Officers Meeting as a side event, which would draw international attention to VPO systems.

4. Closing Address

Ms. Naomi Unemoto, Director General of the Rehabilitation Bureau of the Ministry of Justice of Japan, delivered the closing address, noting that the country presentations identified tremendous work among the VPO and community corrections systems represented at the Meeting, as well as a number of common challenges facing these systems, and that many important initiatives for enhancing public recognition for VPOs were proposed and discussed during the plenary session in terms of enhancing public recognition for VPOs. The Rehabilitation Bureau, in cooperation with UNAFEI, will use their best efforts to promote the public recognition of VPOs at the international level.

September 12, 2017
Tokyo, Japan

APPENDIX

VISITING EXPERTS' PRESENTATIONS & COMMEMORATIVE PHOTOGRAPHS

- *167TH INTERNATIONAL TRAINING COURSE*
- *20TH UNAFEI UNCAC TRAINING PROGRAMME*

UNAFEI

RADICALIZED OFFENDERS AND SECURITY THREAT GROUPS IN CORRECTIONAL ENVIRONMENTS

Andrea E. Moser, Ph.D., C.Psych.

Recently, there has been an increasing focus in many countries regarding the challenge of violent extremists as well as members of Security Threat Groups (e.g., gangs, organized crime) in correctional settings. This includes both concerns about the safe management and community reintegration of these individuals as well as their potential to radicalize and/or recruit others. With respect to violent extremists, while several countries have long histories of managing individuals and groups who have committed criminal acts to promote religious or political aims, an increasing number of high profile attacks over the previous two decades have put an increased focus on establishing a greater understanding of these individuals and how to best manage them in a carceral setting. In a series of three lectures, key issues related to correctional management of violent extremists and members of Security Threat Groups (STGs) will be explored, drawing on both international research as well as work completed by the Correctional Service of Canada.

In the first lecture "*Radicalized Offenders and Security Threat Groups: What Do We Know?*", several themes will be discussed, including definitional issues (i.e., what do we mean by a "radicalized offender"; what is a Security Threat Group), myths and realities regarding STGs and radicalized offenders, an overview of research on STGs and violent extremists, and work that has been done to assist in identifying STG members and radicalized individuals in correctional settings. In addition, international best practices regarding the management of radicalized offenders will be discussed.

The focus of the second lecture, "*Management of Radicalized Offenders and Security Threat Groups in a Correctional Context*" builds on the first lecture by exploring "*What Do We Do*" in relation to these offenders' groups, concentrating on evidence-based strategies and approaches. Topics covered include: population management strategies for STGs and radicalized offenders, assessment and intervention approaches, and the importance of collaboration with external partners. Specific issues to be discussed include accommodation models, staff training, information sharing, and the importance of all assessment and intervention approaches being grounded in principles of effective corrections such as the Risk, Needs, Responsivity (RNR) Model (Andrews, Bonta and Hoge, 1990). Research on disengagement from radical behaviour and violent extremism will also be explored.

The final lecture focuses on "*General and Cultural Considerations in the Management of Offenders*" including those who are members of STGs or radicalized. Drawing on research related to specific responsivity (Andrews, Bonta and Hoge, 1990), the impact of both gender and ethnocultural identity as it relates to issues of assessment and effective interventions will be reviewed, as well as the implications that the research findings in the area have on the correctional management of specific subgroups of offenders.

References:

Andrews, D. A., Bonta, J., & Hoge, R. D. (1990). Classification for effective rehabilitation: Rediscovering psychology. *Criminal Justice and Behavior, 17,* 19-52.

167th UNAFEI International Training Course
(VE1-1) Dr. Andrea Moser
28 AM, Aug. 2017

CORRECTIONAL SERVICE CANADA

CHANGING LIVES. PROTECTING CANADIANS.

Radicalized Offenders and Security Threat Groups: What Do We Know?

Presentation to the 167th Training Course – UNAFEI
Tokyo, Japan

Correctional Service Canada | Service correctionnel Canada

Dr. Andrea Moser, C.Psych.

Canada

Overview of Presentation

A. The Correctional Service of Canada

- Jurisdiction, mission, priorities
- Federal offender population
- Staff profile

B. Security Threat Groups

- Myths and realities
- STGs in Canada
- Overview of/research on STGs
- Identifying STGs

C. Radicalized Offender Research

- Myths and realities
- Violent Extremism in Canada
- Overview of/research on Radicalized Offenders
- Identifying Radicalized Offenders
- International Best Practices

Acknowledgement – Information Sources

- It should be noted that much of the material presented in this deck is derived from the Correctional Service of Canada's Parole Officer Continuous Development Training Modules on Security Threat Groups and Radicalized Offenders as well as studies completed by CSC's Research Branch.

Overview of Correctional Jurisdictions in Canada

- There are 14 correctional jurisdictions in Canada: 1 federal system, 10 provincial systems and 3 territorial systems.
- Provincial and territorial governments have exclusive responsibility for offenders serving less than 2 years, remand, offenders sentenced to probation and young offenders
- Adult offenders (18 years of age and over) sentenced to two or more years are sent to a federal penitentiary
- The federal system is responsible for the supervision of federal offenders in the community, provincial/territorial parolees (except Ontario and Quebec), as well as long term supervision orders.

Correctional Service Canada (CSC)

MISSION

The Correctional Service of Canada, as part of the criminal justice system and respecting the rule of law, contributes to public safety by actively encouraging and assisting offenders to become law-abiding citizens, while exercising reasonable, safe, secure and humane control.

Corporate Priorities	
Safe management of eligible offenders during their transition from the institution to the community, and while on supervision	Effective and timely interventions in addressing mental health needs of offenders
Safety and security of the public, victims, staff and offenders in our institutions and in the community	Efficient and effective management practices that reflect values-based leadership in a changing environment
Effective, culturally appropriate interventions and reintegration support for First Nations, Métis and Inuit offenders	Productive relationships with diverse partners, stakeholders, victims' groups, and others involved in support of public safety

CSC - Structure

Responsible for:

- **administering custodial sentences of a term of two years or more, as imposed by the court regardless of offence type;**
- **managing institutions of various security levels and supervising offenders under conditional release in the community.**

Operates Under:

- **The rule of law, and in particular, the Corrections and Conditional Release Act (CCRA), which provides its legislative framework**

OVERVIEW

➢**Across Canada, 24 hours a day, 365 days of the year, CSC operates:**

-1 National Headquarters:
- •Ottawa, Ontario

-5 Regional Headquarters:
- • Atlantic (Moncton), Quebec (Laval), Ontario (Kingston), Prairies (Saskatoon), Pacific (Abbotsford)

-43 federal institutions (6 for women – includes 1 multi-level Healing Lodge)
- •37 for men – includes 4 minimum-level Healing Lodges)
- •6 Maximum-security (including the Special Handling Unit)
- •9 Medium-security
- •5 Minimum-security
- •12 Multi-level-security, including 5 Regional Treatment Centres
- •11 Clustered *(Effective April 1, 2014, CSC merged 22 institutions on co-located sites into 11 clustered institutions. Each clustered institution is under the leadership of one Institutional Head).*

- 91 Parole offices and sub-parole offices

- 15 Community Correctional Centres

175 Community Residential Facilities (owned and operated by Non-Governmental Organizations under contract to provide accommodation and services)

Federal Offender Population

OFFENDERS UNDER CSC JURISDICTION:
TOTAL OF 22,888

2016-17 Average – Corporate Reporting System

CSC- Employee Profile

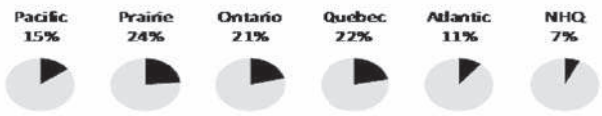
WORKFORCE – APPROXIMATELY 18,000 EMPLOYEES

CSC's professional workforce ensures the success of our operations and fulfillment of our mandate

FRONT-LINE STAFF

6,343 Correctional Officers	460 Correctional Program Officers	1,274 Parole Officers	478 Primary Workers
Correctional Officers maintain the safety and security of penitentiaries. They monitor, supervise, and interact with offenders. They search cells, offenders, visitors, vehicles, living units and surrounding areas.	Correctional Program Officers deliver important correctional programs to offenders such as violence prevention and substance abuse programs. They motivate and encourage offenders along the path to successful reintegration.	Parole Officers assess an offender's behaviour, accountability, and potential risk to society. They maintain regular contact with each offender to develop appropriate programming and treatment options, and track their progress.	Primary workers are the main, daily contact for women offenders. They work with colleagues such as parole officers to develop each woman offender's correctional plan, and encourage women offenders to participate in reintegration programs.
151 Aboriginal Officers	**121 Social Program Officers**	**865 Nurses**	**252 Psychology Staff**
Aboriginal Liaison/Development Officers provide leadership, cultural awareness, counselling and other services to Indigenous offenders in both institutions and in the community.	Social Program Officers plan, organize, and deliver social programs designed to meet the social, cultural, and personal development needs of offenders.	Nurses are the primary health care providers for offenders, working in clinics located in our institutions. Nurses provide every inmate with essential health care and reasonable access to non-essential mental health care.	Psychologists develop risk assessment tools and contribute to corrections research. They provide psychological screening, assessment, and treatment to offenders.

EMPLOYEES BY REGION



EMPLOYEE DIVERSITY

47.5%	are women
9.1%	are from a visible minority group
5.2%	are persons with disabilities
9.5%	are Aboriginal Peoples

Security Threat Groups

MYTHS AND REALITIES

STGs IN CANADA

OVERVIEW OF/RESEARCH ON STG GROUPS IN CSC

INDICATORS OF MEMBERSHIP IN AN STG

MYTHS AND REALITIES

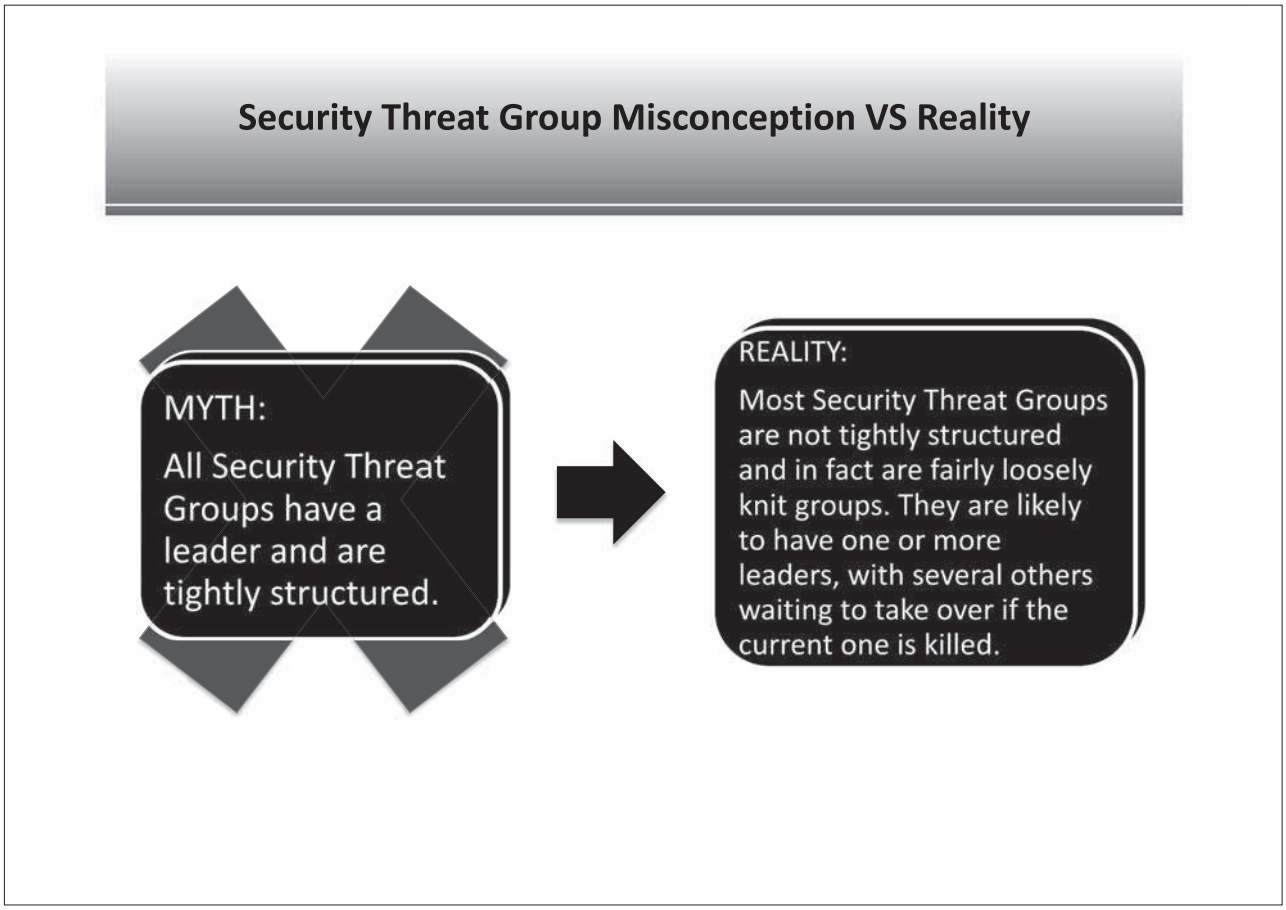
Security Threat Group Misconception VS Reality

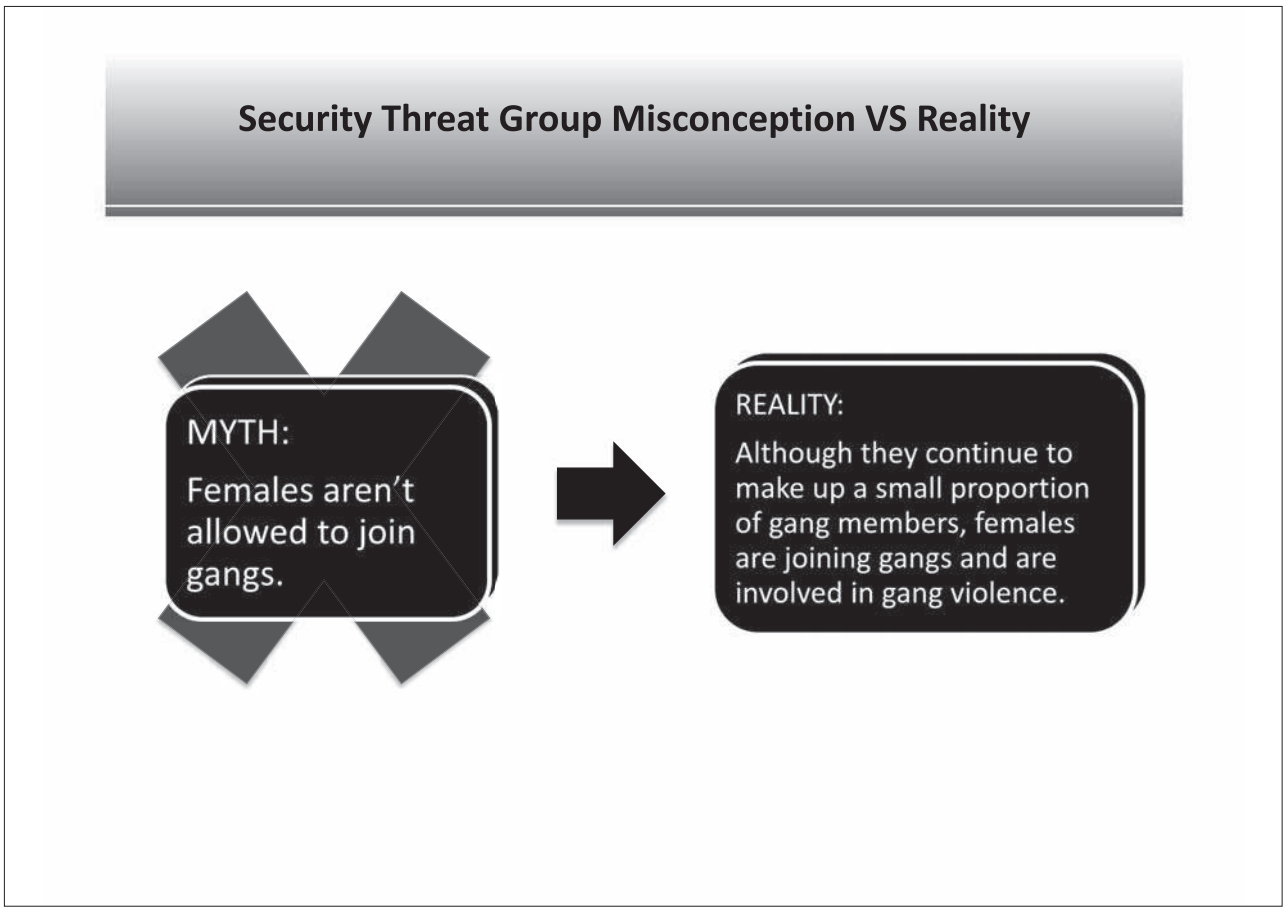
MYTH:

Security Threat Group members only sell drugs, they don't use them.

REALITY:

Research shows that many Security Threat Group members not only are involved in drug trafficking, but they are also users as well. Both alcohol and drug use appear to be an integral and regular part of socializing within gang life


Security Threat Group Misconception VS Reality
MYTH:
All Security Threat Groups have a leader and are tightly structured.
REALITY:
Most Security Threat Groups are not tightly structured and in fact are fairly loosely knit groups. They are likely to have one or more leaders, with several others waiting to take over if the current one is killed.


Security Threat Group Misconception VS Reality
MYTH:
Females aren't allowed to join gangs.
REALITY:
Although they continue to make up a small proportion of gang members, females are joining gangs and are involved in gang violence.

Security Threat Group Misconception VS Reality

MYTH:

A Security Threat Group always protects its members.

REALITY:

While Security Threat Groups can offer protection, it really depends on the person's status within the gang and their usefulness.

STG GROUPS IN CANADA

- OVERVIEW OF SECUIRTY THREAT GROUPS IN CANADA
- CURRENT ILLEGAL ACTIVITIES WHICH SECURITY THREAT GROUPS CARRY OUT IN CANADA
- OVERVIEW OF SECURITY THREAT GROUPS IN CSC

Overview of Security Threat Groups in Canada

What is a Security Threat Group?

The Correctional Service of Canada (CSC) identifies a Security Threat Group as any formal or informal ongoing inmate/offender group, gang, organization or association consisting of three or more members.

Overview of Security Threat Groups in Canada

Street gangs in Canada are becoming more powerful specifically related to:

- Violent crime
- Inter-gang conflict
- Drug trafficking

They range from loosely organized groups involved in low levels of crimes to highly organized groups involved in more sophisticated crimes.

Overview of Security Threat Groups in Canada

Research findings

According to research done by the Criminal Intelligence Service Canada (CISC), gangs are found in smaller cities, rural areas and on Aboriginal reserves.

The amount and types of street gangs in Canada are rising, specifically in Toronto and Montreal. Research has found that in recent years, some trans-national crimes use Canada as their center of operations.

Overview of Security Threat Groups in CSC

Prevalence

- One out of every six male offenders who is newly admitted into custody is affiliated with a STG. For females it is one out of every ten.
- The rate of STG affiliated members entering institutions has been on a steady rise since 1996.
- Quebec and the Prairies have the highest number of STG associations in Canada.

Overview of Security Threat Groups in CSC

The following table includes 2016 data that represents the number of offenders who have been identified as being affiliated with a Security Threat Group:

	ATL	QUE	ONT	PRA	PAC
Women	0	1	9	23	5
Men	86	449	475	919	367
Total	86	450	484	942	372

Overview of Security Threat Groups in CSC

Recruitment/Reasons for joining a STG

The following are some of the most common reasons as to why individuals join STGs:

- Belonging
- Sense of status and respect
- Security and protection
- Financial opportunities/material gain
- Excitement
- Peer pressure

Overview of Security Threat Groups in CSC Structure

Typically a STG has different ranks:

Overview of Security Threat Groups in CSC

According to CSC data, security threat groups usually fall in the following categories:

- Street Gangs
- Prison Gangs
- Outlaw Motorcycle Gangs
- Traditional Organized Crime
- Aboriginal Gangs
- White Supremacy Groups
- Subversive Groups
- Terrorist Organizations

Current illegal activities which Security Threat Groups carry out in Canada

Core criminal areas that are currently active in Canada include:

- Illicit drugs
- Contraband tobacco
- Child sexual exploitation on the internet
- Human trafficking
- Human smuggling
- Gun Crime and Firearms

The current illegal activities related to organized crime in Canada are mainly related to:

- Drug trafficking
- Cybercrime
- Financial crime

Research - Security Threat Groups

2010 CSC research found that, compared to a matched sample, criminal organization offenders were significantly more likely to:

- Come from the province of Quebec;
- Have convictions for drug offences and attempted murder;
- Have high needs in criminal associates and criminal attitudes domains;
- Be low risk and have a high reintegration potential profile; and
- Were significantly less likely to have served a term of youth incarceration.

IDENTIFYING SECURITY THREAT GROUPS

Criminal Gangs vs. Organized Crime Groups

Criminal Gangs

- Identified as a group that is repeatedly involved in criminal activity.
- Some of these groups have been established before imprisonment, others are formed within the institutions.

Organized Crime Groups

- Identified as more sophisticated and structured in their criminal activity.

Key indicators that an offender is affiliated to a Security Threat Group

Since 1996, CSC has been using a specific set of indicators for the identification of gangs and organized crime groups. According to these indicators, an offender may be identified as a member or associate with a Security Threat Group if at least one of the following criteria is met:

- **INDICATOR 1:** Reliable source identifies the individual as a Security Threat Group member or associate.
- **INDICATOR 2:** Police information provided as a result of observed and ongoing association with other known Security Threat Group member(s) (e.g., via surveillance) indicates the individual is associated with a Security Threat Group.

Key indicators that an offender is affiliated to a Security Threat Group

- **INDICATOR 3:** Tangible, written, electronic, or photographic evidence states or suggests that the offender is a Security Threat Group member or an associate.
- **INDICATOR 4:** The offender admits membership or association.
- **INDICATOR 5:** The offender is arrested while participating in a criminal activity with known member(s) or associate(s).
- **INDICATOR 6:** Criminal involvement (direct or indirect) in a criminal organization activity
- **INDICATOR 7:** A judicial finding that the individual is a member or an associate.
- **INDICATOR 8:** The presence of common and/or symbolic identification, tattoos, or paraphernalia.

A note on reliable sources ...

A reliable source may include: an inside gang member or rival gang member; legitimate community or institutional resources such as schools, business, or citizens.

Key indicators that an offender is affiliated to a Security Threat Group

Signs to Watch for

Below are some signs identified by CSC to watch for that may signify association with a Security Threat Group.

- Use of hand signs to communicate with others.
- Possession of money or items that can't be explained.
- Unexplained injuries – potentially from initiation rituals and/or gang violence.
- Unusual handwriting or graffiti on personal items such as notebooks or papers.
- Marking gang symbols on themselves (this may precede tattoos of those symbols).

CONTINUED...

Key indicators that an offender is affiliated to a Security Threat Group

- Use of gang slang.
- Use of nicknames.
- Frequently late for class or misses class altogether.
- Sudden changes in behaviour – for example, the offender who used to participate, share personal experiences and ask questions.
- Change in attitude – overtly suspicious or hostile attitude toward participating in anything to do with CSC.
- Change in friends – starts hanging around people that have a negative influence on them. This will often coincide with poorer program performance and/or a negative attitude; they may be involved in fights and/or other institutional incidents. **CONTINUED...**

Key indicators that an offender is affiliated to a Security Threat Group

- Breaking curfew / obligations – In the community, you may notice they start breaking curfew and fail to show up for programs and appointments.
- Wearing accessories that denote gang membership – bandannas, jewellery, belt buckles, key chains are all commonly used to signify membership.
- Colours – various colours may be signs of gang association, however, those with affiliations will often wear the same colour(s) continuously.
- Carrying photographs – some offenders with affiliations will carry photographs of other gang members.

Key indicators that an offender is affiliated to a Security Threat Group

Responsivity Issues to Watch for

Below are some of the main responsivity issues identified by CSC to be aware of when working with known or suspected members of a Security Threat Group.

- **ISSUE 1: Power and control issues –** offenders with Security Threat Group affiliations may have difficulty with someone else 'running the show.'
- **ISSUE 2: Manipulation –** offenders with gang affiliations may try to manipulate staff.
- **ISSUE 3: Corruption –** offenders with gang affiliations may try to corrupt staff, which can occur in a variety of ways.
- **ISSUE 4: Infiltration –** offenders with gang affiliations may try to infiltrate.
- **ISSUE 5: Trust issues –** gang members and associates may have difficulty trusting staff.

Radicalized Offenders

Misconceptions

- Violent extremism and terrorism is criminally motivated.
- There is an easily identifiable profile or persons that become radical extremists/terrorist.
- Religion is the cause of terrorism.
- Prisons are a hotbed/breeding ground of radicalization.
- De-radicalization is necessary to effectively manage the risk posed by violent extremists.

Radicalization to Violence

- Radicalization is the process by which “individuals (or groups) are introduced to an overtly ideological message and belief system that encourages movement from moderate, mainstream beliefs toward extreme views”.

- The *Royal Canadian Mounted Police (RCMP)* defines the term radical as “a person who wishes to effect fundamental political, economic or social change, or change from the ground up”.

Violent Extremism

• Radical thinking associated to the peaceful promotion of ideas that challenge the prevailing status quo have promoted significant and progressive social change throughout history. Malcolm X, Ghandi and Angela Davis are examples of people who brought about great change through peaceful means.

• While radical thinking is not a problem in itself, it becomes a threat to national security when individuals promote or engage in violence as a means of furthering their radical political, ideological or religious views.

• Radicalization to violence rejects the fundamental principles of both law and democracy. It may manifest in any ethno-cultural or religious context and be driven by a whole range of ideologies or causes.

How individuals become radicalized

- The issue of radicalization leading to violence is complex. Therefore, there is no simple explanation or consensus about a typical pathway to radicalization leading to violence.
- However, researchers and security services worldwide have proposed various models to better define specific trajectories.
- These often include what are called 'Push and Pull' Factors of negative engagement and pro-social disengagement (i.e. Protective Factors).
- Some of the key driving forces include feelings of injustice, lack of recognition, identity crisis, stigmatization, discrimination and marginalization.

How individuals become radicalized

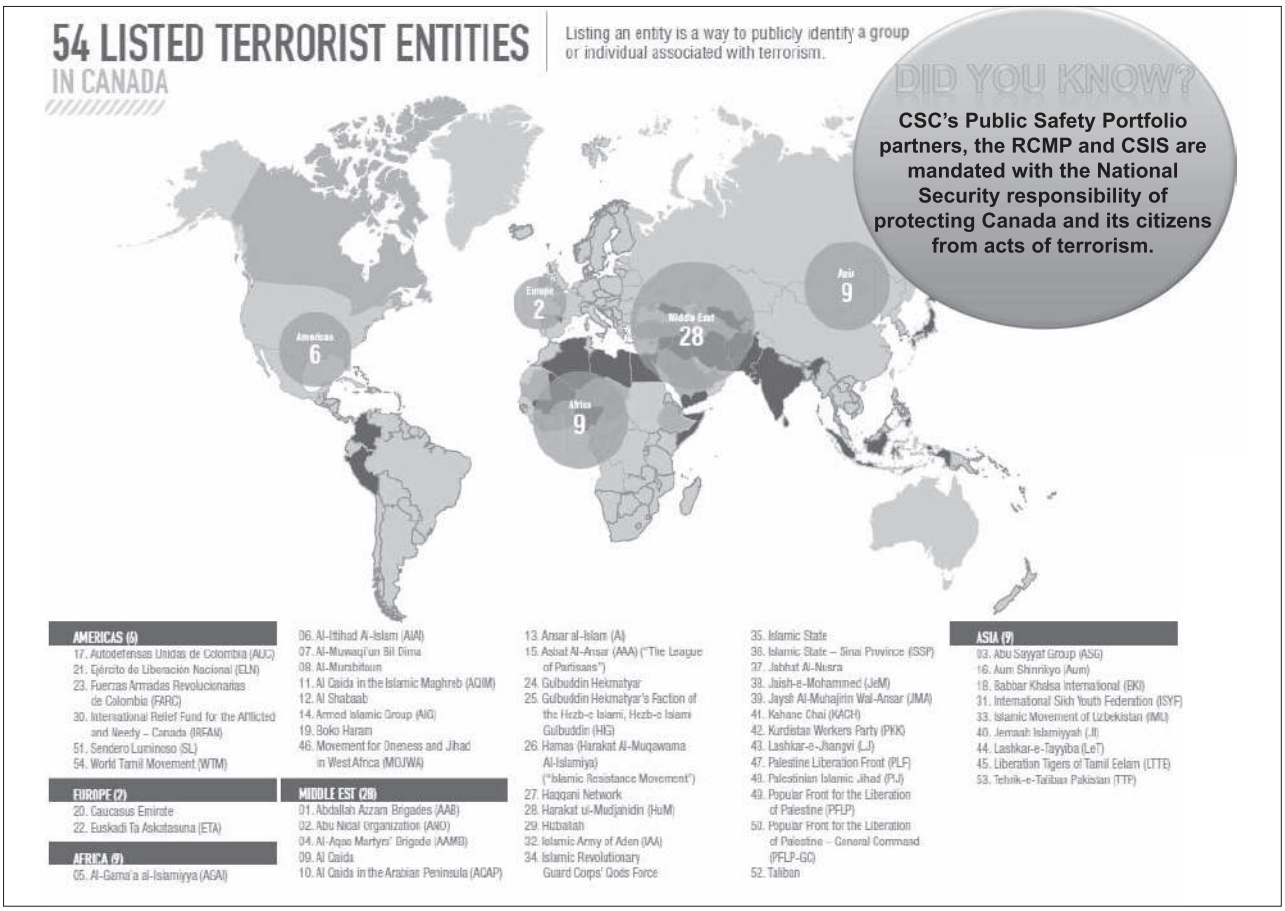
- The Centre for the Prevention of Radicalization Leading To Violence (CPRLV) in Montréal have developed and designed an informative diagram illustrating the complex, multi-dimensional process of radicalization leading to violence.

CENTRE FOR THE PREVENTION
OF RADICALIZATION
LEADING TO VIOLENCE

Terrorism in Canada

- *Public Safety Canada's* 2014 Public Report On The Terrorist Threat To Canada, states that terrorism remains the leading threat to Canada's national security. In the past few decades, several hundred Canadian civilians have been killed or injured in terrorist attacks.

- A number of international and domestic terrorist groups are present in Canada. Some are engaged in terrorist activity here, while others are active beyond Canada's borders.



Identifying Radicalization

Identifying a radicalized individual

- Radicalization is not limited to any single group, social class, religion, culture, ethnicity, age group or worldview. There is not one single profile or linear path.

- However, there are certain behaviours or indicators that suggest that some individuals (or groups) may be more susceptible than others to becoming radicalized or adopting violent extremist ideologies.

How to identify a radicalized individual

- The Centre for the Prevention of Radicalization Leading To Violence (CPRLV) in Montréal has developed the “Behaviour Barometer”. Designed as an education and awareness tool, the “Behaviour Barometer” identifies how to differentiate between behaviours that are cause for concern and those that are not.

CENTRE FOR THE PREVENTION
OF RADICALIZATION
LEADING TO VIOLENCE

Radicalized Offenders in CSC

- Radicalization is not a new phenomenon to CSC as these types of offenders have been in our care at various times over the last 150 years. This is also the case for many jurisdictions around the world.

- Some examples of extremist offenders and groups that have served sentences with CSC and pre-date the Anti-Terrorism act include: the Doukhobors, the Squamish Five, Armenian Nationalists, Quebec Liberation Front (FLQ), and the Jamaat ul-Fuqra.

- While our *Public Safety* colleagues are specifically mandated to detect, prevent and prosecute those who commit acts of terrorism and violent extremism, CSC is chiefly responsible with a wholly different responsibility: the management, supervision and rehabilitation of those convicted of such crimes.

Caveat ...

- Indicators and factors provided in this presentation are for reference purposes only, and do not definitively claim direct causation to radicalization or violent extremism. Professional judgment, objectivity and discretion, on a case-by-case basis, need be exercised in all circumstances.
- As with all human behaviour, changes are open to interpretation. For that reason, it is important not to make judgement on the presence of one indicator, rather looking for a "cluster" or pattern of changes. It is of critical importance that signs be considered in context.
- The presence of any of the indicators referenced within this presentation, on their own, do not necessarily indicate a threat of criminal activity; however, the likelihood increases as more indicators are present.
- The indicators provided are equally applicable to all types of ideologically motivated extremist violence.
- A correctional service's ability to accurately identify persons involved in violent extremism and those at risk of being radicalized, will allow it to effectively triage these cases from a security risk mitigation perspective and determine an appropriate intervention/ security case management strategy.

Radicalized offenders in CSC

- CSC's defines a radicalized offender as "ideologically motivated offender, who commits, aspires, or conspires to commit, or promotes violent acts in order to achieve ideological objectives."
- CSC's definition of radicalized offenders does not focus on any specific ethnic or cultural group or religious denomination, recognizing that radicalized offenders can be involved in a wide range of behaviours and activities that support extreme political, religious or ideological purposes, objectives or causes (including global jihad, terrorist financing, or extreme political militantism).
- It is important to note that there are other offenders currently in the federal correctional system that meet CSC's definition of a radicalized offender but who were not convicted of terrorism-related offences.

CSC's identification processes

1. Convicted of Anti-Terrorism Act (ATA) offences

2. Identified by partners or third party agencies: Royal Canadian Mounted Police (RCMP), Canadian Security Intelligence Service (CSIS), Canadian Border Services Agency (CBSA), Ontario Provincial Police – Provincial Anti-Terrorism Squad (OPP-PATS), etc.

3. Identified internally by CSC:

- Via established Security and Case Management intake and review processes
- Staff observational reporting

Radicalized Offenders in CSC – At a Glance

- As of July 1st, 2017, there were 15 offenders serving federal sentences under CSC's jurisdiction on terrorism-related offences – 14 in federal institutions and one under community supervision.
- Sentences for these offenders range from four years to life.
- CSC's radicalized offender population presently represents a very small fraction of those persons identified as belonging to a Security Threat Group (STG).
- However, this population poses a unique threat to CSC, our departmental responsibilities, and the safety and security of our staff and offender population.

Radicalized Offender Research at CSC

The Research Branch (CSC):

- Part of Policy Sector
- applied program of research
- forward-thinking, innovative, and targets critical correctional issues
- multi-disciplinary teams, multi-method approaches
- engages/collaborates with internal and external partners

Radicalized Offender Research: Background and Purpose

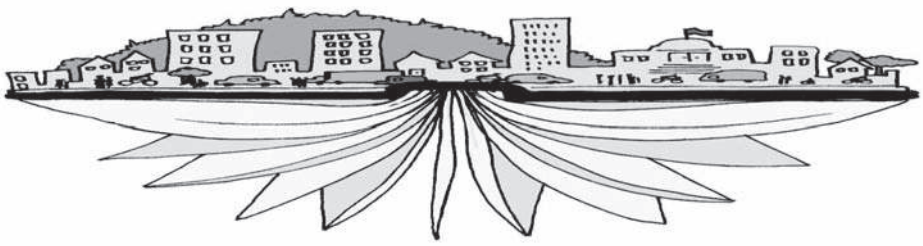
- Canadians have been victim to acts or threats of violent extremism from a variety of groups who hold ideologies involving religious, political, and revolutionary doctrine (Crelinsten, 2012)
- A critical need for more quantitative data with regards to violent extremism in Canada has been identified (Borum, 2011; Public Safety Canada, 2011)
- There have been calls for more research to occur to understand radicalization within prisons (Pluchinksy, 2008; Wilner & Crowley, 2011)

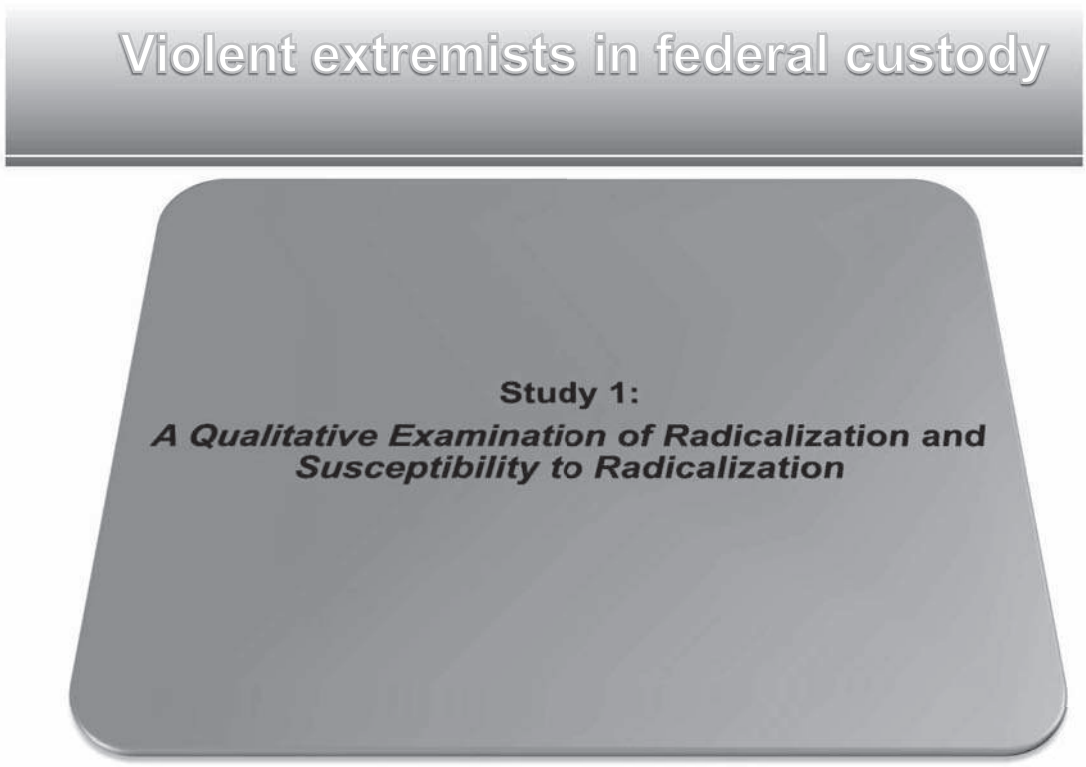
Background and Purpose Continued…

- **2012/13: CSC's Research Branch undertook a research study on violent extremists (radicalized offenders) in federal institutions in an effort to:**
  - gain an understanding of data sources and gaps;
  - contribute to the level of knowledge surrounding violent extremists in Canada; and
  - inform CSC institutional operations, policies, and procedures
- **Results led to a multi-year (2013/14 – 2015/16) research initiative aiming to:**
  - obtain evidence-based knowledge to inform effective assessment, intervention, and management strategies for radicalized offenders or those deemed susceptible to radicalization

Research Questions

1. What can we learn from examining radicalized offenders under CSC's jurisdiction, as well as those susceptible to radicalization?
2. What can we learn from other correctional systems that have experience in managing radicalized offenders?
3. How can we integrate these research findings into evidence-based policy and practice at CSC?



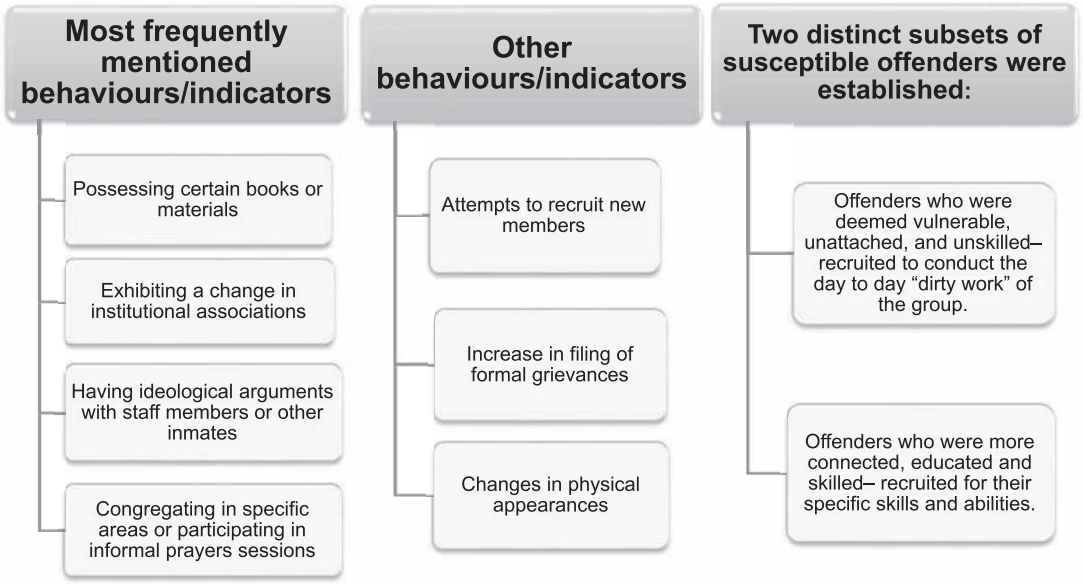


Study 1:
Methodological Approaches

- Focus groups with CSC staff
- Empirical comparison of radicalized offenders and the non-radicalized general offender population on:
  - Literature-based theoretical characteristics;
  - Characteristics identified in focus groups;
  - Other available intake and custody-related information
- Coding of offender files to obtain information on motivations (ideological and non-ideological) and needs (criminogenic or other violent extremist)
- International roundtable and consultation questionnaire

Focus groups with CSC staff

Results/Findings

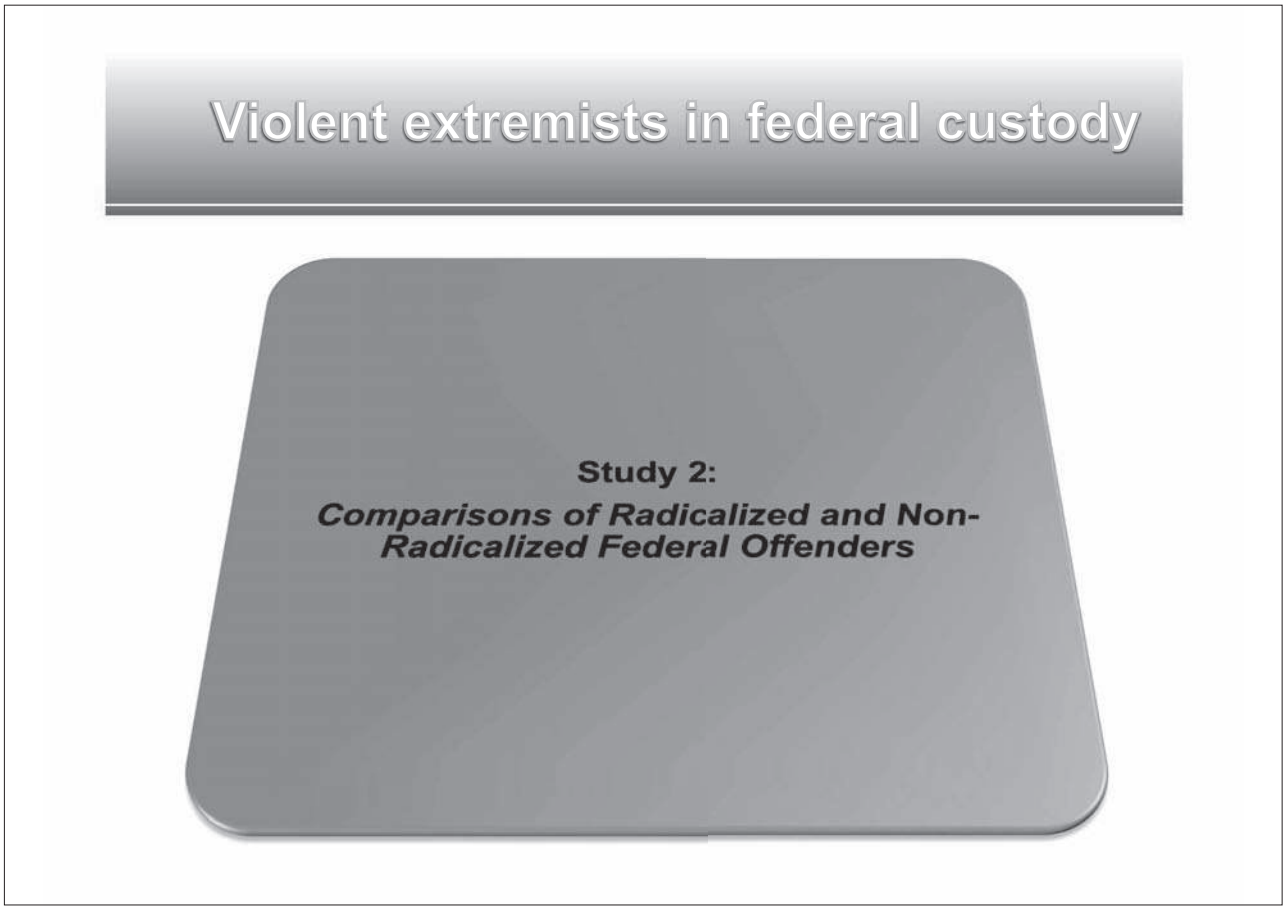


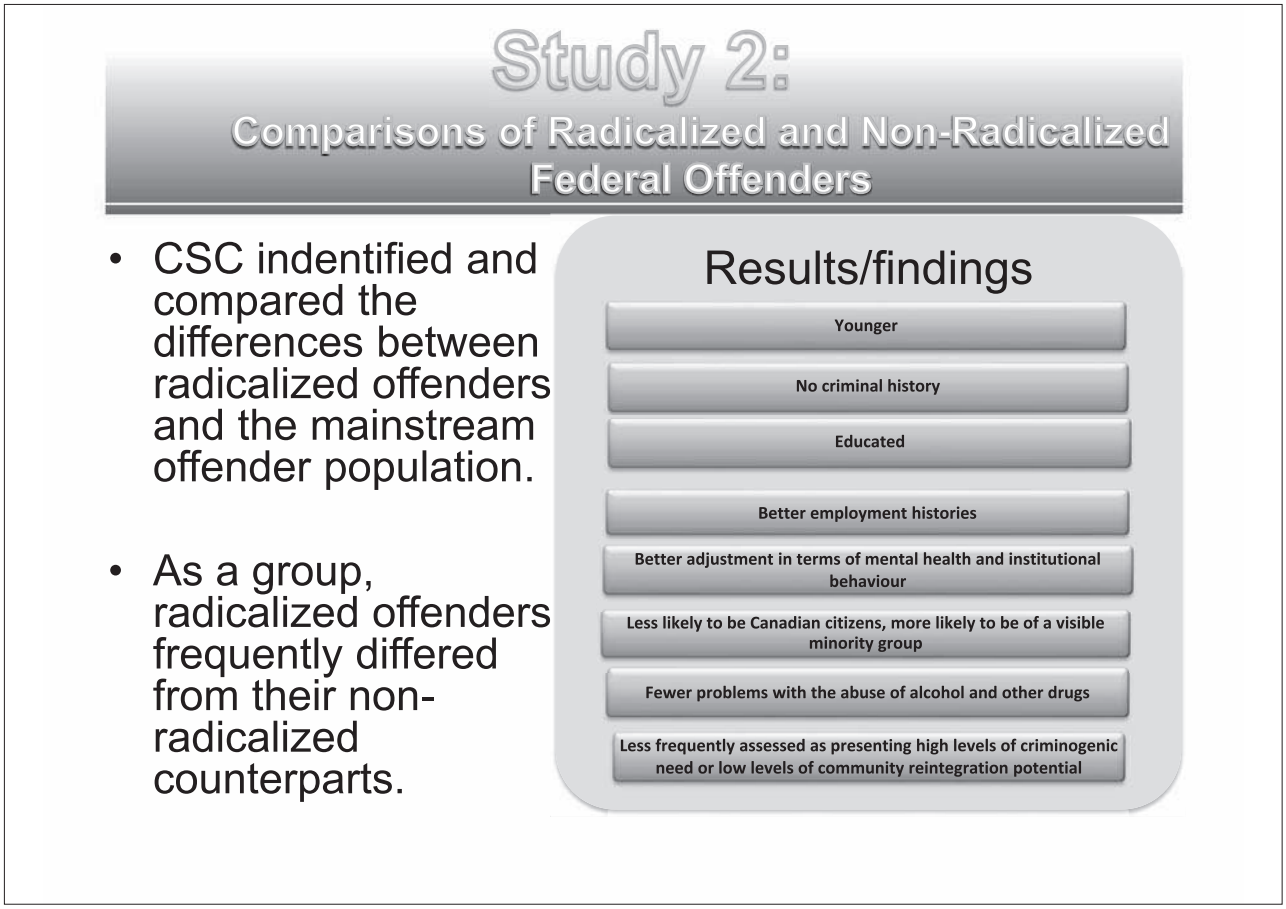
Stys, Y., Gobeil, R., Harris, A. J. R., & Michel, S. (2014). Violent extremists in federal institutions: *Estimating radicalization and susceptibility to radicalization in the federal offender population*. (Research Report R-313). Ottawa, ON: Correctional Service of Canada.

Research Findings

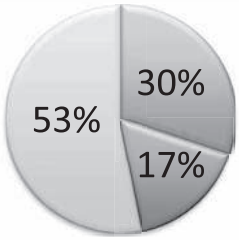
Susceptibility to radicalization in the correctional realm:

- Though concern over the spread of violent ideologies has been expressed, this concern is supported by limited qualitative, anecdotal evidence
- Researchers have concluded that many of those who adopt extremist ideologies in prison often disregard these beliefs upon release
- However, a greater understanding of susceptibility while incarcerated is still required


Violent extremists in federal custody
Study 2:
Comparisons of Radicalized and Non-Radicalized Federal Offenders


Study 2:
Comparisons of Radicalized and Non-Radicalized Federal Offenders
• CSC indentified and compared the differences between radicalized offenders and the mainstream offender population.
• As a group, radicalized offenders frequently differed from their non-radicalized counterparts.
Results/findings
Younger
No criminal history
Educated
Better employment histories
Better adjustment in terms of mental health and institutional behaviour
Less likely to be Canadian citizens, more likely to be of a visible minority group
Fewer problems with the abuse of alcohol and other drugs
Less frequently assessed as presenting high levels of criminogenic need or low levels of community reintegration potential

Needs and Motivations of Radicalized Offenders

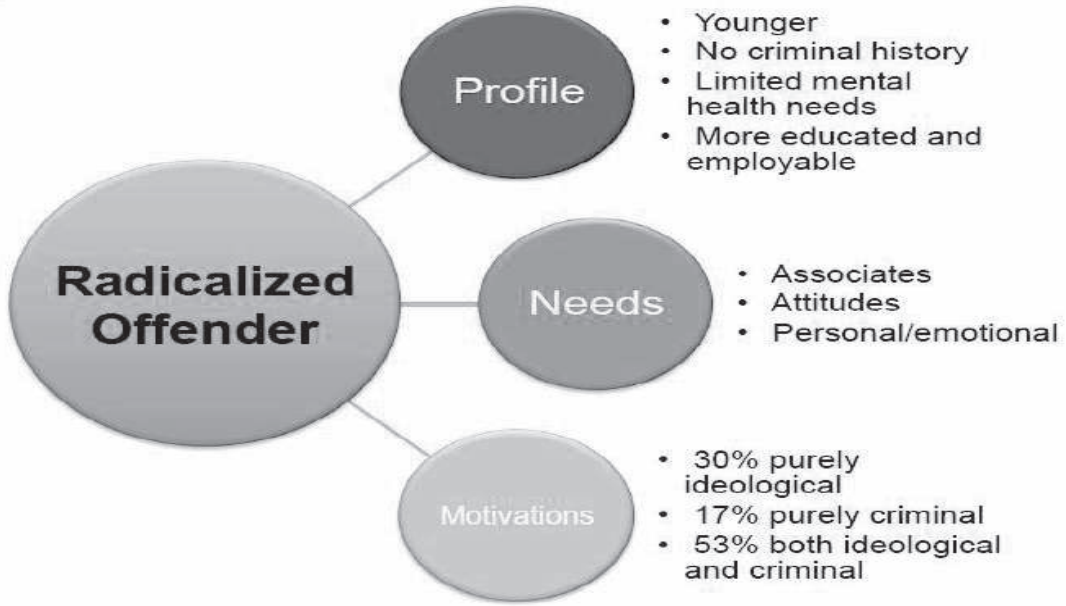


Motivations

- Purely Ideological Motives
- Purely Criminal Motives
- Both

- Most common ideological motivations: desire for political change, desire to respond to a group grievance
- A high proportion of radicalized offenders had needs in the associates, attitudes, and personal/emotional domains and a low proportion had needs in the areas of substance abuse and community functioning
- When ideologically-motivated offenders were examined separately, the needs results were more pronounced, indicating that perhaps the needs and motivations of non-ideologically motivated radicalized offenders are more similar to those found in the non-radicalized, general offender population.

Research Results Profile Summary
CSC's Radicalized Offenders



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Radicalized Offender Research

- While the gains in this area have been significant, there is international recognition that the field of research related to radicalization and violent extremism is in its relative infancy, and that significant work remains outstanding.
- CSC's Research Branch continues to build upon recent advancements in regards to radicalized offender research, policy, and procedure; while addressing a number of the internationally-recognized areas in need of additional evidence.
- The applicability of a radicalized offender management strategy is presently being considered in ongoing research coupled with international consultation on this specific population of offenders.

Want to know more about CSC's Radicalized Offenders research?

Contact the Research Branch at research@csc-scc.gc.ca

CSC Research Results: International Best Practices

1. Sharing of intelligence information
- collaborative, open, and reciprocal
- at all points of offender management (pre-sentence, incarceration, and post-release)

2. Provision of staff training
- what radicalization is, when it is problematic, how to identify it
- responsibilities in terms of reporting and/or intervention

3. Accommodation strategies
- aim to fully integrate and separate when security risk necessitates
- identification and control of key radicalizing influences is essential

International Best Practices Continued…

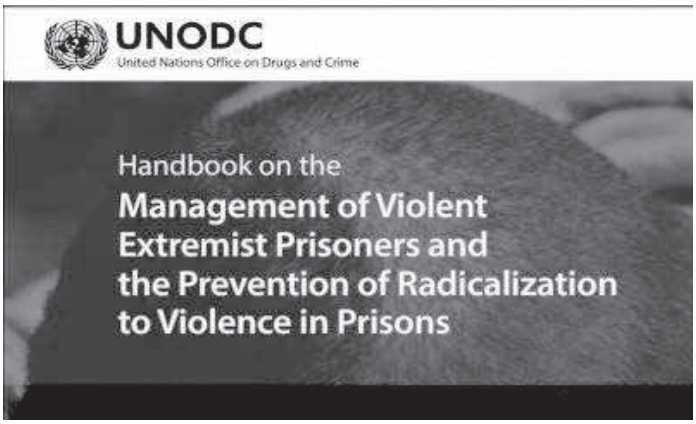
4. Disengagement rather than de-radicalization
- focus of intervention is to change behaviour, not ideology
- requires an understanding of the factors that motivate radicals to violent action (i.e., identity)

5. Radicalized offenders have unique needs
- understanding unique needs = effective management
- approaches vary (specialized vs. standard risk/needs assessments)

6. More evidence is required
- effectiveness of assessments and interventions
- community reintegration and reoffending

UNODC Handbook

- Developed by expert working group in 2015/2016; published in December, 2016
- CSC contributed through participation in the expert working group
- Comprehensive guide aimed at providing technical guidance on this topic to member states



Additional Lectures

- *Management of Radicalized Offenders and Security Threat Groups in a Correctional Context*
- *Gender and Cultural Considerations in the Management of Offenders (including STGs)*

Questions and Discussion

For more information:
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Correctional Service Canada

andrea.moser@csc-scc.gc.ca

167th UNAFEI International Training Course
(VE1-2) Dr. Andrea Moser
30 AM, Aug. 2017

CORRECTIONAL SERVICE CANADA

CHANGING LIVES. PROTECTING CANADIANS.

Management of Radicalized Offenders and Security Threat Groups in a Correctional Context

Presentation to the 167th Training Course – UNAFEI
Tokyo, Japan

Correctional Service Canada | Service correctionnel Canada

Dr. Andrea Moser, C.Psych.

Canada

Overview of Presentation

- Recap of what we know about STGs and Radicalized Offenders
- Population Management Strategies for STGs and Radicalized Offenders
- Assessment of STGs and Radicalized Offenders
- Intervention with STGs and Radicalized Offenders
- The importance of collaboration with external partners

Recap

- Definitions
- Identification
- Research

Acknowledgement – Information Sources

- It should be noted that much of the material presented in this deck is derived from the Correctional Service of Canada's Parole Officer Continuous Development Training Modules on Security Threat Groups and Radicalized Offenders as well as studies completed by CSC's Research Branch.

Issues in the Correctional Management of STGs and Radicalized Offenders

- Accommodation and Population Management
- Information Sharing – Internal and External
- Staff Training

Security Threat Groups

- In CSC, Security Threat Group membership continues to be an ongoing concern for the safety and security of staff, the public and offenders. Their activities are disruptive and can affect the smooth running of most medium and maximum security institutions. This includes the drug trade inside most institutions, which may lead to violent confrontation between different Security Threat Groups trying to enlarge or maintain their customer base.
- CSC continues to work to develop effective strategies for this subgroup as part of its National Population Management Strategy.
- Staff training on STGs and information sharing is a key element, as is the role of Security Intelligence Officers (SIOs) inside institutions.

CSC - Legislation/Policy involving Security Threat Groups

Commissioner's Directive 568-3
Identification and Management of Security Threat Groups

Purpose

- To establish a framework for the identification and management of security threat groups and offenders affiliated with same
- To recognize that affiliation to security threat groups is considered a significant risk, poses a serious threat to the safety and security of the Correctional Service of Canada's operations and compromises the protection of society
- To prevent offenders affiliated with security threat groups from exercising influence and power and to prevent actions and circumstances that enhance their image and prestige
- To support and assist offenders' termination of affiliation with security threat groups

CSC - Legislation/Policy involving Security Threat Groups

Commissioner's Directive 568-7

Management of Incompatible Offenders

Purpose

- To provide direction for the identification and management of incompatible offenders

Application

- Applies to staff responsible for identifying and managing incompatible offenders

Management of Incompatible Offenders

- Incompatible offenders: offenders who pose a threat to the safety and well-being of each other and may present a risk to staff, the public or other offenders.
- Incompatibilities can occur between any offenders for a variety of reasons. With STGs, these can arise related to issues of gang affiliations and rivalries.
- In CSC, Security Intelligence Officers (SIOs) are responsible for coordinating and implementing procedures for the identification and management of incompatible offenders. Therefore, when any staff member becomes aware of information that may identify offenders as being incompatible, this information must be reported in writing to the SIO who will take the appropriate action.

Management of Incompatible Offenders

Upon the identification of incompatible offenders, conflict resolution is typically the first action that will be taken by the SIO where it is deemed appropriate, with the aim of allowing the incompatible offenders to resolve the reasons for their incompatibilities. In the event that conflict resolution was unsuccessful or not warranted, various risk management options will be considered including, but not limited to:

1. Not transferring the incompatible offenders to the same institution unless the risk can be managed within the same institution (i.e. in a different unit or range);
2. Not housing the offenders in the same unit, range or cell;
3. Not housing them in the same community-based residential facility; and
4. Implementing additional precautions when incompatible offenders report to the same parole office.

Accommodation Issues – Radicalized Offenders

"To a great extent, managing institutions holding violent extremist prisoners requires the same "core" prison management approach as managing prisons detaining any other group of prisoners. Violent extremist prisoners, like other prisoners, need to be kept securely, provided with basic necessities such as food and clothing, looked after with humanity and given opportunities to reform and rehabilitate themselves."

UNODC Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons, p.9

Models of Accommodation

- UNODC Handbook on the Management of VEPs note that each prison administration needs to determine the best approach to accommodation, based on specific factors within the country (p. 47)

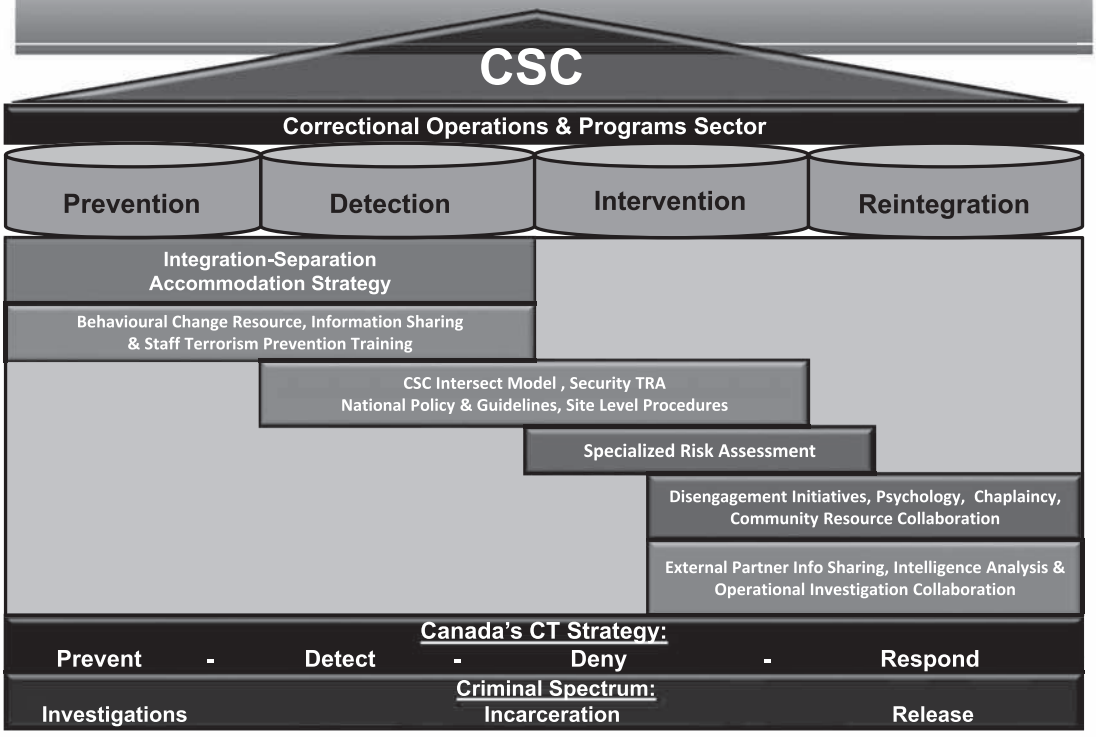
Models of Accommodation

Factors to be considered include*:

- The size of the violent extremist prison population being managed
- The state of the prison infrastructure and the administration's ability to ensure secure custody if violent extremists were dispersed to a number of prisons
- The capacity, size and skills level of staff
- The financial resources available to manage the violent extremist prisoner population
- The legislative framework and responsible authorities
- The cultural, political and social context
- The risk that an individual presents for being further radicalized, or for radicalizing others to violence
- The modus operandi and organizational structure of the violent extremist group

*UNODC Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization in Prisons

CSC Management Strategy – Radicalized Offenders Overarching Pillars



Management Strategy - Purpose

- Research indicates the importance of policies and **evidence-based population management practices** designed to address and counter radicalization and ideologically motivated violent extremism.
- To ensure that the CVE programs of our Canadian and international law enforcement and criminal justice partners are founded on the principles established in **'Canada's Counter-Terrorism Strategy'** and active CACP and Public Safety-led initiatives.
- To facilitate a **Service-wide approach**, in that the effective management of the radicalized offender population depends on the coordination and cooperation of numerous Sectors/Branches/Divisions in the organization, as well as correctional staff in our institutions and parole districts.
- To delineate the overarching pillars of activity: **prevention, detection, intervention, and reintegration.** Within these pillars exist sub-strategies for effective accommodation, identification, communication, assessment, disengagement, and community collaboration.

Correctional Service of Canada (CSC) Accommodation Model –Radicalized Offenders

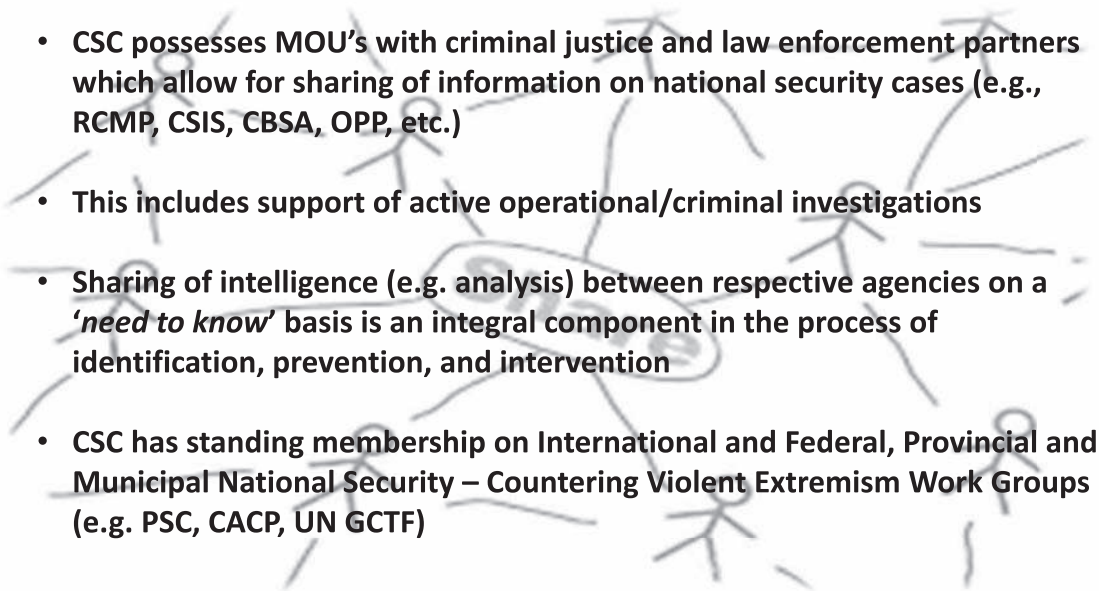
- CSC does not accommodate its terrorist-convicted offenders in dedicated prisons, instead utilizing an *Integration-Separation* accommodation model to manage radicalized and terrorism-convicted offenders.
- This approach predominantly focuses on the integration of radicalized offenders in an open general population environment; however, it permits for the physical/geographical separation of these offenders where security information suggest that the direct association of two or more radicalized offenders poses a threat to the offender, institution, or staff.
- Offender's behaviour and needs remain the focus of CSC's current radicalized offender accommodation strategy.
- This strategy avoids granting of unwarranted status onto the radicalized offender by minimizing 'profiling' and/or 'targeting' and defuses potential radicalization or recruitment power base.

Other Operational Considerations

- Primary security focus is on disengagement of offender's violent extremist behaviours and activities, secondary to which is efforts towards de-radicalization
- Ensure CSC policies and procedures governing the management of radicalized and terrorist convicted offenders are in accordance with the Service's core values and the law
- Ensure our decisions and direction are well reasoned, based on comprehensive consultation and empirical evidence, and respect human rights
- Maintain our existing relationships, and develop new domestic and international partnerships to enrich our working knowledge and share best practices

Information Sharing

Information Sharing & Partner Relations:

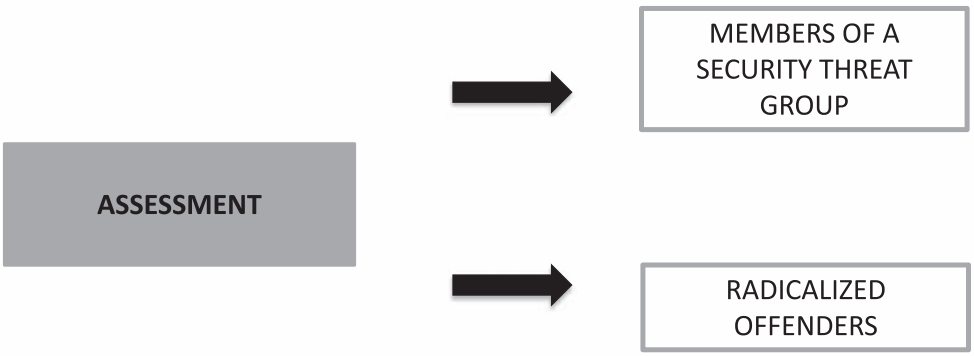


- **CSC possesses MOU's with criminal justice and law enforcement partners which allow for sharing of information on national security cases (e.g., RCMP, CSIS, CBSA, OPP, etc.)**
- **This includes support of active operational/criminal investigations**
- **Sharing of intelligence (e.g. analysis) between respective agencies on a '*need to know*' basis is an integral component in the process of identification, prevention, and intervention**
- **CSC has standing membership on International and Federal, Provincial and Municipal National Security – Countering Violent Extremism Work Groups (e.g. PSC, CACP, UN GCTF)**

Staff Training

- Important that staff receive training on topics such as STGs and Radicalized Offenders.
- UNODC Handbook (2016) notes: *" Training, which is crucial to any environment, is especially important for people working with violent extremist prisoners".*
- In CSC, frontline correctional, security and parole staff are provided training on STG identification and management, which includes training on the identifiers and behaviours of individuals and groups who pose a security risk to CSC operations.

ASSESSMENT



Risk Assessment Principles

- Risk assessment of STG members and radicalized offenders must be grounded in an overall evidence-based approach
- Specifically, while specialized tools can be considered, this should be as an adjunct to research-based, validated tools for criminal risk and need.

Intake Assessment

- A systematic and comprehensive process to determine security risk and needs, as well as the appropriate security level for initial placement to an institution (maximum, medium, minimum)
- Immediately after the court sentences an offender, information about the offender and the offence(s) is collected from many sources such as police, crown attorneys, judges, courts, victims and family members.
- When an offender reaches the institution, he/she undergoes an evaluation to determine the factors that may have led to the criminal behaviour for which he/she has been sentenced.
- The offender intake assessment process results in a multi-disciplinary correctional plan for treatment and intervention throughout the sentence.

Risk Assessment – Correctional Service Canada

The Offender Intake Assessment (OIA)

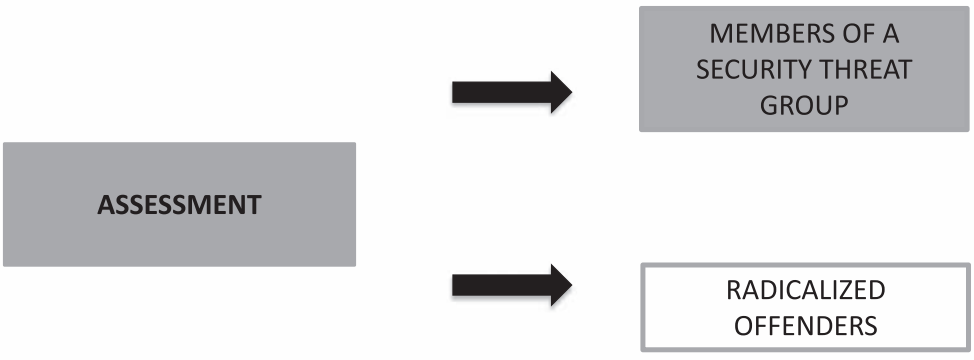
The Offender Intake Assessment is a comprehensive evaluation of an offender conducted at the time of admission to the Correctional Service Canada by institutional parole officers. All offenders complete the OIA (full or compressed version)

The assessment consists of two core components:

- Static Risk Assessment
- Dynamic Factors Identification and Analysis (DFIA-R)

The assessment involves collection and analysis of information on the following:

- Offender's criminal and mental health history
- Social situation
- Education
- Other factors relevant to determining criminal risk and needs



Risk Assessment: Members of a Security Threat Group

Security Threat Group Designation:

- The OIA can distinguish whether or not participants are considered members of a Security Threat Groups.

According to CSC members of a criminal organization include:

- Key Player
- Member
- Associate

- The affiliation level of an offender with a security threat group (member/associate/key player) will be considered a significant risk factor when making any decision related to the offender. The Case Management Team will consider the current activity level of the offender (active or inactive) when assessing risk and when making recommendations related to the offender.

Risk Assessment: Members of a Security Threat Group

Dynamic Factors Identification and Analysis (DFIA)

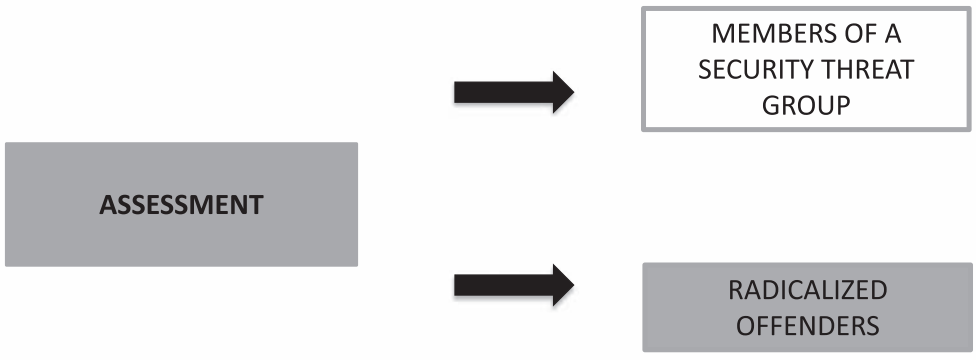
- As mentioned, assesses a variety of evidence-based criminogenic factors groups into seven domains, which are measured by several indicators. Scores on the indicators place the offenders on a four-point scale of need.

The seven domains include:

- **Associates/social interaction**
- **Attitudes**
- **Community functioning**
- **Employment/education**
- **Marital/family**
- **Personal/emotional**
- **Substance abuse**

Risk Assessment: Members of a Security Threat Group

- Examination of criminogenic risk, need and reintegration potential found that the typical criminal organization offender was assessed as being "medium" risk (58.1%) and "high" need (45.9%), with "high" reintegration potential (68.8%). Domain-level analyses of need illustrated that criminal organization offenders were significantly more likely to have some or considerable need in the areas of criminal attitudes and criminal associates than a matched sample of CSC offenders.



How to assess risk/needs for radicalized offenders

- As described, offender risk level, needs and reintegration potential are assessed initially as part of the Offender Intake Assessment (OIA) process.
- Offenders are rated as high, medium or low risk, and are rated on the extent of their need based upon the seven overarching criminogenic domain areas.
- CSC then aims to tailor its Correctional Plans according to the risk principle, that is, to match the required degree of correctional treatment to the identified needs of the offender.

How to assess risk/needs for radicalized offenders

- While these need domains are evidence-based risk factors related to criminal behaviour, research has demonstrated that the individuals who have been deemed radicalized may have unique needs and motivations that may not be systematically and empirically measured through the OIA, but which may nevertheless benefit from targeted programming.
- At present however, CSC does not use an assessment instrument tailored specifically to radical offenders. The applicability of specialized risk assessments for radical or violent extremist offenders is presently under careful consideration in CSC's ongoing research and international consultation on this specific population of offenders.

Comparisons of Radicalized and Non-Radicalized Federal Offenders

- CSC research indentified and compared the differences between radicalized offenders and the mainstream offender population.
- As a group, radicalized offenders frequently differed from their non-radicalized counterparts.

Results/findings

- Younger
- No criminal history
- Educated
- Better employment histories
- Better adjustment in terms of mental health and institutional behaviour
- Less likely to be Canadian citizens, more likely to be of a visible minority group
- Fewer problems with the abuse of alcohol and other drugs
- Less frequently assessed as presenting high levels of criminogenic need or low levels of community reintegration potential

Stys, Y., Gobeil, R., Harris, A. J. R., & Michel, S. (2014). *Violent extremists in federal institutions: Estimating radicalization and susceptibility to radicalization in the federal offender population* (Research Report R-313).Ottawa, ON: Correctional Service of Canada.

Specialized Risk Assessment Tools

- UNODC Handbook notes that a limited number of tools have been developed to specifically assess VEPs.
- These tools have only been used with a limited number of offenders and in specific jurisdictions and contexts, so their validity may be limited.
- It may not be realistic to deploy these tools in jurisdictions with limited resources, given they are often very comprehensive and resource intensive.

Example – Specialized Assessments Radicalized Offenders

- Violent Extremist Risk Assessment (VERA-2R)

(Pressman E., Duits, N., Rinne, T. And Flockton, J. (2016) VERA-2R Violence Risk Assessment – Version 2 Revised: A structured professional judgement approach, Nederlands Institut voor Forensische Psychiatrie en Psychologie.

- Extremist Risk Guidelines (ERG22+)

Lloyd, M. And Dean, C. (2015) "The Development of Structured Guidelines for Assessing Risk in Extremist Offenders", *Journal of Threat Assessment and Management, 2015, Vol. 2, No. 1, 40-52.*

VERA-2R

- Designed to be used with the following groups:
  - People who are suspected of being radicalized to violence
  - Who are in the process of being radicalized to violence
  - Who have a history of extremist violence
  - Who have been convicted of terrorist-related offences

From UNODC Handbook on the Management of VEPs (2016), p. 56

VERA-2R

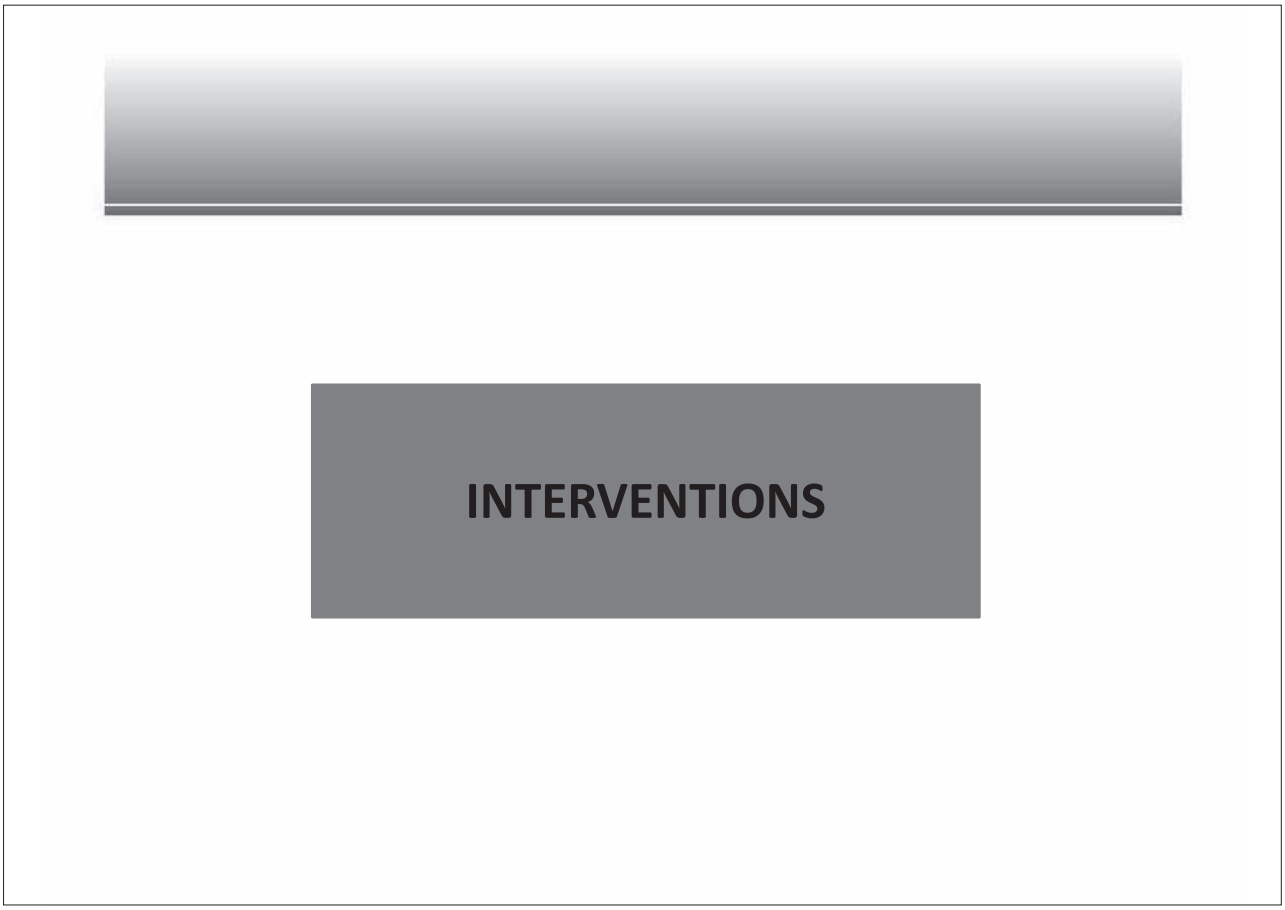
- Can contribute to a multi-modal risk assessment process
- Reliant on information initially obtained and validated by intelligence, security and law enforcement agencies
- The VERA-2 focused on a number of factors such as attitudes-beliefs-ideology, social context and intention, history and capability, motivational and commitment factors. It also includes protective factors
- The VERA-2R is an augmented version that includes additional indicators such as mental health background.

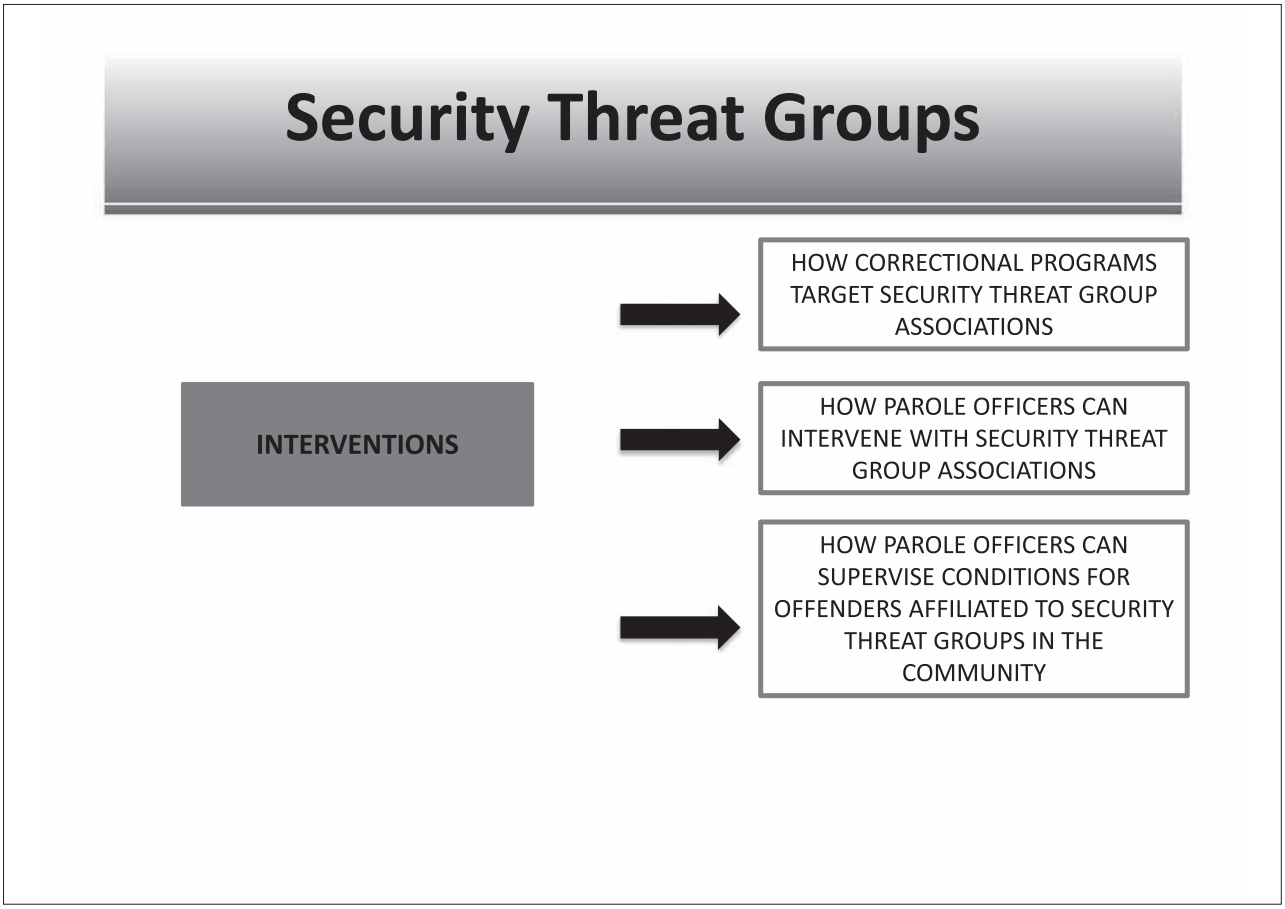
From UNODC Handbook on the Management of VEPs (2016), p. 56

ERG22+

- Developed to assess individuals and the personal and contextual circumstances contributing to their extremist offending or the offending in the future
- Case formulation approach is used
- Particularly appropriate for idiosyncratic offending
- Employs Structured Professional Judgement
- Assessors consider 3 dimensions: 1) Engagement, 2) Intent & 3) Capability
- 22 factors identified that seem to contribute to extremist offending that map onto the 3 dimensions

From UNODC Handbook on the Management of VEPs (2016), p. 56


INTERVENTIONS


Security Threat Groups
INTERVENTIONS
HOW CORRECTIONAL PROGRAMS TARGET SECURITY THREAT GROUP ASSOCIATIONS
HOW PAROLE OFFICERS CAN INTERVENE WITH SECURITY THREAT GROUP ASSOCIATIONS
HOW PAROLE OFFICERS CAN SUPERVISE CONDITIONS FOR OFFENDERS AFFILIATED TO SECURITY THREAT GROUPS IN THE COMMUNITY

Principles of Effective Correctional Programming

- Grounded in Risk-Needs-Responsivity Model (Andrews, Bonta & Hoge, 1990):

1. **Risk principle** (match level of program intensity to offender risk level; intensive levels of treatment for higher risk offenders and minimal intervention for low-risk offenders)
2. **Need principle** (target criminogenic needs or those offender needs that are functionally related to criminal behavior)
3. **Responsivity** principle (match the style and mode of intervention to the offender's learning style and abilities)

Principles of Effective Correctional Programming

- Program models and content based on "What Works" evidence from the research literature

- "Fidelity" of programs is key – manualized approach, staff training and certification, ongoing research and evaluation

Correctional Programs & Intervention Approaches Correctional Service Canada

- The Integrated Correctional Program Model (ICPM) is a comprehensive correctional program strategy that extends from the intake stage of the correctional process to the community. It provides consistent and systematic intervention from start to finish of an offender's sentence. Individual needs are identified up front and then those needs are targeted and addressed as the offender proceeds through his sentence, from reception, to institution, to community.

- The integrated program has three streams:
  - Multi-Target
  - Aboriginal
  - Sex Offender

  moderate or high intensity

- Each stream has its own version of the Primer, the main program and maintenance.

- The multi-target nature of ICPM allows CSC to more holistically address the individual needs and risks of offenders.

How Correctional Programs can target STG associations

- As the ICPM was designed for moderate to high risk offenders the programs is appropriate for members of STG groups who are mainly criminally motivated.

- There are 4 modules of the ICPM multi-target moderate and high intensity program – next slides will examine how each module applies to members of Security Threat Groups.

How Correctional Programs target STG associations

ICPM multi-target moderate and high intensity

Module 1 of the ICPM multi-target moderate and high intensity programs focuses on good relationships and support. Within this module, participants establish goals for their 'Good Life', and explore barriers to change. Participants also identify the various people in their lives and assess whether or not those individuals have a positive or negative impact on their lives. Social skills, establishing boundaries and assertiveness are explored, and participants are given opportunities to practice the application of these skills through various role-play scenarios. This module assists participants, including STG members with criminal associates, to identify individuals in their lives who may lead them away from their goals and/or put them in high risk situations and develop skills to break ties with negative associates, while building and strengthening relationships with more positive influences.

STG Targets: Associates, Goals

How Correctional Programs target STG associations

ICPM multi-target moderate and high intensity

In **Module 2** of the program, participants explore personal beliefs and expectations that they hold, and how these beliefs can play a role in their interpretation of events and how they in turn react. By identifying their core beliefs, participants can begin to examine how 'violations' of their personal expectations (e.g. need for approval or control) can lead to risky emotions and behaviors. Participants then review strategies to challenge risky thoughts and expectations effectively.

STG Targets: Beliefs, Emotions Management

How Correctional Programs target STG associations

ICPM multi-target moderate and high intensity

Module 3 of the programs focuses on clear thinking and healthy decisions. Participants examine types of thinking that support risky behavior (e.g. substance abuse, general violence, partner violence and crime for gain), identify self-talk that justifies harmful behaviors and explore the motives behind harmful behaviors. Within this module, STG members can apply program content in order to identify how their thinking justified the use of harmful behavior, including violence, and the positives and negatives that resulted from those behaviors.

STG Targets: Risky Thinking

How Correctional Programs target STG associations

ICPM multi-target moderate and high intensity

In **Module 4** of the program, participants explore the role of their lifestyle in their crime process including risks and protective factors. This module assists participants in examining how to apply program skills to effectively deal with conflict and pressure to engage in harmful activities. The program content in this module pertains to interactions with risky associates and how to establish boundaries and resist peer pressure will be particularly salient for STG members with harmful associates.

STG Targets: Associates

How Parole Officers can intervene with STG associations (based on ICPM)

- Despite their distinct features, STG offenders who meet the referral criteria for ICPM (i.e., low-moderate to high risk offenders) should be referred to the appropriate ICPM program.
- Criminalised low risk STG offenders who meet the override criteria for ICPM should be considered for referral to the ICPM program by way of an override
- With any offender who has completed an ICPM program, Parole Officers can maintain program skills by referring to a "Self-Management Pocket Plan" which provides a summary of the skills taught in the ICPM programs.

How Parole Officers can intervene with STG group associations (based on ICPM)

Low risk STG affiliated offenders who do not meet the referral criteria for correctional programs can be managed by a combination of the following strategies many of which are similar to the ones used in the ICPM:

- Helping to identify which goals offenders were trying to attain by their criminal behaviours and normalizing the goal (e.g. sense of justice, belonging, meaning) without legitimizing the violent or criminal means.
- Non confrontational approach exploring the pros and cons of the old way.
- Identifying reasons for change, including loyalty to family, spouses and children.

How Parole Officers can intervene with STG group associations (based on ICPM)

- Supporting any expressed attitudes suggesting the desire to get on with one's life, leave the old way behind
- Exploring life choices which move the offender away from engagement with the violent ideology
- Promoting meaningful goals which are incompatible with radical violence (education, job skills, employment, family, social integration)
- Supporting educational and employment activities and plans

How parole officers can intervene with Security Threat Group associations

The following ten best practices were submitted by correctional staff as being particularly effective in assisting them in managing their site level STG populations:

(1) Collecting information on STG affiliations;
(2) Ensuring high quality security information;
(3) Sharing information with institutional staff;
(4) Sharing information with external partners;
(5) STG separation from general population;
(6) Specialized transition unit for offenders who terminated their affiliation to a STG;
(7) Transfers to disrupt STG activity;
(8) Integration;
(9) Building credibility and rapport with offenders; and
(10) Providing choices for respect.

Community Reintegration of STGs

Issues to consider:

- Safe release
- Special Conditions
- Supervision

Radicalized Offenders

Interventions with Radicalized Offenders

- As with STGs in general, CSC utilizes evidence based correctional programs such as ICPM that are proven to significantly reduce rates of recidivism. As noted, these cognitive-behavioral programs target violence and the influence of antisocial associates
- The CSC also uses inter-faith counselling within the spiritual service delivery model and access to ethno-cultural services to counter extremist ideology, present pro-social modelling, and help identify potential risk

The Role of Chaplaincy

- As previously identified, religious extremism is only one of the many types of ideologically motivated violence that pose a security threat.
- While Islamist inspired (i.e. AQ & ISIS) extremism is known to pose a national security threat, it is important to separate faith and religion as the underlying cause for these actions/activities. Religion serves only to justify ones actions, when the real reasons are more often inspired by politics, personal grievance, or cultural dissonance, etc.
- Faith worship and religious change are a Canadian Human right and freedom. Exploring the spiritual dimension of life and the role of spirituality in addressing the challenges of incarceration are beneficial and can play an important part in an offender's rehabilitation.

Chaplaincy

- Through the provision of spiritual services and support, CSC promotes offender accountability and positive relationships among offenders, their families, and faith communities in order to assist with offenders' successful reintegration.

- CSC respects the religious freedom and right of expression of federal offenders of all faiths, and provides support and services to offenders of all religious backgrounds, as per the *Corrections and Conditional Release Act* and the *Canadian Charter of Rights and Freedoms*.

Chaplaincy

- While chaplains are not required to engage in counter-radicalization strategies among any particular group, they are an integral part of CSC's effort to actively encourage and assist offenders to become law-abiding citizens.

- Chaplains facilitate the connection of offenders with members of their own faith communities. These activities help offenders examine their behaviours and decisions and discover new ways of living. This can help offenders accept responsibility for their actions, which in turn contributes to their safe reintegration into our communities. In addition, chaplains consult and work with case management teams as part of their work with offenders.

The Role of Mental Health professionals in Assessment and Intervention with Radicalized Offenders

- There are several important roles for mental health colleagues (examples include Psychologists, Psychiatrists, Physicians, Nurses, and Clinical Social Workers) in the management of radicalized offenders:

1. Providing subject matter expertise in the gathering and interpretation of research.

➢ The identification of pertinent and informative research is paramount in building a team's knowledge and skill, to enhance their ability to recognize offenders who may be at risk of radicalization. The mental health professional can utilize research results to educate the team on evolving trends, innovative and best practice methods to assist offenders at risk.

The Role of Mental Health Professionals (continued)

2. Informing on effective prevention activities that will engage and support vulnerable offenders, subsequently reducing the risk of radicalization.

➢ Prevention activities are programs, policies and interventions that promote inclusion and well being and will strengthen individuals in ways that reduce vulnerability to engaging in violent extremism.

The Role of Mental Health Professionals (continued)

3. Informing on effective prevention activities that will engage and support vulnerable offenders, subsequently reducing the risk of radicalization.

- Identify potential risk factors (e.g. Ideologist, grievances, moral emotions and link risk factors to assist with identification of supports).
- Explore experiences of discrimination or stereotyping.
- Consider violent extremism action when assessing for violence.
- Identification of inmates who may be susceptible to violent extremist ideology.
- Assessment based on facts and evidence rather than believed characteristic or "traits" or terrorists.
- Prevention and intervention efforts should continuously monitor at-risk offenders to determine if the structured activities are effective and progress has been made in key indicators.
- Feedback from staff implementing the intervention and other disciplines is needed to determine if the intervention plan needs to be modified.
- Ongoing screening for increased risk of suicide of high risk offenders to consider risk factors such as, previous attempts, history of self-injury, family history, etc.

Disengagement from Radicalization

- Disengagement: "the process of ceasing terrorist activity. It does not always involve a change in ideology or beliefs, but does require an end to terrorist behavior" (Horgan, 2008)
- Disengagement is distinct from deradicalization
- As noted in the UNODC Handbook on the Management of Violent Extremists (2016) – interventions that aim for disengagement are likely to be more successful in reaching their goals (p. 71)

Disengagement from Radicalization

- Research has found that former violent extremists who have reintegrated most successfully are those who have made significant changes in 6 domains*:
  - Social relations
  - Coping
  - Identity
  - Ideology
  - Action Orientation
  - Disillusionment

* See UNODC Handbook, p. 71-72 and Barellea, K. (2015), Noricks, D. (2009), Horgan, J. (2009), Bjorgo & Horgan, (2008)

Research on Disengagement

Work by John Horgan notes the following:

- There is no single reason why individuals walk away from terrorism
- A review of the literature indicates that certain factors may make individuals more likely to disengage.
- These hypothesized factors can be grouped into **push** and **pull** factors. **Push factors** are associated with the challenges of engagement and commitment to a terrorist group. **Pull factors** are the lures that draw people towards a different life."

Horgan, J. (2014). *Psychology of terrorism* (2nd ed.). London: Routledge.

Push and Pull Factors

Push Factors:

- Disillusionment with key personnel of a terrorist group
- Disillusionment with the strategy or actions of the terrorist group
- Unmet expectations
- Loss of faith in the ideology
- Difficulty adapting to the clandestine lifestyle
- Inability to cope with physiological and psychological effects of carrying out attacks
- Burnout

Horgan, J. (2014). *Psychology of terrorism* (2nd ed.). London: Routledge.

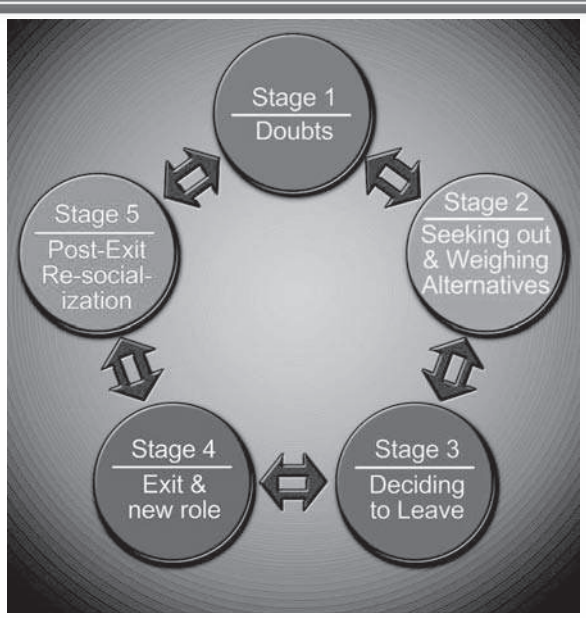
Push and Pull Factors

Pull Factors:

- Competing loyalties
- Positive interactions with those who hold moderate views
- Longing for the freedoms of a conventional life
- Employment/educational demands or opportunities
- Desire to marry and establish a family or the demands of having a family
- Promise of amnesty
- Financial incentives

Horgan, J. (2014). *Psychology of terrorism* (2nd ed.). London: Routledge.

Stages of the Disengagement Process



From: Horgan, 2008 - Horgan notes that the stages of the disengagement process are adapted from Ebaugh's (1988) model of voluntary role exit.

External partner collaboration

- As noted in the UNODC Handbook on the Management of Violent Extremist Prisoners (2016), prison administrations should cooperate with other law enforcement and criminal justice agencies with respect to the VE prisoners in their custody. Intelligence and other relevant information should be shared across agencies. (p. 135)
- International cooperation and information sharing is also critical

CSC's Domestic and International Collaboration

- CSC is continually developing and maintaining domestic and international capacity-building partnerships to enrich our working knowledge in this area and share our experienced 'best practices' with others.

CSC's Domestic and International Collaboration

•**Domestically** CSC maintains active membership on Public Safety Canada's Countering Radicalization to Violence– Interdepartmental Working Group (CRV-WG), the Cross-Cultural Roundtable on Security (CCRS) the Canadian Association of Chiefs of Police (CACP) Counter-Terrorism & National Security Committee (CTNS) Working Group, the Heads of Corrections (HOC) Meetings between Federal-Provincial Security Intelligence counterparts.

CSC's Domestic and International Collaboration

- **Internationally** CSC is represented at the Global Counter-Terrorism Forum (GCTF) – Detention & Reintegration Working Group, the United Nations Office on Drugs and Crime (UNODC) - Radicalized Offender Expert Working Group, the United Nations Interregional Crime and Justice Research Institute (UNICRI).
- CSC also has Memoranda of Understanding in relation to collaborative efforts in the Management of Radicalized Offenders with Correctional Service Departments from Sweden, France, United Kingdom, United States and Australia.

Questions and Discussion

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167th UNAFEI International Training Course
(VE1-3) Dr. Andrea Moser
1 AM, Sep. 2017

CORRECTIONAL SERVICE CANADA

CHANGING LIVES. PROTECTING CANADIANS.

Gender and Cultural Considerations in the Management of Offenders

Presentation to the 167th Training Course – UNAFEI
Tokyo, Japan

Correctional Service Canada | Service correctionnel Canada

Dr. Andrea Moser, C.Psych.

Canada

Overview of Presentation

- Gender and culture – why do they matter?
- Research on a gender-informed approaches
- Research on cultural issues
- Discussion

Exercise – Gender and Culture Considerations

- Do gender and/or culture matter in terms of the management and reintegration of offenders?
- Why or why not?
- What does a gender-informed and/or culturally-informed approach to corrections look like?

Gender and Culture – Why Do They Matter?

- Another look at the Risk-Need-Responsivity (RNR) Model ...

Risk-Need-Responsivity (RNR) Model (Andrews, Bonta and Hoge, 1990)

- **Responsivity Principle** – treatment services delivered in a style and mode that matches learning style and ability of the offender

- Two types of responsivity factors to be considered:
  - General
  - Specific

General Responsivity

- Focuses on attributes of intervention that are **external** to the individual
- Posits that cognitive social learning interventions are the most effective way to teach people new behaviours regardless of the type of behaviour.
- Additionally, effective cognitive social learning strategies operate according to the following two principles:
  1. The Relationship Principle (establishing a warm, respectful and collaborative working alliance with the client optimizes effectiveness)
  2. The Structuring Principle (influence the direction of change towards the pro-social through appropriate modeling, reinforcement, problem-solving, etc.).

Specific Responsivity

- Focuses on **internal** characteristics of the individual
- Treatment interventions need to consider personal strengths and socio-biological-personality factors. Interventions should be tailored to these factors, as they have the potential to facilitate or hinder treatment
- These characteristics include factors such as gender, ethnicity, cognitive functioning, literacy level and motivation to change

Does Research Support the Need to Consider Specific Responsivity Factors Like Gender and Culture?

- Part I: Focus on Gender
- Part II: Focus on Culture

Part I: Gender Considerations

International Data
Women in the Criminal Justice System

Penal Reform International notes that:

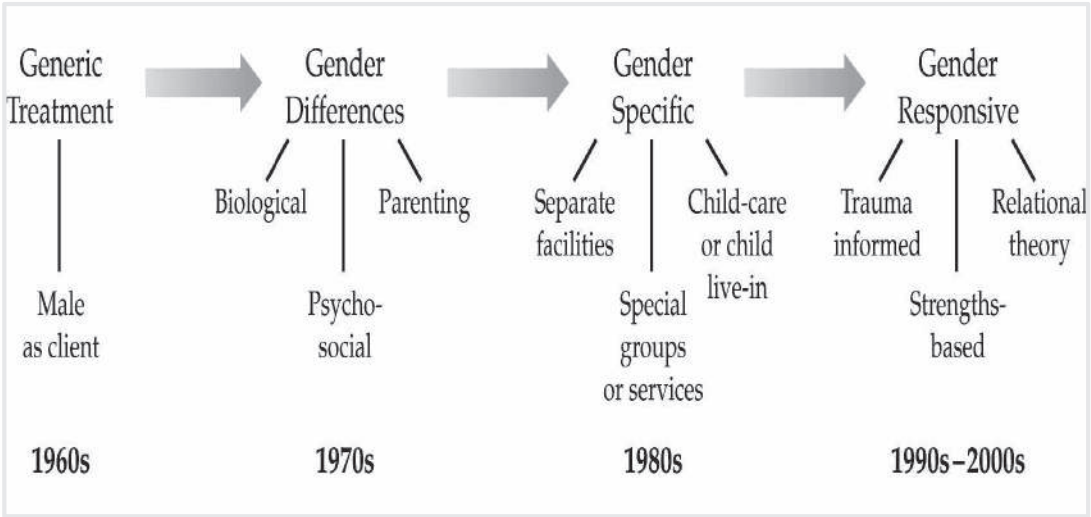
- World-wide, more than 700,000 women and girls are held in prison settings
- Offences committed by women are often closely linked to poverty
- According to the World Health Organization, 80% of women prisoners have an identifiable mental illness and are more likely to harm themselves or commit suicide than male prisoners
- Gender roles and cultural expectations in many parts of the world mean that women in prison face greater stigma than men
- Children are often the hidden victims of a parent's imprisonment.

www.penalreform.org

Research on Gender Issues

- Several authors have noted that existing paradigms for offenders are founded on male models of change and fail to consider arguments that women and men have different pathways to crime and different desistance patterns
- From this work, women-centered perspectives have emerged that advocate that correctional interventions for women offenders require a different approach

Evolving Treatment Approaches



From: Stephanie S. Covington, Ph.D. *Implementing Gender-Responsive Interventions for Girls and Women* Adult and Juvenile Female Offenders Conference
October 13, 2015, Session 30, Hartford, CT – Adapted from Grella, C.E. (2000)

Research on Gender Issues

- Research has found evidence that a number of gender-responsive factors contribute to criminal behavior among women, including trauma.
- Other factors supported by research include:
  - family separation and community isolation
  - poor quality of life conditions
  - lack of secure, stable and legal employment
  - substance abuse

Challenges in Conducting Research on Women Offenders

- Substantially fewer women involved in the criminal justice system than men
- As a result, studies on the characteristics of women offenders as well as the impact of interventions are hindered by factors such as low numbers and low base rates (e.g., of reoffending)
- Advanced statistical methods such as meta-analysis can assist in examining these issues by analyzing the results of multiple studies

Research on Women Offenders

- A recent meta-analytic study by Gobeil, Blanchette and Stewart (2016) examined whether correctional interventions work for women offenders and in particular, whether gender-informed approaches are effective in reducing recidivism.

Gobeil, R., Blanchette, K. and Stewart, L. (2016) A Meta-Analytic Review of Correctional Interventions for Women Offenders: Gender-Neutral Versus Gender-Informed Approaches CRIMINAL JUSTICE AND BEHAVIOR, 2016, Vol. 43, No. 3, March 2016, 301–322.

Results – Meta-Analysis (Gobeil, Blanchette & Stewart, 2016)

- Examined 37 studies and nearly 22,000 women offenders
- Found that women who participated in correctional interventions had 22% to 35% greater odds of community success than non-participants. Specifically, correctional interventions for women were at least as effective as the published rates for men.
- Gender-informed and gender-neutral interventions were equally effective; however, when analyses were limited to studies of higher methodological quality, gender-informed interventions were significantly more likely to be associated with reductions in recidivism.
- These findings support recent research indicating that women and girls are more likely to respond well to gender-informed approaches if their backgrounds and pathways to offending are associated with gendered issues.

Research on Women involved in Security Threat Groups

- A 2012 study by CSC's Research Branch (Scott, 2012) found that, compared with non-affiliated women, gang-involved women:
  - had more extensive criminal histories, static risk and dynamic risk (needs), lower motivation and reintegration potential, and poor institutional adjustment indicated by involvement in institutional incidents and involuntary segregation.
  - At intake, were more likely to be rated as medium or maximum security.
  - Had both prior youth and adult convictions, and had previously served a sentence of up to 4 years.
  - Had specific needs in the areas of pro-criminal attitudes and associates
  - Were more likely to be involved in violent incidents and disruptive behaviour in the institution
  - Participated in more core correctional programs for violent offenders, substance abuse, education, living skills, and women's' programs than their non-gang involved counterparts

Radicalized Women

- No women are currently incarcerated for a terrorist-related offence in CSC
- UNODC Handbook on the Management of Violent Extremists in Prisons (2016) notes that, although the role of women as violent extremists remains largely unexplored, research to date indicates that many of the factors that motivate men to become terrorists also motivate women.
- Additional motives for women becoming involved in extremism have also been suggested:
  - Vulnerable to being physically coerced or socially blackmailed, particularly in patriarchal societies
  - Influence or coercion by family members

International Initiatives Related to Women Offenders

- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (i.e., "The Bangkok Rules")
- adopted by the UN General Assembly in December 2010 to fill a long-standing lack of standards providing for the specific characteristics and needs of women offenders and prisoners.

The Bangkok Rules

- Historically, prisons and prison regimes have been designed for the male prison population – from the architecture of prisons, to security procedures, to healthcare, family contact, work and training.

- The 70 Rules give guidance to policy makers, legislators, sentencing authorities and prison staff to reduce the imprisonment of women, and to meet the specific needs of women in case of imprisonment

Areas covered by the Bangkok Rules Women in Correctional Settings

- Provision of appropriate healthcare
- Humane treatment
- Preservation of dignity during searches
- Protection from violence
- Provision for children affected by parental imprisonment

Correctional Service Canada - Women Offenders

- Role of the Women Offender Sector
- History of women's federal corrections
- Current challenges and initiatives

Women Offenders in CSC

- In the last ten years, the number of women admitted to federal jurisdiction increased 32.5%
- Overall, women continue to represent a small proportion of the total number of admissions in comparison to men (i.e., 7.6% in 2014-15)
- In 2016-2017 the average number of women under CSC's jurisdiction was 1,299 – 684 women in custody and 615 under supervision in the community

Sources: Corrections and Community Release Statistical Overview 2015 – Public Safety Canada; CSC Corporate Business Plan 2017/18

Role of the Women Offender Sector

The Deputy Commissioner for Women (DCW) holds functional responsibility for women's corrections.

The DCW and the Women Offender Sector:

- establish national policies, programs and guidelines and give related advice, assistance and guidance;
- provide corporate expertise and strategic guidance on women offender issues;
- give input and guidance to other Sectors as they develop policies, plans and procedures that will impact women offenders;

History of Women's Corrections in Canada: Pre-1934

- Early 19th century: Women offenders were housed in city or county jails until the opening of Kingston Penitentiary in Ontario.
- 1835: women offenders moved to Kingston Penitentiary where they were often housed alongside male offenders.
- 1913: a separate standalone building for women offenders was built within the walls of Kingston Penitentiary called Prison for Women.

History of Women's Corrections: Prison for Women

- 1934: Prison for Women (P4W) was opened in Kingston, Ontario. Women Offenders from across Canada were incarcerated at this one location.
- 1938: The Royal Commission on the Penal System (Archambault Commission) was the first to call for its closure.

History of Women's Corrections: Creating Choices

- 1989: CSC established the Task Force on Federally Sentenced Women, co-chaired by CSC and the Canadian Association of Elizabeth Fry Societies, and comprised of a diverse mix of government representatives, correctional practitioners, community advocates, Aboriginal organizations, and women offenders.
- 1990: The Task Force released its groundbreaking report entitled *Creating Choices*, which – among other recommendations – advocated for the closure of P4W, the establishment of a Healing Lodge, and the establishment of regional facilities for women offenders.

Creating Choices: A new vision for federal women's corrections

- Five overarching principles were identified in the report as the foundation for a correctional strategy for women offenders: Empowerment, Meaningful and Responsible Choices, Respect and Dignity, Supportive Environment, and Shared Responsibility.
- These 5 principles remain relevant today and continue to guide the development of policies, programs and interventions for women offenders.

A vision for federal women's corrections

- It is recognized that women offenders require a gender based approach to address their unique pathways to crime, significant history of trauma, and gender differences that impact incarceration and community supervision. This approach is research based and is considered in all areas of federal women's corrections including:
  - Design of Institutions
  - Correctional Interventions
  - Operations
  - Human Resources
  - Policy

The results: 5 New Institutions... (1995 – 2004)

Edmonton Institution for Women (Prairie)

Nova Institution for Women (Atlantic)

Grand Valley Institution for Women (Ontario)

and...

Joliette Institution (Quebec)

Fraser Valley Institution (Pacific)

...an Aboriginal Healing Lodge

Okimaw Ohci Healing Lodge (Prairie)

The transition to new units: Resulting challenges

- Creating Choices emphasized the importance of physical environments that were conducive to reintegration, highly interactive with the community and reflective of the generally low risk presented by women offenders.
- The move from P4W to the regional facilities however was not without challenges.
- Edmonton Institution for Women experienced significant difficulties during the transition period with a number of suicide attempts, instances of self-injury, assaults on staff, escapes, and ultimately the homicide of an inmate.
- This resulted in women classified as maximum-security being transferred out of the regional facilities until such time as a strategy could be developed that would ensure the safety

Infrastructure at Women Offender Institutions

- House and apartment style accommodation for women classified as minimum security and house style accommodations for women classified as medium security
- Women are responsible for their own budgets, groceries, cleaning, cooking, laundry
- Mother-Child program available at each women offender facility
- Traditional cell accommodation in separate Secure Units for women classified as maximum security
- Structured Living Environments for minimum and medium security women with cognitive and/or mental health issues (also house style accommodation)

Types of Interventions

- Correctional Programs (Aboriginal and Non-Aboriginal)
- Mental Health
- Education
- Vocational and Employment
- Social Programs
- Other Programs and Interventions

Correctional Programs

- Address multiple factors contributing to criminal behaviour
- Reduce re-offending by helping offenders make positive changes
- Must be relevant in dealing with needs of women offenders
- Are gender based, trauma-informed and culturally sensitive
- Research based

Interventions

- CSC offers a comprehensive array of interventions to engage and motivate women offenders to make changes that lead to pro-social lifestyles.

- All interventions consider the relational nature of women offenders and the research based factors that increase the likelihood of returning to custody. These are targeted in a holistic manner.

Social and Other Programs and Interventions

- Social Integration Program for Women
- Institutional Mother Child Program
- National Employment Skills Program
- Peer Mentor Program
- Therapeutic and Vocational
- Horse and K9 Programs

Challenges

- Small number of women compared to the male offender population (higher costs, limited economies of scale)
- Population pressures and population growth
- Addressing chronic self-injury, mental health and behavioural issues
- Further addressing the needs of specific populations (maximum security women, and Aboriginal women, specifically those in maximum-security and Inuit women)

Challenges (continued)

- Employment (institutional and community)
- Ensuring that we have the right number of beds in the right places for women in the community
- Building new partnerships and sustaining existing ones
- Capacity-building
- Female/male Primary Worker ratio

Part II: Cultural Considerations

Cultural Considerations

- Another specific responsivity factor that must be considered in assessment and interventions within correctional settings is ethnicity and culture

Cultural Considerations – The Canadian Context

- CSC manages a culturally diverse offender population:
  - 58% of all offenders (in institutions and the community) are Caucasian
  - 23% are Indigenous
  - 19% are a visible minority

Indigenous Offenders

- Indigenous peoples represent 4% of Canadian population, but approximately 25% of the federal offender population
- Due to cultural and social history factors these offenders require interventions that recognize and respect their unique cultural needs
- CSC addresses this through specific interventions for Indigenous offenders, including culturally-appropriate programs, specialized units and institutions (Pathways Units and Healing Lodges) and involvement of Elders
- Social history factors (e.g., the impact of colonization, residential schools) are also considered in all levels of decision-making related to Indigenous offenders

Indigenous Offenders

- CSC research has demonstrated that culturally appropriate interventions for Indigenous offenders have a positive impact on reintegration results (i.e., return to custody)

Kunic, D. & Varis, D.D. (2009). *The Aboriginal Offender Substance Abuse Program (AOSAP): Examining the effects of successful completion on post-release outcomes).* Ottawa ON: Correctional Service of Canada.

Stewart, L. A., & Wilton, G. (2014). *Outcomes of federal Aboriginal offenders in correctional programs: Follow-up from the ICPM evaluation* (Research Report R-328). Ottawa ON: Correctional Service of Canada.

Ethnocultural Offenders

- As noted, close to 20% of offenders under CSC jurisdiction are a member of a visible minority group
- CSC has conducted research to better understand these offenders (Keown, L.A., Gobeil, R., Biro, S.M. & Ritchie, M.B. (2015) *Ethnocultural Offenders: An Initial Investigation of Social History Variables at Intake.* R-362, Ottawa, ON: Correctional Service Canada)
- The following slides explore the findings of this research

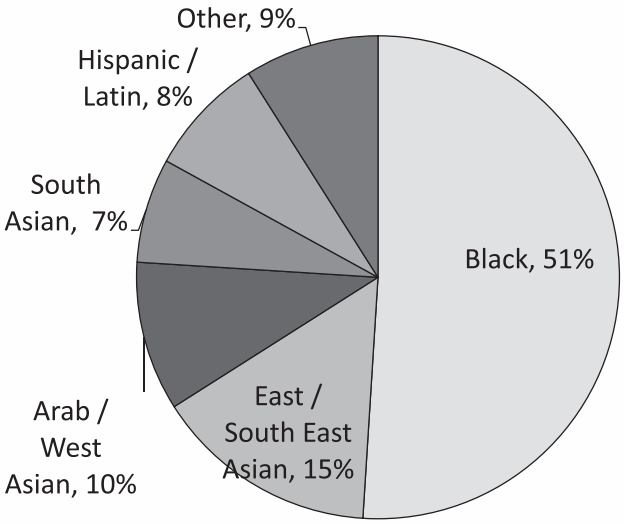
Method - Social History

- Social history factors can be useful in contextualizing and understanding behaviours
- Though detailed social history information is not necessarily available for all offenders, existing information was examined

What was Examined

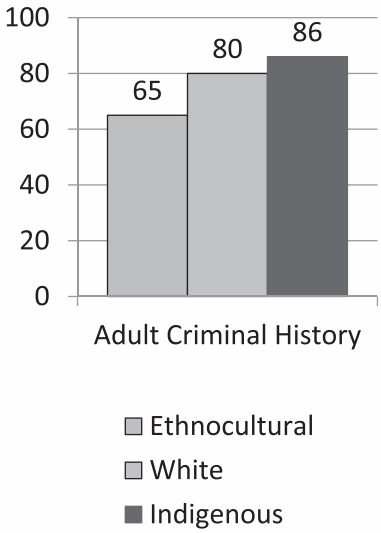
- The study utilized what was likely the best available source of information on offenders' lives and experiences prior to incarceration - CSC's Offender Intake Assessment (OIA). Domains examined included:
  - Family / marital
  - Personal / emotional
  - Substance use
  - Community functioning
  - Education / employment
  - Associates
  - Attitudes
- Criminal history was also examined

Sample Characteristics



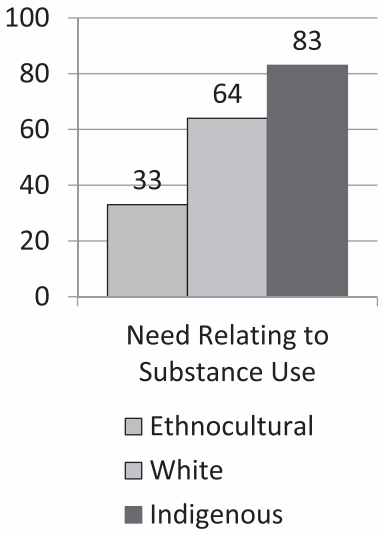
In total, data were available for 725 ethnocultural offenders. Half of these offenders were Black.

Findings - Criminal History



- Ethnocultural offenders less frequently had previous adult convictions than did White and Indigenous offenders
- Rates of youth criminal history were similar for ethnocultural and White offenders

Findings - Substance Use



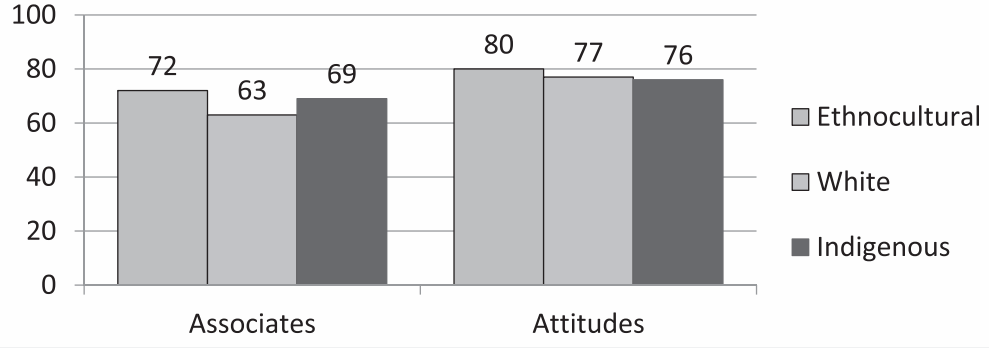
- Overall, rates of problematic substance use were much lower for ethnocultural offenders
- The lowest rates were found for Black offenders and for East / South East Asian offenders

Findings - Substance Use, *cont.*

- Relative to White and Indigenous offenders, ethnocultural offenders **less** frequently reported:
  - Beginning drinking and taking drugs at young ages
  - Substance use that impacted relationships, employment, or contributed to conflicts with the law
  - Having alcohol or drug use as part of their offence cycle
  - Having friends, family members, or intimate partners with substance use problems

Antisocial Attitudes and Associates

- Ethnocultural, White, and Aboriginal offenders were about equally likely to have needs relating to associates and to attitudes
- Among ethnocultural offenders, rates were lowest for East and South East Asian offenders

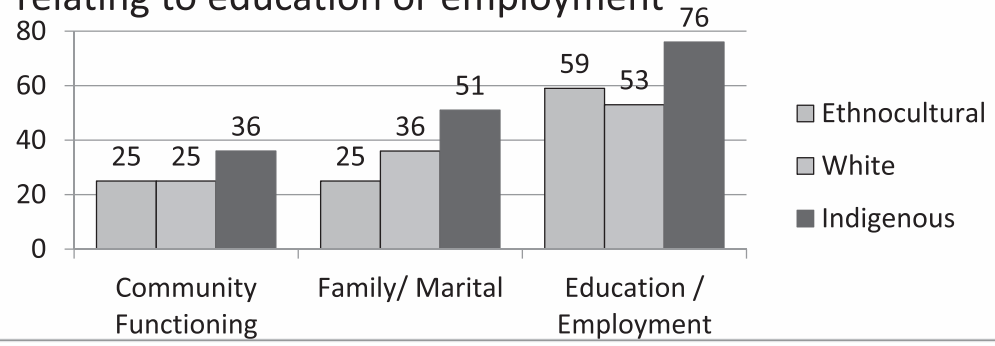


Antisocial Attitudes and Associates, *cont.*

- Relative to White offenders, ethnocultural offenders **less** frequently reported:
  - Attitudes disrespectful of personal, commercial, or public property
- On the other hand, ethnocultural offenders were **more** likely than White offenders to:
  - Report attitudes supportive of instrumental or goal-oriented violence
  - Be suspected of being affiliated with a gang

Family and Community Stability

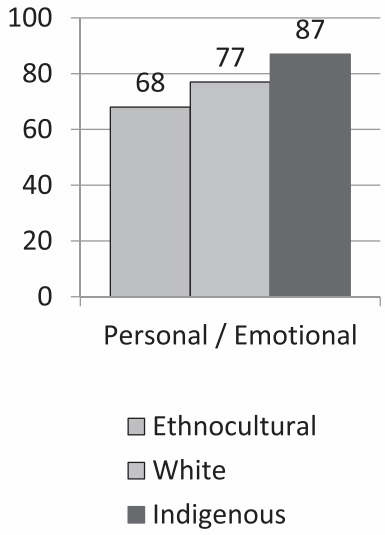
- Overall, a quarter of ethnocultural offenders had elevated need relating to community functioning and their family / marital situation
- Just over half of ethnocultural offenders had needs relating to education or employment



Family and Community Stability, *cont.*

- Relative to White and Indigenous offenders, ethnocultural offenders **more** frequently demonstrated:
  - Housing stability
  - Financial stability
  - Pro-social support from friends, family, and intimate partners
- **Similar** proportions of ethnocultural and White offenders:
  - Had completed high school
  - Were employed at arrest and had job skills
- There was a great deal of variability among ethnocultural offenders in the percentage who resided in high-crime areas.

Personal Characteristics



- Overall, about two-thirds of ethnocultural offenders had elevated needs in this domain
- The lowest rates were found for Arab, East, South East, and West Asian offenders

Personal Characteristics, *cont.*

- Relative to White offenders, ethnocultural offenders were **less** frequently assessed as:
  - Impulsive
  - Having difficulty coping with stress
  - Having difficulty solving interpersonal problems
  - Giving up easily when challenged
- **Similar** proportions of ethnocultural and White offenders were identified as:
  - Displaying narrow and rigid thinking
  - Being able to link actions to consequences

Contribution and Interpretation

- This study provided a snapshot of the current ethnocultural offender population in federal corrections in Canada, which added to existing knowledge and could act as a baseline to allow detection of trends over time
- Overall, ethnocultural offenders differed from their White and Indigenous counterparts in many ways; that said, it is important to recall that there is as much variability **within** the ethnocultural population as across groups

The Importance of Situating Findings

- Aggregate-level descriptions are helpful, in that they can assist in developing cultural competency and allocating resources
- However, moving beyond description to understanding how to incorporate these findings in case management requires:
  - Consideration of each offender's unique background and social history
  - Examination of why certain factors may be present
- Important to consider each offender and each case management decision on a case-by-case basis

Questions and Discussion

For more information:

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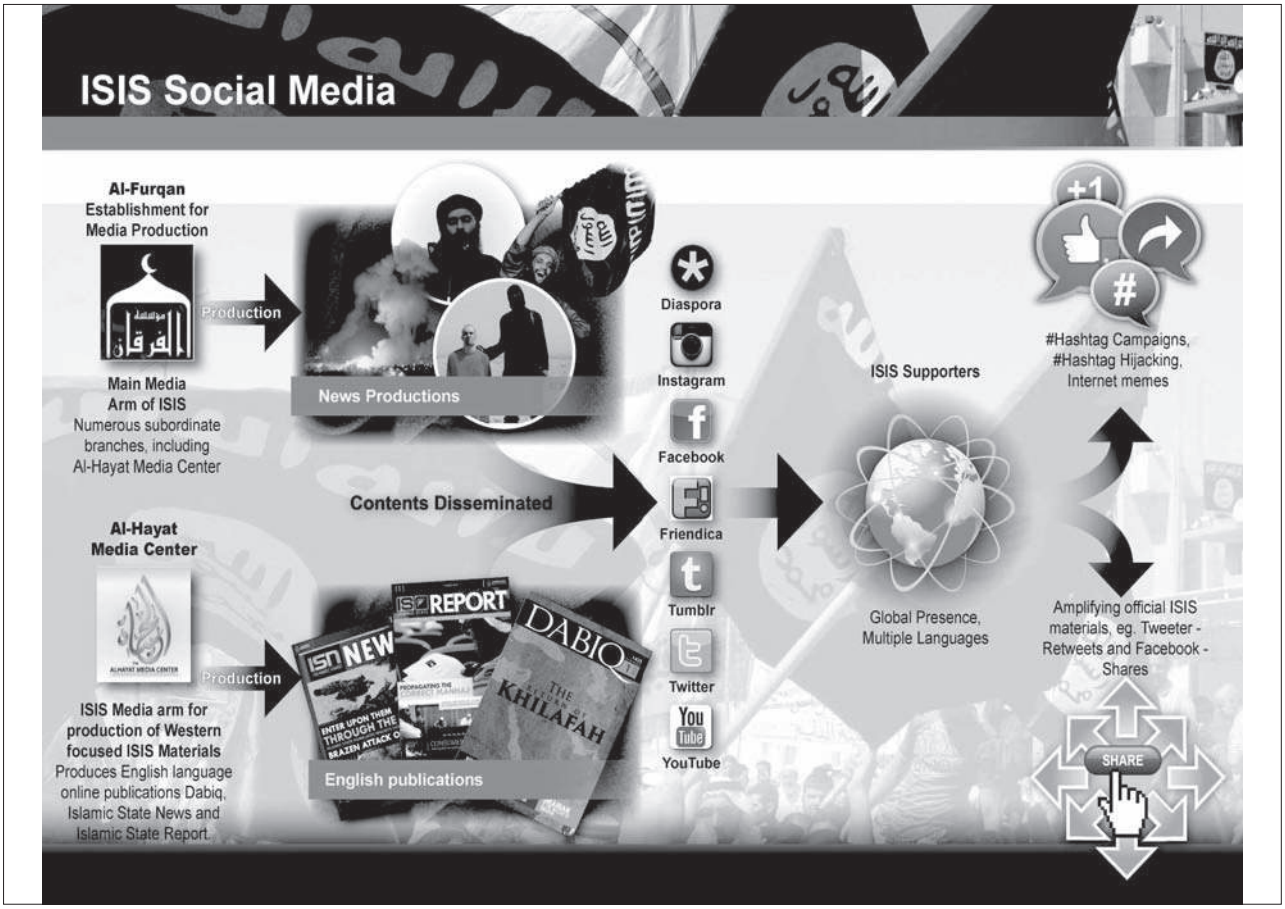
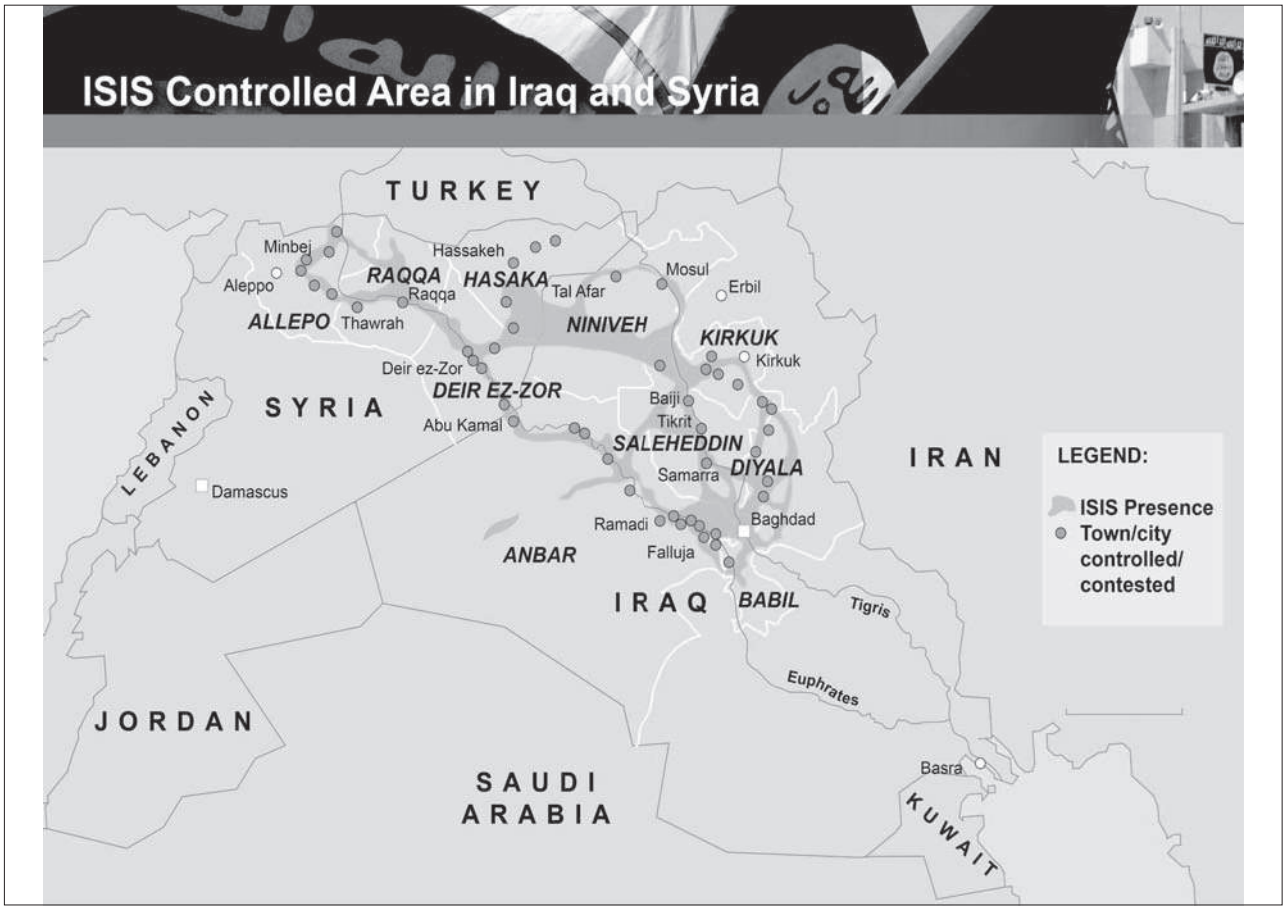
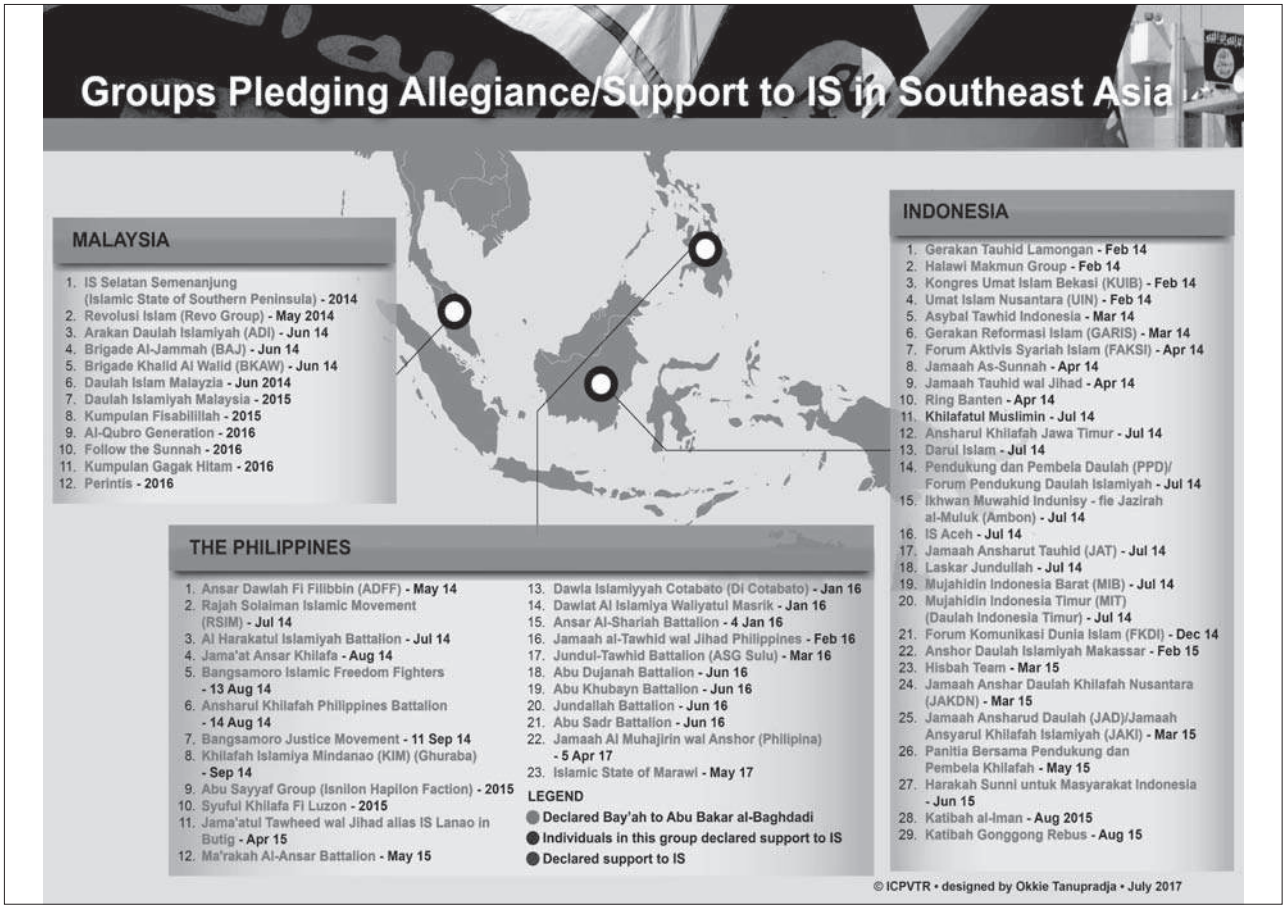
167th UNAFEI International Training Course
(VE3-1) Dr. Rohan Gunaratna
6 AM, Sep. 2017
Global Threat
Prof. Rohan Gunaratna
Professor of Security Studies
Head
International Centre for Political Violence and Terrorism Research
Email: secretary-icpvtr@ntu.edu.sg


ISIS Social Media
Al-Furqan Establishment for Media Production
Production
Main Media Arm of ISIS
Numerous subordinate branches, including Al-Hayat Media Center
News Productions
Contents Disseminated
Al-Hayat Media Center
Production
ISIS Media arm for production of Western focused ISIS Materials
Produces English language online publications Dabiq, Islamic State News and Islamic State Report.
English publications
Diaspora
Instagram
Facebook
Friendica
Tumblr
Twitter
YouTube
ISIS Supporters
Global Presence, Multiple Languages
#Hashtag Campaigns, #Hashtag Hijacking, Internet memes
Amplifying official ISIS materials, eg. Tweeter - Retweets and Facebook - Shares
SHARE


ISIS Controlled Area in Iraq and Syria
TURKEY
Minbej
Hassakeh
Aleppo
RAQQA
HASAKA
Raqqa
Tal Afar
Mosul
Erbil
ALLEPO
Thawrah
NINIVEH
KIRKUK
Kirkuk
Deir ez-Zor
DEIR EZ-ZOR
SYRIA
Baiji
Tikrit
Abu Kamal
SALEHEDDIN
DIYALA
Samarra
IRAN
LEBANON
Damascus
Ramadi
Baghdad
ANBAR
Falluja
IRAQ
BABIL
Tigris
Euphrates
JORDAN
SAUDI ARABIA
Basra
KUWAIT
LEGEND:
ISIS Presence
Town/city controlled/ contested


Groups Pledging Allegiance/Support to IS in Southeast Asia
MALAYSIA
1. IS Selatan Semenanjung (Islamic State of Southern Peninsula) - 2014
2. Revolusi Islam (Revo Group) - May 2014
3. Arakan Daulah Islamiyah (ADI) - Jun 14
4. Brigade Al-Jammah (BAJ) - Jun 14
5. Brigade Khalid Al Walid (BKAW) - Jun 14
6. Daulah Islam Malayzia - Jun 2014
7. Daulah Islamiyah Malaysia - 2015
8. Kumpulan Fisabilillah - 2015
9. Al-Qubro Generation - 2016
10. Follow the Sunnah - 2016
11. Kumpulan Gagak Hitam - 2016
12. Perintis - 2016
INDONESIA
1. Gerakan Tauhid Lamongan - Feb 14
2. Halawi Makmun Group - Feb 14
3. Kongres Umat Islam Bekasi (KUIB) - Feb 14
4. Umat Islam Nusantara (UIN) - Feb 14
5. Asybal Tawhid Indonesia - Mar 14
6. Gerakan Reformasi Islam (GARIS) - Mar 14
7. Forum Aktivis Syariah Islam (FAKSI) - Apr 14
8. Jamaah As-Sunnah - Apr 14
9. Jamaah Tauhid wal Jihad - Apr 14
10. Ring Banten - Apr 14
11. Khilafatul Muslimin - Jul 14
12. Ansharul Khilafah Jawa Timur - Jul 14
13. Darul Islam - Jul 14
14. Pendukung dan Pembela Daulah (PPD)/ Forum Pendukung Daulah Islamiyah - Jul 14
15. Ikhwan Muwahid Indunisy - fie Jazirah al-Muluk (Ambon) - Jul 14
16. IS Aceh - Jul 14
17. Jamaah Ansharut Tauhid (JAT) - Jul 14
18. Laskar Jundullah - Jul 14
19. Mujahidin Indonesia Barat (MIB) - Jul 14
20. Mujahidin Indonesia Timur (MIT) (Daulah Indonesia Timur) - Jul 14
21. Forum Komunikasi Dunia Islam (FKDI) - Dec 14
22. Anshor Daulah Islamiyah Makassar - Feb 15
23. Hisbah Team - Mar 15
24. Jamaah Anshar Daulah Khilafah Nusantara (JAKDN) - Mar 15
25. Jamaah Ansharud Daulah (JAD)/Jamaah Ansyarul Khilafah Islamiyah (JAKI) - Mar 15
26. Panitia Bersama Pendukung dan Pembela Khilafah - May 15
27. Harakah Sunni untuk Masyarakat Indonesia - Jun 15
28. Katibah al-Iman - Aug 2015
29. Katibah Gonggong Rebus - Aug 15
THE PHILIPPINES
1. Ansar Dawlah Fi Filibbin (ADFF) - May 14
2. Rajah Solaiman Islamic Movement (RSIM) - Jul 14
3. Al Harakatul Islamiyah Battalion - Jul 14
4. Jama'at Ansar Khilafa - Aug 14
5. Bangsamoro Islamic Freedom Fighters - 13 Aug 14
6. Ansharul Khilafah Philippines Battalion - 14 Aug 14
7. Bangsamoro Justice Movement - 11 Sep 14
8. Khilafah Islamiya Mindanao (KIM) (Ghuraba) - Sep 14
9. Abu Sayyaf Group (Isnilon Hapilon Faction) - 2015
10. Syuful Khilafa Fi Luzon - 2015
11. Jama'atul Tawheed wal Jihad alias IS Lanao in Butig - Apr 15
12. Ma'rakah Al-Ansar Battalion - May 15
13. Dawla Islamiyyah Cotabato (Di Cotabato) - Jan 16
14. Dawlat Al Islamiya Waliyatul Masrik - Jan 16
15. Ansar Al-Shariah Battalion - 4 Jan 16
16. Jamaah al-Tawhid wal Jihad Philippines - Feb 16
17. Jundul-Tawhid Battalion (ASG Sulu) - Mar 16
18. Abu Dujanah Battalion - Jun 16
19. Abu Khubayn Battalion - Jun 16
20. Jundallah Battalion - Jun 16
21. Abu Sadr Battalion - Jun 16
22. Jamaah Al Muhajirin wal Anshor (Philipina) - 5 Apr 17
23. Islamic State of Marawi - May 17
LEGEND
Declared Bay'ah to Abu Bakar al-Baghdadi
Individuals in this group declared support to IS
Declared support to IS
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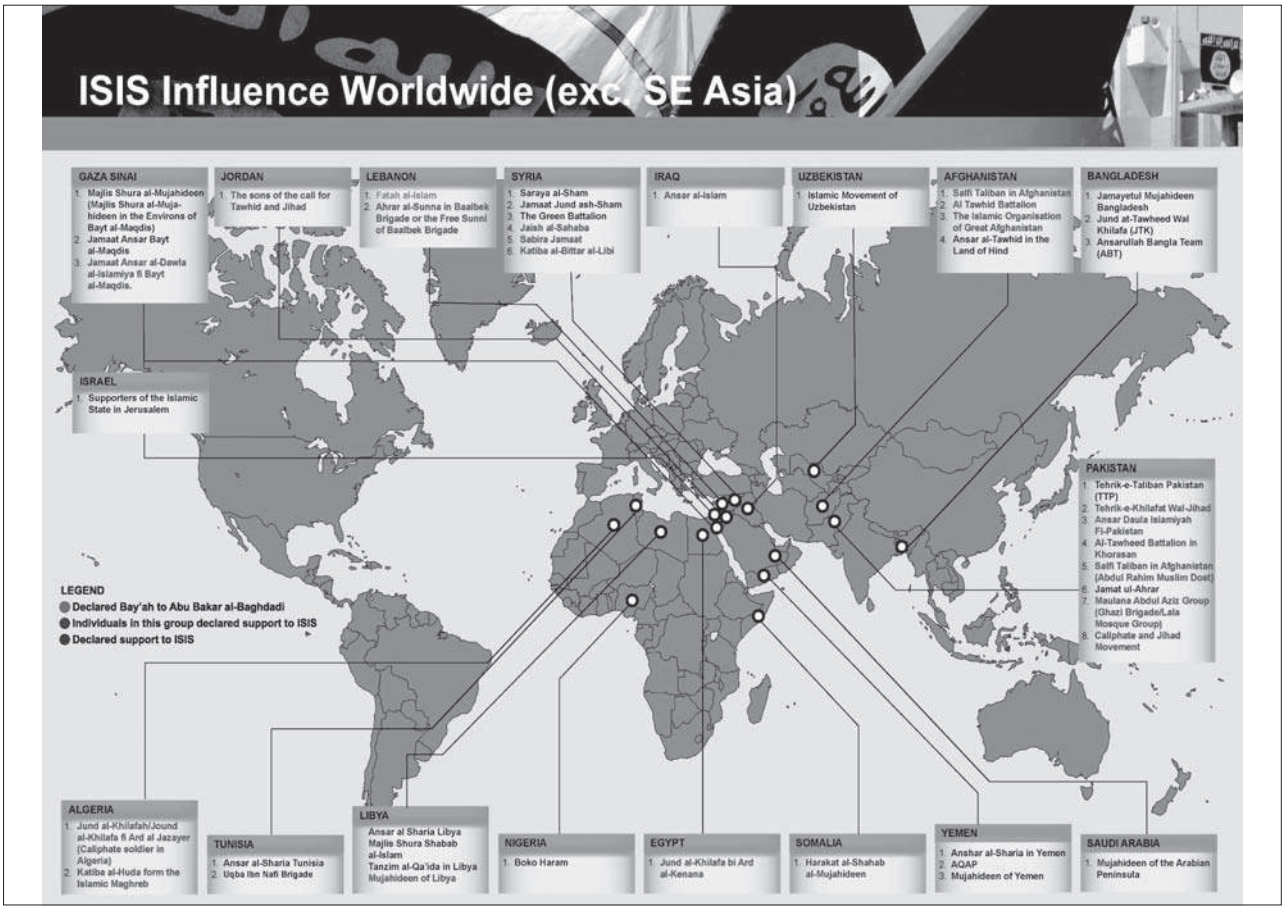
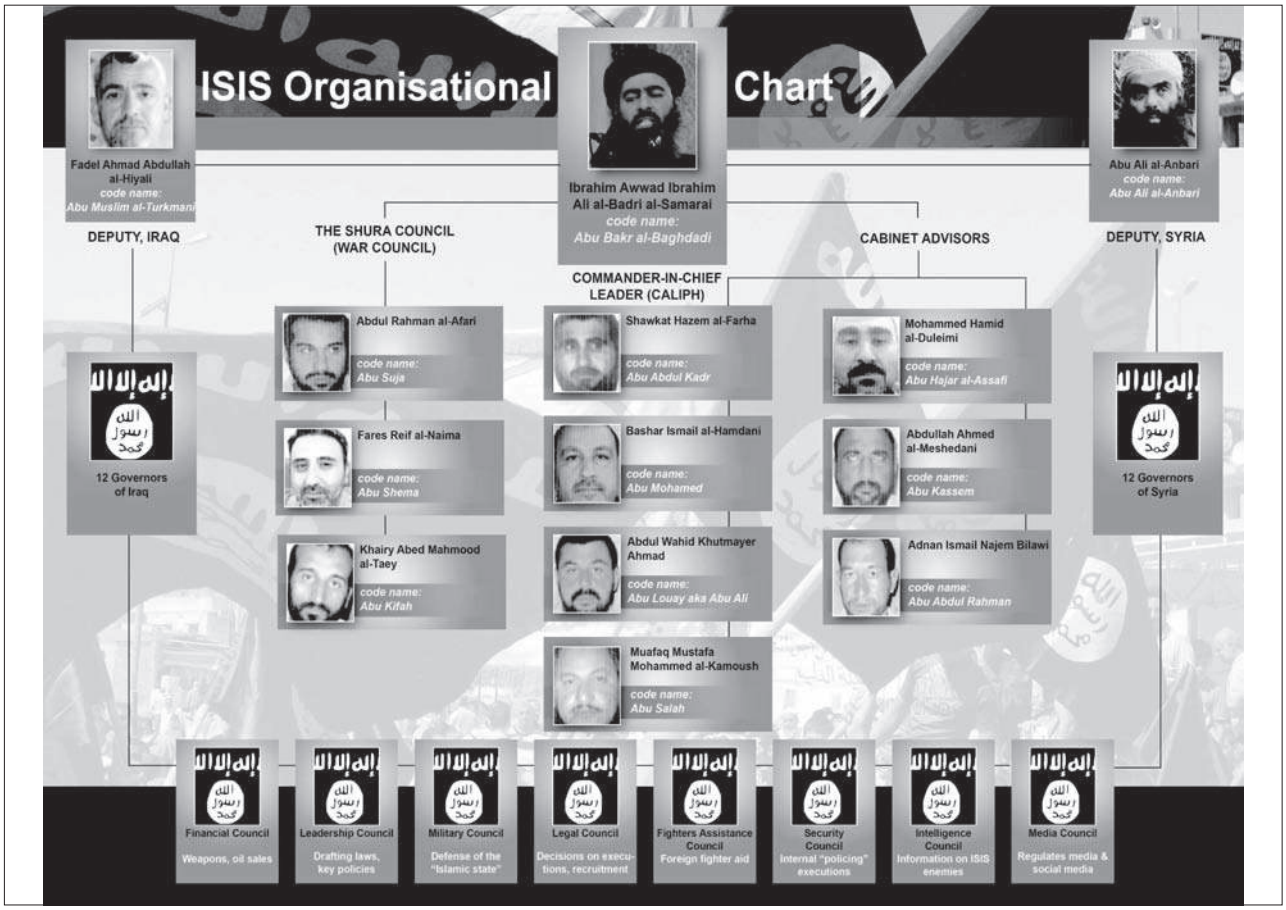
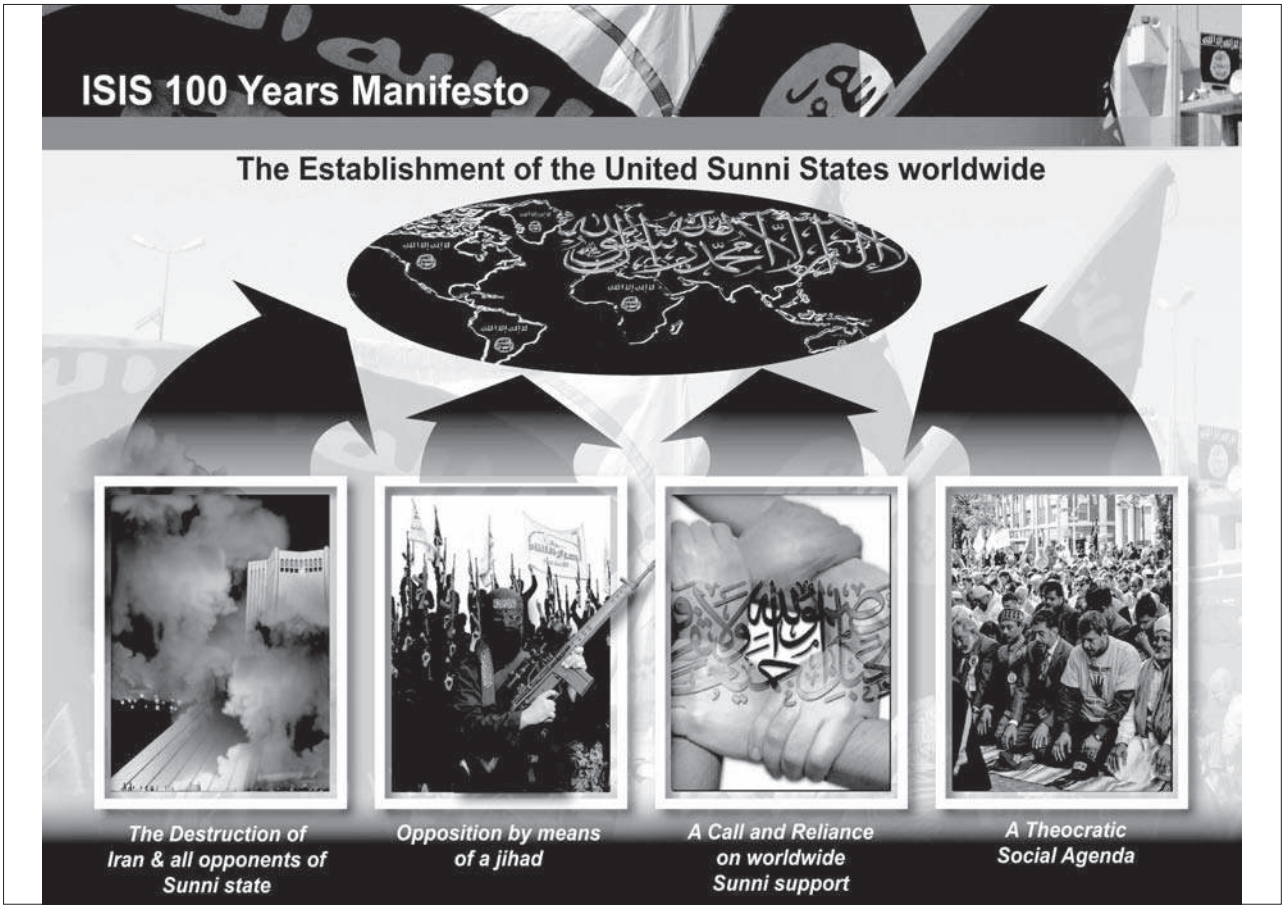

ISIS Influence Worldwide (exc. SE Asia)
GAZA SINAI
1. Majlis Shura al-Mujahideen (Majlis Shura al-Mujahideen in the Environs of Bayt al-Maqdis)
2. Jamaat Ansar Bayt al-Maqdis
3. Jamaat Ansar al-Dawla al-Islamiya fi Bayt al-Maqdis.
JORDAN
1. The sons of the call for Tawhid and Jihad
LEBANON
1. Fatah al-Islam
2. Ahrar al-Sunna in Baalbek Brigade or the Free Sunni of Baalbek Brigade
SYRIA
1. Saraya al-Sham
2. Jamaat Jund ash-Sham
3. The Green Battalion
4. Jaish al-Sahaba
5. Sabira Jamaat
6. Katiba al-Bittar al-Libi
IRAQ
1. Ansar al-Islam
UZBEKISTAN
1. Islamic Movement of Uzbekistan
AFGHANISTAN
1. Salfi Taliban in Afghanistan
2. Al Tawhid Battalion
3. The Islamic Organisation of Great Afghanistan
4. Ansar al-Tawhid in the Land of Hind
BANGLADESH
1. Jamayetul Mujahideen Bangladesh
2. Jund al-Tawheed Wal Khilafa (JTK)
3. Ansarullah Bangla Team (ABT)
ISRAEL
1. Supporters of the Islamic State in Jerusalem
PAKISTAN
1. Tehrik-e-Taliban Pakistan (TTP)
2. Tehrik-e-Khilafat Wal-Jihad
3. Ansar Daula Islamiyah Fi-Pakistan
4. Al-Tawheed Battalion in Khorasan
5. Salfi Taliban in Afghanistan (Abdul Rahim Muslim Dost)
6. Jamat ul-Ahrar
7. Maulana Abdul Aziz Group (Ghazi Brigade/Lala Mosque Group)
8. Caliphate and Jihad Movement
LEGEND
Declared Bay'ah to Abu Bakar al-Baghdadi
Individuals in this group declared support to ISIS
Declared support to ISIS
ALGERIA
1. Jund al-Khilafah/Jound al-Khilafa fi Ard al Jazayer (Caliphate soldier in Algeria)
2. Katiba al-Huda form the Islamic Maghreb
TUNISIA
1. Ansar al-Sharia Tunisia
2. Uqba Ibn Nafi Brigade
LIBYA
Ansar al Sharia Libya
Majlis Shura Shabab al-Islam
Tanzim al-Qa'ida in Libya
Mujahideen of Libya
NIGERIA
1. Boko Haram
EGYPT
1. Jund al-Khilafa bi Ard al-Kenana
SOMALIA
1. Harakat al-Shahab al-Mujahideen
YEMEN
1. Anshar al-Sharia in Yemen
2. AQAP
3. Mujahideen of Yemen
SAUDI ARABIA
1. Mujahideen of the Arabian Peninsula


ISIS Worldwide Foreign Fighters
NETHERLANDS 152
NORWAY 10
FINLAND 20
SWEDEN 10
BOSNIA 60
DENMARK 94
U. KINGDOM 400
UKRAINE 50
TURKEY 400
AUSTRIA 60
FRANCE 412
BOSNIA 60
ALBANIA 146
SPAIN 95
RUSSIA 800
KYRGYZSTAN 50
CHINA 100
JAPAN N/A
CANADA 70
U. STATES 130
TUNISIA 3000
EGYPT 358
SYRIA
JORDAN 2089
AFGHANISTAN 33
PAKISTAN 330
ALGERIA 250
MOROCCO 1500
LIBYA 556
SAUDI ARABIA 2500
U.A.E. 11
LEBANON 890
BANGLADESH N/A
SENEGAL N/A
ISRAEL 20
YEMEN 110
KUWAIT 71
MALAYSIA N/A
SUDAN 94
BAHRAIN 12
MALDIVES N/A
SINGAPORE N/A
IVORY COAST N/A
QATAR 18
INDONESIA 60
SOMALIA 68
T. TOBAGO N/A
AUSTRALIA 250
CHILE N/A


ISIS Organisational Chart
Fadel Ahmad Abdullah al-Hiyali
code name: Abu Muslim al-Turkmani
DEPUTY, IRAQ
Ibrahim Awwad Ibrahim Ali al-Badri al-Samarai
code name: Abu Bakr al-Baghdadi
COMMANDER-IN-CHIEF LEADER (CALIPH)
Abu Ali al-Anbari
code name: Abu Ali al-Anbari
DEPUTY, SYRIA
THE SHURA COUNCIL (WAR COUNCIL)
CABINET ADVISORS
Abdul Rahman al-Afari
code name: Abu Suja
Fares Reif al-Naima
code name: Abu Shema
Khairy Abed Mahmood al-Taey
code name: Abu Kifah
Shawkat Hazem al-Farha
code name: Abu Abdul Kadr
Bashar Ismail al-Hamdani
code name: Abu Mohamed
Abdul Wahid Khutmayer Ahmad
code name: Abu Louay aka Abu Ali
Muafaq Mustafa Mohammed al-Kamoush
code name: Abu Salah
Mohammed Hamid al-Duleimi
code name: Abu Hajar al-Assafi
Abdullah Ahmed al-Meshedani
code name: Abu Kassem
Adnan Ismail Najem Bilawi
code name: Abu Abdul Rahman
12 Governors of Iraq
12 Governors of Syria
Financial Council
Weapons, oil sales
Leadership Council
Drafting laws, key policies
Military Council
Defense of the "Islamic state"
Legal Council
Decisions on executions, recruitment
Fighters Assistance Council
Foreign fighter aid
Security Council
Internal "policing" executions
Intelligence Council
Information on ISIS enemies
Media Council
Regulates media & social media


ISIS Atrocities in Iraq and Syria
TURKEY
Minbej
Aleppo
RAQQA
Raqqa
HASAKA
Hassakeh
Tal Afar
Mosul
Erbil
ALLEPO
Thawrah
NINIVEH
KIRKUK
Kirkuk
Deir ez-Zor
DEIR EZ-ZOR
SYRIA
Abu Kamal
Baiji
Tikrit
IRAN
SALEHEDDIN
DIYALA
Samarra
LEBANON
Damascus
IRAQ
Ramadi
Baghdad
ANBAR
Falluja
BABIL
Tigris
Euph.
LEGEND:
ISIS Presence
Town/city controlled/ contested
Sources: Institute for the Study of War;CIA; The Economist
Suicide Bombing
Uncounted suicide bombing in cars and buildings occured in various areas in Iraq and Syria
Abductions
Innumerable abductions occured in various areas in Iraq and Syria
Beheadings
2 Americans, 2 British, several Lebanese & Syrian soldiers were beheaded in ISIS
Cruelty against Women & Child
Rape, enslavement, marriage and mutilations against women & childrens
Extortions
Innumerable extortions occured in various areas in Iraq and Syria
Public Executions
Countless public executions occured in various areas in Iraq and Syria
Torture
Various type of cruel, inhumane tortures occured in various areas in Iraq and Syria
Forced Recruitments
Childrens and adults were forced to conscript in the ISIS military force
Amputations
Countless amputations of civilians and military members in Iraq and Syria
Crucifixions
Myriad numbers of civilians and military members were crucified in Iraq and Syria
Defilement of religious places
Countless defilement cases of churches and shiite mosques occured in ISIS
Fire gas explosive
Uncounted gas explosions occured in various areas in Iraq and Syria
Property robberies
A myriad of robberies occured in various areas in Iraq and Syria
Trials & Detentions
Uncounted trials and detentions occured in various areas in Iraq and Syria


ISIS Sources of Income
ISIS FUNDING
PRIVATE DONORS
Private donors from Saudi Arabia, Kuwait, Turkey and Qatar.
STATE FUNDING
Intelligence services from countries oppose to Iran and Syria.
"DOMESTIC INCOME"
Controlling and centralising economic activities in areas of control. Estimated that during 2013, the IS income from extortion was around $8 million per month.
ILLICIT ECONOMY
Exports about 9,000 barrels of oil per day at prices ranging from about $25 - $45 (£15 - £27). Estimated oil production in Syria and Iraq at 80,000 barrels per day - income of about $8 million per day.


ISIS 100 Years Manifesto
The Establishment of the United Sunni States worldwide
The Destruction of Iran & all opponents of Sunni state
Opposition by means of a jihad
A Call and Reliance on worldwide Sunni support
A Theocratic Social Agenda

THANK YOU

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Head
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167th UNAFEI International Training Course
(VE3-3) Dr. Rohan Gunaratna
8 PM, Sep. 2017

Global Terrorist Rehabilitation and Community Engagement Programmes: The State-of-the-Art

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Global Approaches

1. **Counterterrorism Operations**
   "Fighting fire with fire"
   Although effective, will not by itself produce the desired outcome

2. **Rehabilitation and Reintegration**
   Winning "hearts and minds" to transform beneficiaries through multi-faceted activities

3. **Community Engagement**
   To "inoculate" vulnerable segments of the community against radicalisation

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Global Approaches: (1) Counterterrorism Operations

- Coordinated intelligence measures
- "Hard" approaches:
  - Disrupt
  - Capture
  - Kill

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Global Approaches: (2) Rehabilitation and Reintegration

Why rehabilitate?

1. ***Security Threat****:* Unless terrorists in custody transform, when released they will continue to pose an enduring threat to public safety and security
2. ***Regeneration:*** Terrorists will contaminate society and increase the pool of supporters and sympathisers
3. ***Terrorist Iconography:*** Terrorists will earn the status of heroes worthy of respect and emulation by the next generation of terrorist recruits

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Global Approaches: (2) Rehabilitation and Reintegration

- Dedicated specialist government body working with community partners and private sector
- Creating specialised units of *ulama* and *asatizah* with strategy and action plan
- Re-engineering prisons from "pesantren jihad" to become "pesantren salam" (peace)
- Robust reintegration strategy and aftercare plan

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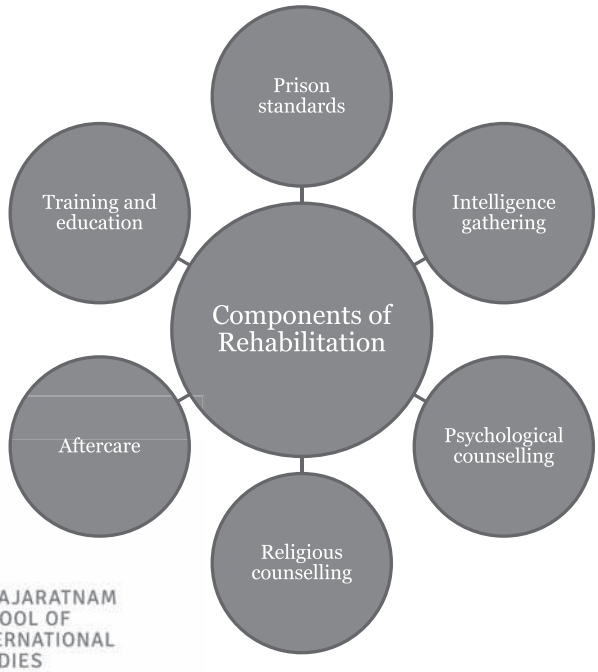
Components of Rehabilitation



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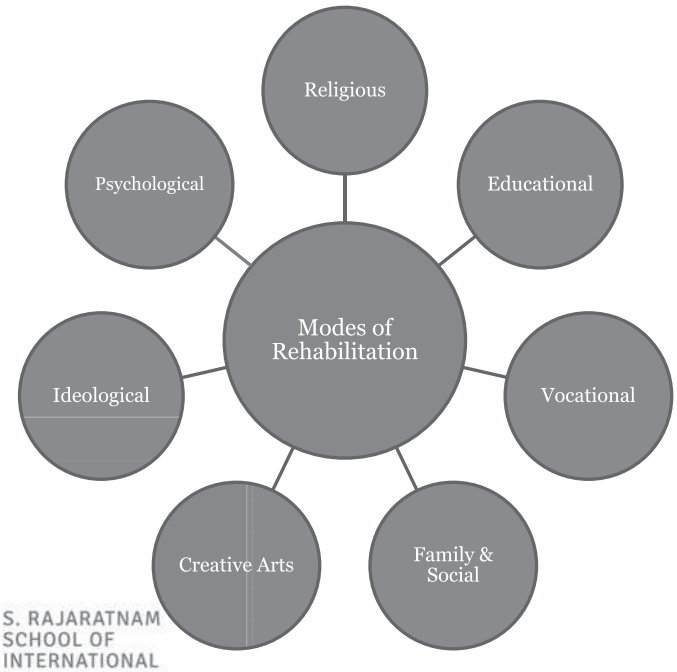
Modes of Rehabilitation



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Global Rehabilitation Initiatives

Egypt	Saudi Arabia	Singapore	Pakistan	Colombia
Algeria	Yemen	Malaysia	Sri Lanka	Spain
Libya	Iraq	Indonesia	Oman	UAE
				Nigeria

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Global Rehabilitation Initiatives: North Africa

- Egypt DEFUNCT
  - De-radicalisation of the Egyptian Islamic Jihad and the Islamic Group of Egypt
  - State and civil society facilitated processes led threat groups to renounce violence and produce a corpus of ideological literature renouncing Al Qaeda
- Algeria DEFUNCT
  - De-radicalisation of the Islamic Salvation Army began with the leadership
  - Selective inducements led to de-radicalisation

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Global Rehabilitation Initiatives: North Africa

- Libya DEFUNCT

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Global Rehabilitation Initiatives: Southeast Asia

- Singapore ACTIVE
  - Best known programme in the region
  - A model for others
- Malaysia ACTIVE
  - Extensive programme under the Police
  - Well-supported by government, law enforcement, religious authorities and civil society
- Indonesia ACTIVE
  - Responsibility entrusted to the National Counterterrorism Agency: BNPT
  - Geared towards prison assistance, reintegration, and post-release livelihood programmes

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Global Rehabilitation Initiatives: Middle East

- Saudi Arabia ACTIVE
  - Most comprehensive of existing programmes
  - Best-funded, longest-running effort with the most graduates
- Yemen DEFUNCT
  - Due to a lack of political support, the programme collapsed
- Iraq ACTIVE
  - The largest programme; drew on Saudi and Singaporean experiences

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Global Rehabilitation Initiatives: Saudi Arabia

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Global Rehabilitation Initiatives: Yemen

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Global Rehabilitation Initiatives: Iraq

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Global Rehabilitation Initiatives: South Asia

- Sri Lanka ACTIVE
  - Focused on Tamil Tigers surrendees since 19th May 2009
  - Comprehensive programme by the army run with the support of the civil society and private sector
  - Of 12,000 beneficiaries, only around 400 beneficiaries are left to complete the programme
  - Dedicated Bureau of the Commissioner General of Rehabilitation

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Global Rehabilitation Initiatives: Sri Lanka

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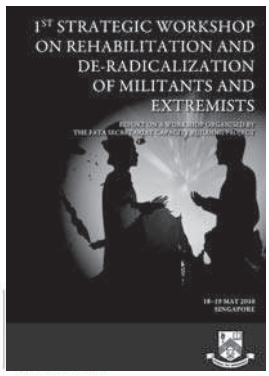
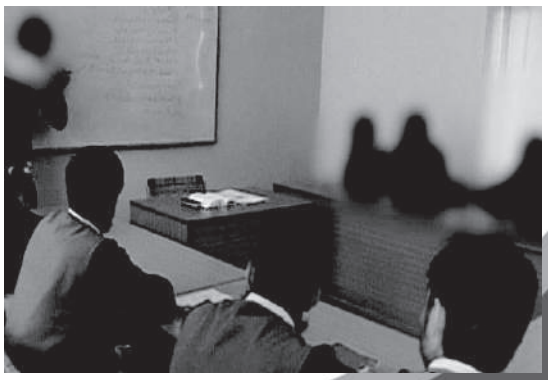
Global Rehabilitation Initiatives: South Asia

- Pakistan ACTIVE
  - 2155 adults and children rehabilitated so far
  - Functioning programmes in Mishal (Swat), Sabaoon (Swat), Heila (Tank) and Khar (Bajaur)





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Global Rehabilitation Initiatives: South America and Europe

- Colombia ACTIVE
  - Former members of both left-wing (FARC) and right-wing (AUC) groups are rehabilitated
- Spain ACTIVE
  - Focus on prevention and cultural integration
  - Long-running amnesty programme with ETA prisoners in Spanish prisons
  - Intentions to create a similar programme for Muslim radicals

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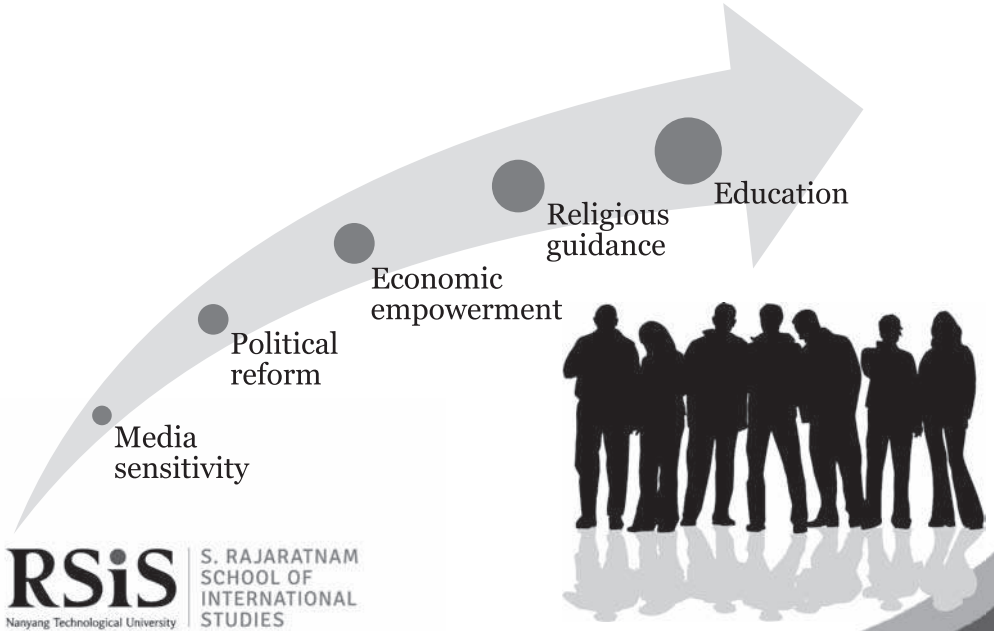
Global Approaches: (3) Community Engagement



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Community Engagement Initiatives

- Two dozen programs: mostly unstructured, few structured
- United Kingdom
  - Muslim Contact Unit
  - Focus on counter-radicalisation
  - Intelligence gathering
  - Partnership with community organisations
  - Increasing capability and resilience
  - Providing training and support to operational staff
  - Offender management and interventions
  - Strategic management and capacity

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Community Engagement Initiatives

- United States
  - Focus on deterrence
  - No public policy on de-radicalisation
- Netherlands
  - Separate terrorist detention unit
  - Counter-radicalisation programme in partnership with the community

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New Initiatives

- UNICRI
  - Rehabilitation and reintegration initiative to offer assistance to countries interested in addressing any or all of the full range of issues relating to violent radicalisation in their prisons
- EU Workshop on Effective Programming for Countering Violent Extremism
  - How the EU can support other countries in their efforts to address violent extremism and recruitment
  - Assist the European Commission with future CVE actions under the Instrument for Stability (IFS) as well as traditional development instruments including rehabilitation and community engagement

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Challenges

- No “one size fits all” approach: Every programme is unique
- Rehabilitation programmes must be tailored to individual country conditions and cultures
- Reintegration determines rehabilitation success
- Identify and empower rightful speakers of faith
- Create legal framework, systems and infrastructure to reconcile communities
- Build resilience: minimizing sympathy and support to violent and radical ideologies
- Political will, a must

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The Future

- Sustain structured programs
- Support ad-hoc Programs
- Develop a working model for rehabilitation
- Psychometrics: quantifying success
- Repenting and rejecting violence is inadequate, must embrace and champion the cause of peace
- Threat has shifted to cyberspace: build websites to counter-ideology and promote moderation
- Bring the West - EU and US - on board

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Conclusion

- Rehabilitation and community engagement are long-term processes
- Success can be determined overtime
- Government partnership with private sector and civil society is paramount
- In the battle against current wave of extremism and violence, engage all communities
- Emerging as a standard toolkit: Rehabilitation and community engagement are global imperatives

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"He who fights with monsters should look to it that he himself does not become a monster"

Friedrich Nietzsche,
Beyond Good and Evil, 1886.

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Thank You

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20th UNAFEI UNCAC TRAINING PROGRAMME (24-Nov)
Dr. Eduardo VETERE

THE ROLE OF THE UNITED NATIONS IN THE FIGHT AGAINST CORRUPTION

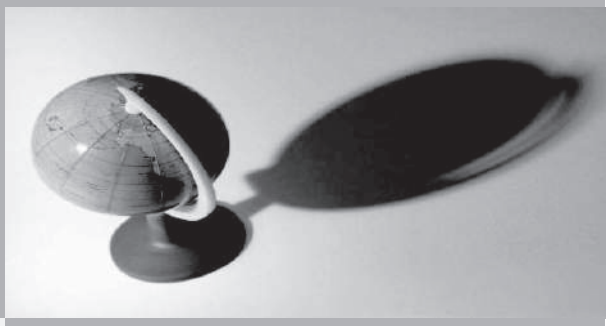
Lecture by Eduardo Vetere
Executive Secretary of the Eighth, Ninth, and Eleventh UN Crime Prevention and Criminal Justice Congresses
Vice President of the International Association of Anti-Corruption Authorities

The 20th UNAFEI UNCAC Training Programme
24 November 2017

Corruption --- *Multi-dimensional Challenge*

Corruption: a global threat

Cost of corruption exceeds by far the damage caused by any other single crime



- World Bank – More than 1 trillion US$ is paid in bribes every year and the harm exceeds their proceeds: US$ 1 bribe = US$ 1.7 damage
- Asian Development Bank: Cost of corruption may amount up to 17% of countries' GDP

CASES OF GRAND CORRUPTION

Mobuto, Zaire
US $ 5 billon

More than the foreign debt

87% of the Annual Government Budget

Duvaliers, Haiti
US $ 500 million

Nigerian kleptocrats
US $ 100 billion

More than double the DGP
3-4 times the foreign debt

Origins

Paving the ground for international action

- Fourth U.N. Congress (Kyoto, 1970): Declaration of the Fourth Congress (Report: UN Pub. Sales No. E/71.IV.8)
- Fifth U.N. Congress (Geneva, 1975):"Crime as business" (Report: UN Pub. Sales No. E/76.IV.2)
- Code of Conduct for Law Enforcement Officials (GA Res. 34/169 of 17 December 1979, annex: see, in particular, the commentary on article 7, which makes reference to a definition of corruption)
- Sixth U.N. Congress (Caracas, 1980): "Crime and abuse of power" (Report: UN Pub. Sales No. E/81.IV.4)
- Seventh U.N. Congress (Milan, 1985): Guiding Principles (Report: UN Pub. Sales No. E/86.IV.1)

Origins

Setting international standards

- Interregional Seminar on Corruption in Government (The Hague, Netherlands, 11-15 December 1989) (Report: TCD/SEM.90/2-INT/89/R56)
- Eighth U.N. Congress (Havana, 1990): Resolution 7 on "Corruption in government" (Report: UN Pub. Sales No. E/91.IV.2)
- Manual on Practical Measures against Corruption, International Review of Criminal Policy, 1993 (Report: UN Pub. Sales No. E/93.IV.4)
- Versailles Ministerial Meeting on the Creation of an Effective U.N. Crime Prevention and Criminal Justice Programme (21-23 November 1991): Establishment of the Commission on Crime Prevention and Criminal Justice (Report: A/46/703 and Corr.1)
- Statement of Principles and Programme of Action approved by the General Assembly in its resolution 46/152, annex, of 18 December 1991
- Various sessions of the Commission devoted to matters related to corruption

Origins

Setting international standards

- World Ministerial Conference on Organized Transnational Crime (Naples, 21-23 November 1994): corruption as characteristic feature of organized crime (Report: A/49/748)
- Naples Political Declaration and Programme of Action, approved by the General Assembly in its resolution 49/159 of 23 December 1994)
- Ninth U.N. Congress (Cairo, 1995): Special session on corruption involving public officials (Report: A/CONF.169/16/Rev.1)
- Regional Ministerial Workshop on Follow-up to the Naples Declaration: Buenos Aires, 27-30 November 1995 (Report: E/CN.15/1996/2/Add.1, annex)
- GA Res. 51/59 of 12 December 1996: Adoption of the International Code of Conduct for Public Officials, as recommended by the Crime Commission at its fifth session (Report: E/1996/30)
- GA Res. 51/60 of 12 December 1996: Adoption of the U.N. Declaration on Crime and Public Security , as recommended by the Crime Commission at its fifth session (Report: E/1996/30) (prevent and combat corruption and bribery –art. 10)
- GA Res. 51/191 of 16 December 1996: Adoption of the U.N. Declaration against Corruption and Bribery in International Commercial Transactions, as recommended by the Second Committee of the General Assembly

Origins

Building political momentum for more effective international action

- African Regional Ministerial Workshop (Dakar, 21-23 July 1997) – Report: E/CN.15/1998/6/Add.1
- Asian Regional Ministerial Workshop (Manila, 23-25 March 1998) – Report: E/CN.15/1998/6/Add.2
- GA Res. 52/87 of 12 December 1997 on "International cooperation against corruption and bribery in international commercial transactions", as recommended by the Crime Commission at its sixth session (Report: E/1997/30)

Exploring the viability of an international instrument against corruption

- Expert Group Meeting on Corruption (Buenos Aires, 17-21 March 1997) - Report: E/CN.15/1997/3/Add.1
- Expert Group Meeting on Corruption and its Financial Channels (Paris, 30 March-1 April 1999) – Report: E/CN.15/1999/10
- GA Res. 53/176 of 18 December 1998 on "Action against corruption and bribery in international commercial transactions"

Ad Hoc Committee for the negotiations of the UNTOC

- Inclusion of provisions targeting corruption in the public sector (art. 8-9)
- Attesting the need for a new comprehensive international instrument against corruption: GA Res. 54/128 of 17 December 1999, as recommended by the Ad Hoc Committee, 7th session, Vienna, 17-28 January 2000 (Report: A/AC.254/25) and by the Crime Commission at its 8th session (Report: E/1999/30)
- GA Res. 54/205 of 23 December 1999 on "Prevention of corrupt practices and illicit transfer of funds"

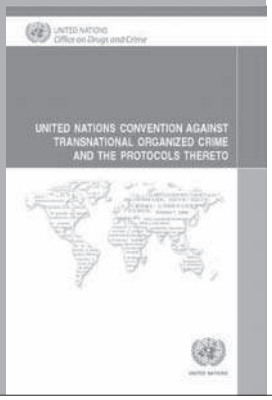
Origins

The process - Mandates

- Tenth U.N Congress
  - Workshop on "Combating corruption"
  - High-level segment: need for an independent international instrument on corruption
  - Vienna Declaration on Crime and Justice (GA Res. 55/59 of 4 December 2000) and Plans of Action for its implementation (GA Res. 56/261 of 31 January 2002): enhanced international action against corruption and steps to develop an effective international legal instrument against corruption
- Thematic debate on new instruments against corruption, 9th session of the Crime Commission (Report: E/2000/30)
- Adoption of the United Nations Convention against Transnational Organized Crime (GA Res. 55/25 of 15 November 2000)
- Decision to create an Ad Hoc Committee for the Negotiation of a new Convention against Corruption (GA Res 55/61 of 4 December 2000)
- Intergovernmental expert group meeting on the preparation of draft terms of reference for the negotiation of the instrument (Vienna, 30 July-3 August 2001) - Report: A/AC.260/2
- Resumed session of the Commission on Crime Prevention and Criminal Justice: Vienna, 6-7 September 2001- Report: E/2001/30/Rev.1
- GA Res. 56/260 of 31 January 2002: Adoption of terms of reference for the negotiation of the instrument

United Nations Convention against Transnational Organized Crime and its Protocols

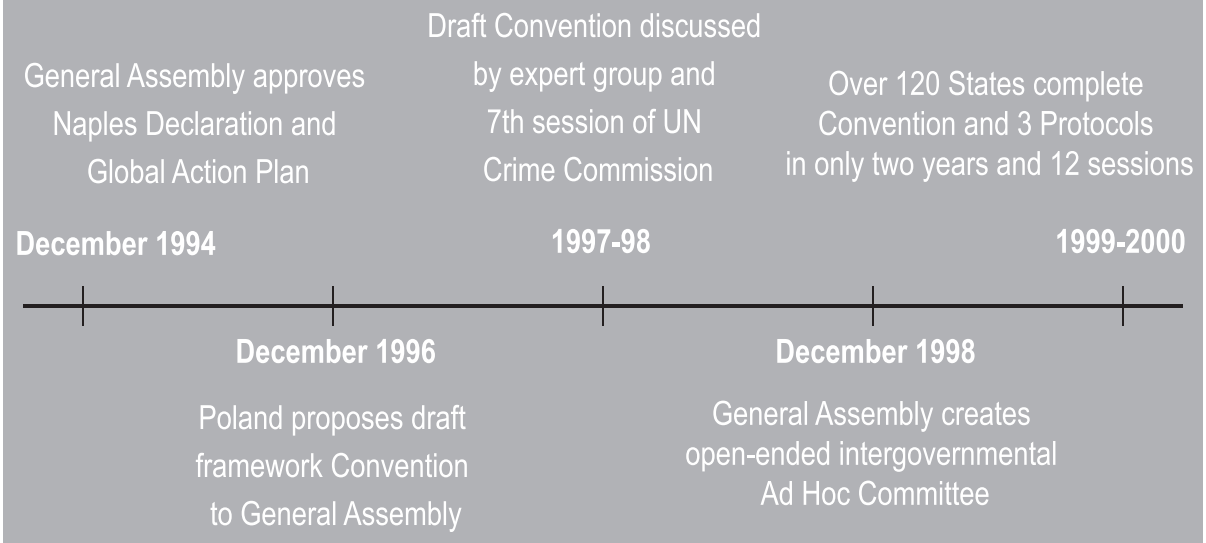
- From the Naples Declaration and Global Action Plan
- to the Polish proposal of the Draft Framework Convention
- to the establishment of the Ad Hoc Committee



"With the signing of the United Nations Convention against Transnational Organized Crime, the international community demonstrated the political will to answer a global challenge with a global response. If crime crosses borders, so must law enforcement…If the enemies of progress and human rights seek to exploit the opportunities of globalization, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings…The Convention gives us a new tool to address the scourge of crime as a global problem. With enhanced international cooperation we can have a real impact on the ability of the uncivil society to operate successfully and help the civil society in its often struggle for safety and dignity…".

Kofi Annan
High-level Political Signing Conference, Palermo, Italy, 12 December 2000

Negotiation of the instruments: 2-year process



Adoption of the instruments (G.A. Res.55/25 of 15Nov.2000 and 55/255 31 May 2001), with High level Signing Conference in Palermo

- United Nations Convention against Transnational Organized Crime (TOC)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (Trafficking Protocol)
- Protocol against the Smuggling of Migrants by Land, Sea and Air (Migrants Protocol)
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their parts and Components and Ammunition (Firearms Protocol)

Proceedings

Ad Hoc Committee Negotiating UNCAC in action

- Informal Preparatory Meeting of the Ad Hoc Committee for the negotiation of the Convention (Buenos Aires, 4-7 December 2001) – Report: A/AC.261/2
- Draft consolidated text reflecting proposals and contributions from Governments submitted to the Ad Hoc Committee at its first session (A/AC.261/3-Parts I-IV)
- First session: Vienna, 21 January-1 February 2002 - Report: A/AC.261/4
- Second session: Vienna, 17-28 June 2002 - Report: A/AC.261/7
- Third session: Vienna, 30 September-11 October 2002 - Report: A/AC.261/9
- Fourth session: Vienna, 13-24 January 2003 - Report: A/AC.261/13
- Fifth session: Vienna, 10-21 March 2003 – Report: A/AC.261/16
- Sixth session: Vienna, 21 July 8 August 2003 – Report: A/AC.261/22
- Seventh session: Vienna, 29 September-1 October 2003- Report: A/AC.261/25
- Report of the Ad Hoc Committee on the work of its first to seventh sessions: A/58/422, with an addendum containing interpretative notes for the official records (see the official publication of the *Travaux Préparatoires of the UNCAC, Sales No. E.10.V.13)*

Proceedings

Ad Hoc Committee in action: Rolling texts of the convention

- First session: A/AC.261/3-Parts I-IV
- Second session: A/AC.261/3/Rev.1/Add.1
- Third session: A/AC.261/3/Rev.2
- Fourth session: A/AC.261/3/Rev.3
- Fifth session: A/AC.261/3/Rev.4 + A/AC.261/L.232 + A/AC.261/L.254
- Sixth session: A/AC.261/3/Rev.5
- Seventh session: A/AC.261/L.257 (Final text of the Convention, as approved by the Ad Hoc Committee)

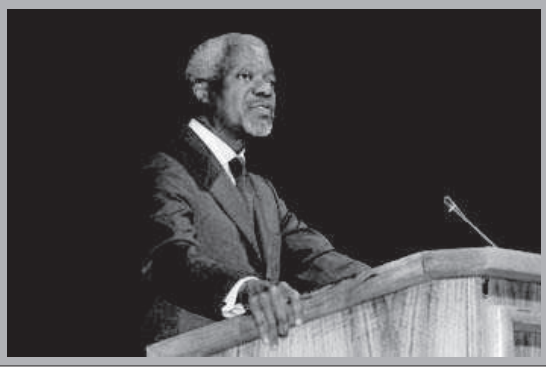
Outcome and political follow-up

- Report of the Ad Hoc Committee for the Negotiation of a Convention against Corruption on the work of its first to seventh sessions: A/58/422
- Adoption of the Convention by GA Res. 58/4 of 31 October 2003
- High-level Political Conference for the Purpose of Signing the UNCAC: Merida, Mexico, 9-11 December 2003
- Report of the High-level Political Conference: A/CONF.205/2 (procedural), A/59/77 (substantive)
- Entry into force of the Convention: 14 December 2005
- 8th Session of the Ad Hoc Committee (draft rules of procedure for the COSP): Vienna, 25-26 January 2006 – Report: A/AC.261/28-CAC/COSP/2006/2
- Draft rules of procedure for the COSP: A/AC.261/29-CAC/COSP/2006/3

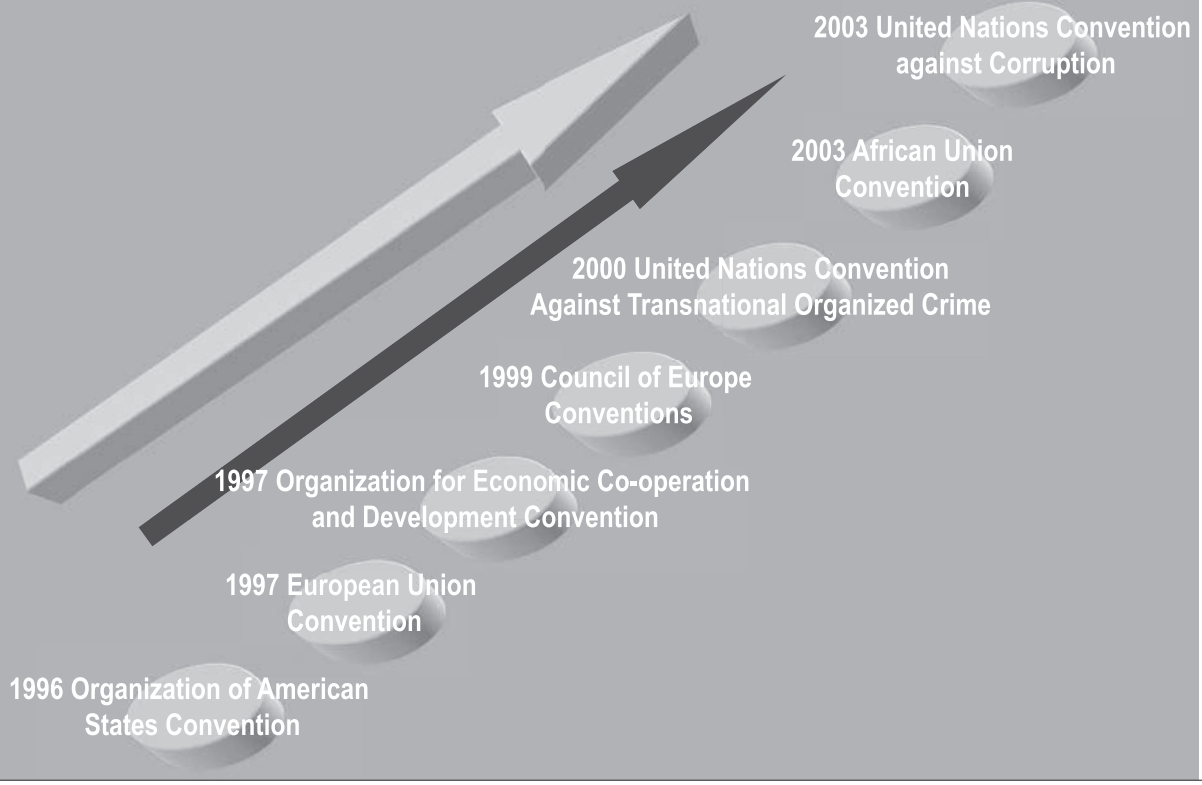
Outcome and political follow-up

"The adoption of the new Convention is a remarkable achievement.
But let's be clear: it is only a beginning…
If fully enforced, this new instrument can make a real difference to the quality of life of millions of people around the world…
It is a big challenge, but I think that, together, we can make a difference".

Kofi Annan, Introductory statement before the Plenary of the General Assembly adopting the Convention on 31 October 2003



A Brief History of International Anti-Corruption Treaties



The United Nations Convention against Corruption

Adopted by the General Assembly: Resolution 58/4, 31 October 2003, with High level Signing Conference in Merida

Entry into Force: 14 December 2005

Signatories: 140, States Parties: 183

The content of the UNCAC

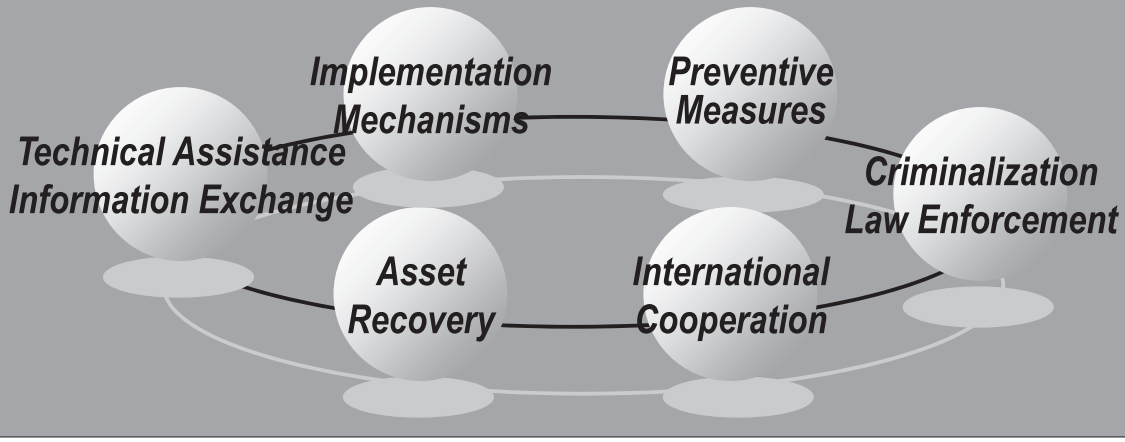
General Assembly resolution 58/4

- **Preamble**
- **71 Articles**
- **Eight chapters**

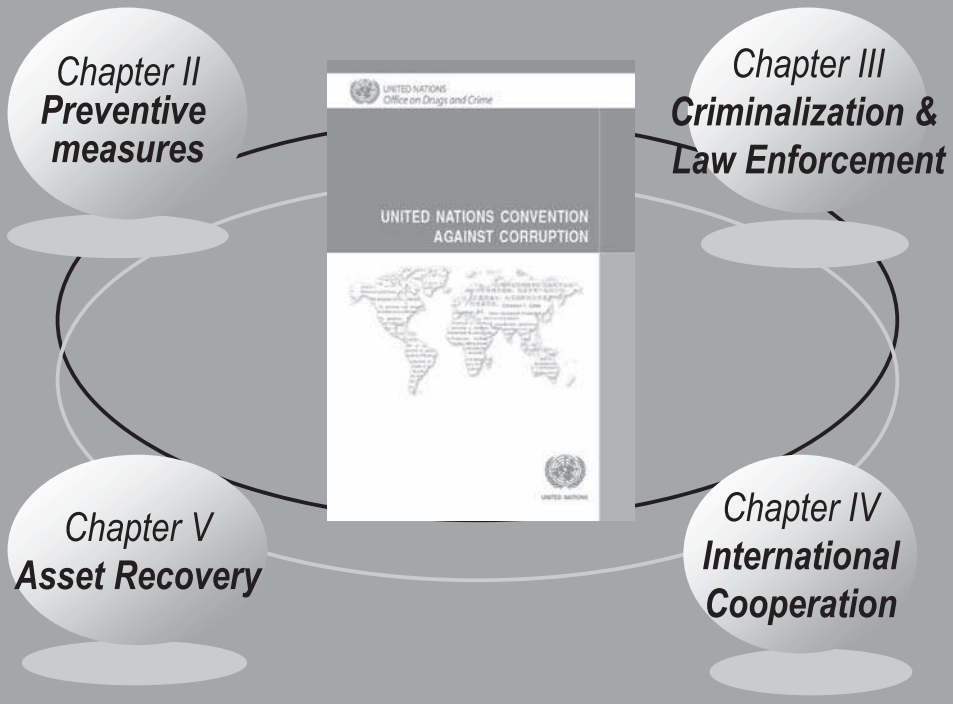
"Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the *implementation* ***of its obligation under this Convention."*** (Article 65, paragraph 1)

Aims and Structure of the UNCAC Convention

1. Prevent and Combat Corruption More Efficiently and Effectively
2. International Cooperation & Technical Assistance including Asset Recovery
3. Integrity, Accountability and Proper Management of Public Affairs and Property

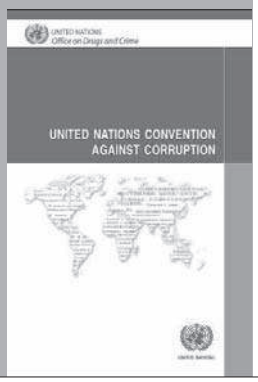


United Nations Convention against Corruption



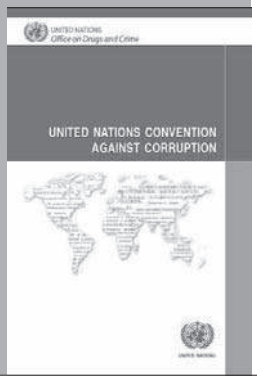
Chapter II – Preventive Measures (Arts 5 – 14)

- Anti-corruption policies and bodies
- Public Sector – Recruitment / Retention of Civil Servants
- Codes of conduct of Public Officials
- Public Procurement – Establishing a system with objective criteria
- Integrity of the Judiciary
- Private Sector
- Participation of society
- Measures to prevent money laundering



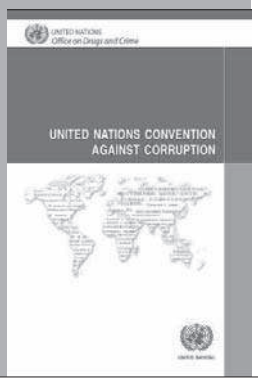
Chapter III – Criminalization and Law Enforcement (Arts 15 – 42)

- Criminalization of Specific Offences
  - Bribery of Public Officials
  - Embezzlement
  - Abuse of Functions
  - Illicit Enrichment
  - Bribery / Embezzlement in the Private Sector
  - Trading in influence
  - Laundering of proceeds of crime
  - Obstruction of justice



Chapter III – Criminalization and Law Enforcement (Arts 15 – 42)

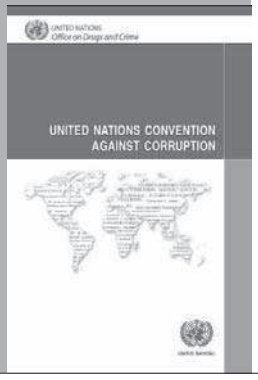
- General Provisions relating to all Offences:
  - Liability of legal persons
  - Statute of limitations
  - Prosecution, adjudications and sanctions
  - Protection of witnesses, experts and victims
  - Freezing, seizure and confiscation
  - Bank secrecy
  - Specialized authorities
  - Various forms of cooperation
  - Jurisdiction



Chapter IV – International Cooperation (Arts. 43 - 50)

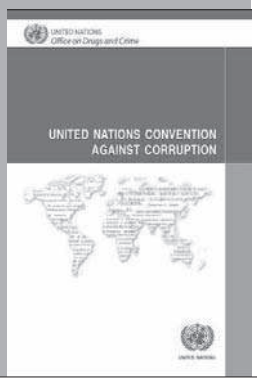
- Extradition
  - Addresses the issue of 'double criminality'.
  - If a State does not extradite its nationals, it must seek to prosecute or enforce a sentence that has already been imposed .
  - Encouragement of cooperation and the agreement of bilateral treaties

- Mutual Legal Assistance
  - MLA to be provided in relation to investigations, prosecutions and judicial proceedings
  - Requirement for States to designate an MLA authority
  - Outlines a template for an MLA request



Chapter IV – International Cooperation (Arts. 43 - 50)

- Transfer of sentenced persons
- Transfer of criminal proceedings
- Law enforcement cooperation
- Joint investigations
- Special investigative techniques

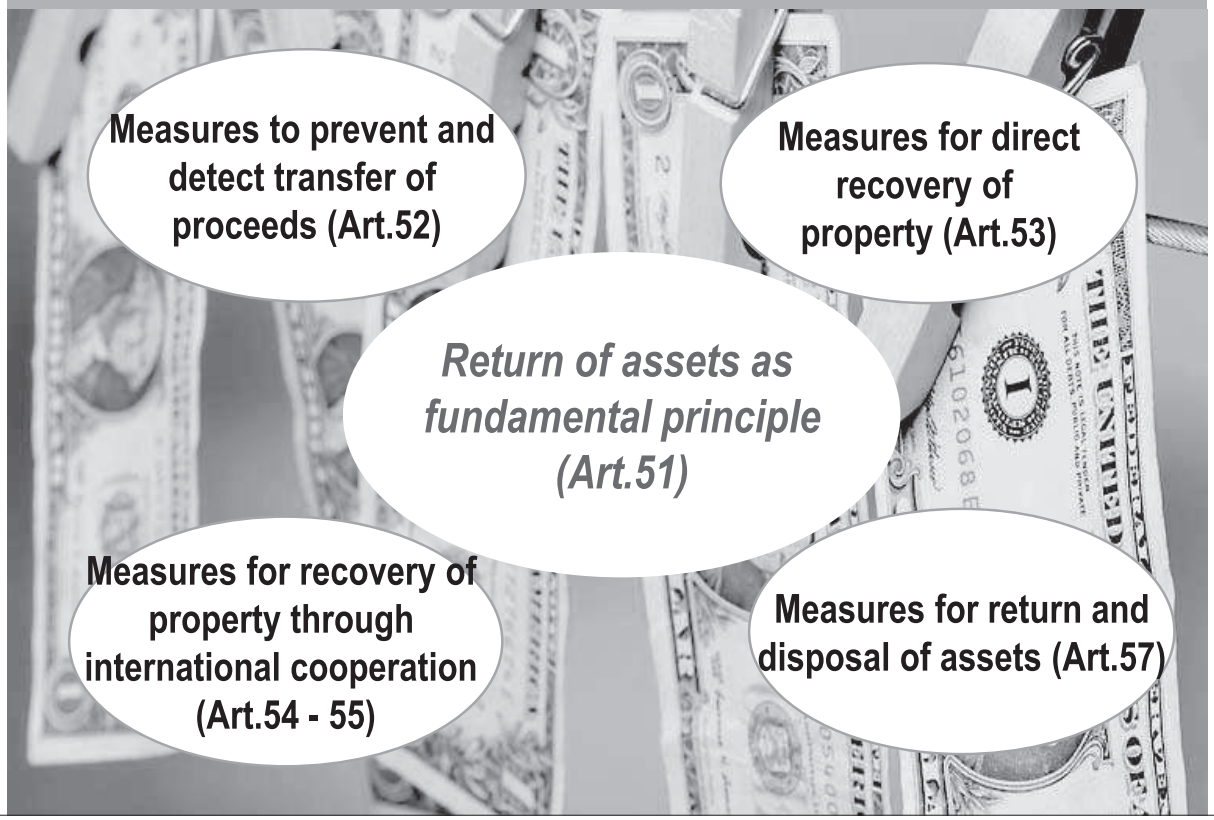


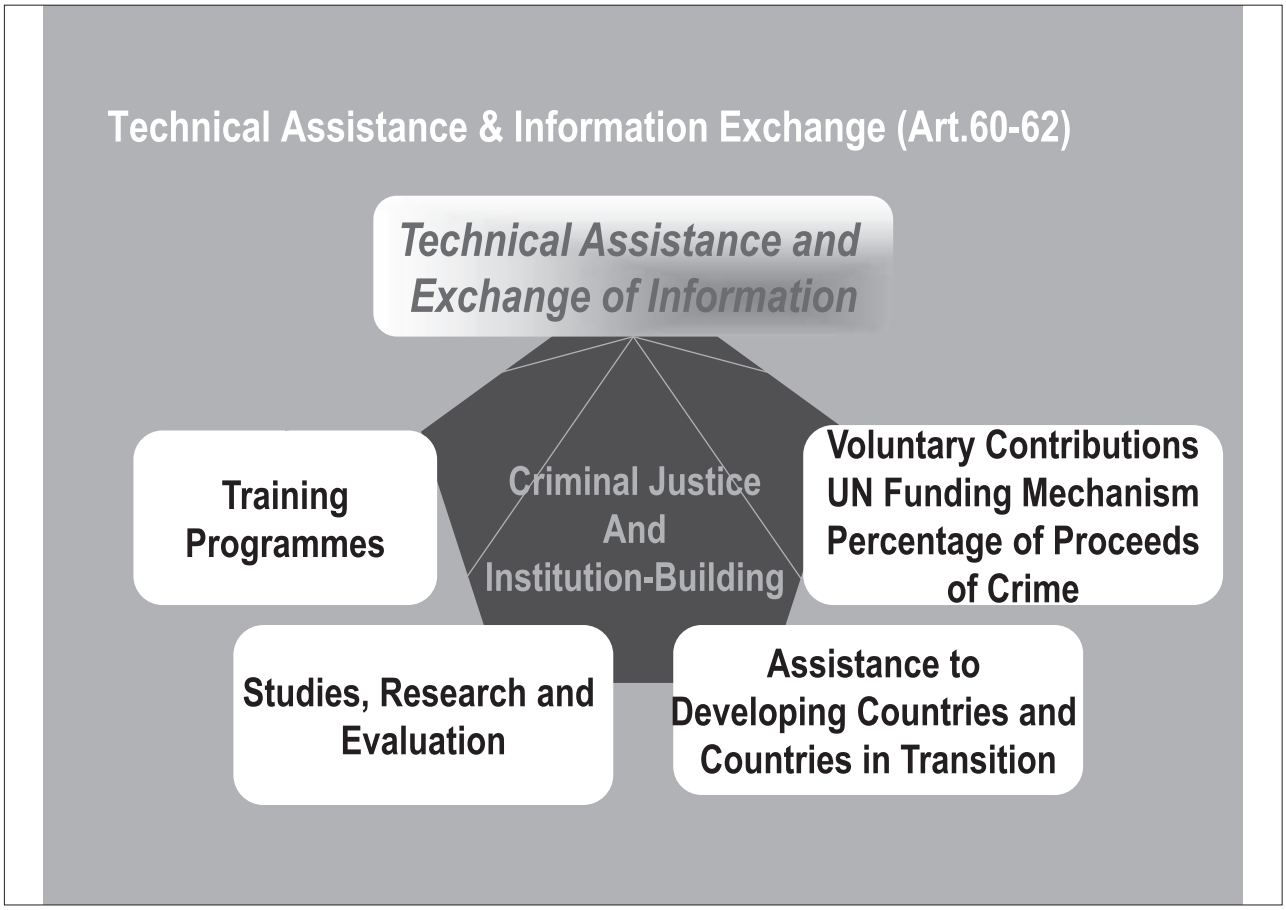
Use of Chapter IV of the UNCAC as legal basis for international cooperation

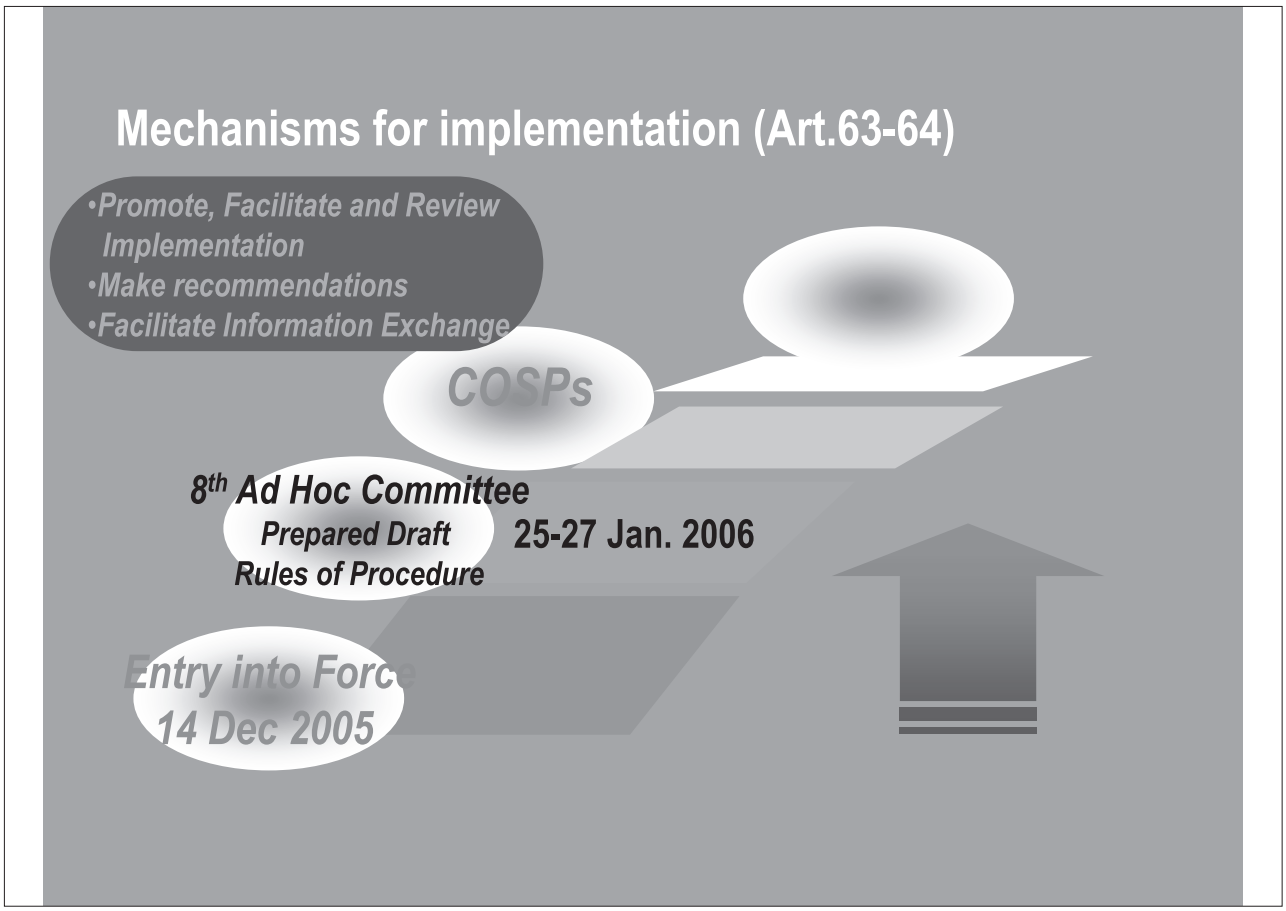
- **Extradition subject to the conditions provided for by the provisions of domestic law of requested State party or applicable extradition treaties (article 44, paragraph 8);**
- **Mutual legal assistance: Article 46, paras. 9-29**
  - **Applicable if States parties are not bound by other MLA treaty;**
  - **If other treaty exists, its provisions shall apply unless States parties agree to apply paras. 9-29;**
  - **UNCAC strongly encourages States parties to apply paras. 9-29 if they facilitate cooperation.**
- **Law enforcement cooperation: Article 48, paragraph 2**
  - **In the absence of ad hoc agreements or arrangements, States parties may consider UNCAC as basis for cooperation**

Chapter V – Asset Recovery (Arts. 51 – 59)

- Return of Assets a fundamental principle of the Convention (Art 51).
- Prevention / Detection of transfers of proceeds of crime
  - Requirements on Financial Institutions to identify customers
  - Enhanced scrutiny of accounts of public officials
  - Prevent banks with no physical presence
- Recovery of Property through Int. Cooperation
  - Give effect to confiscation orders from another SP including freezing orders
  - Assets to be returned to requesting State Parties




Technical Assistance & Information Exchange (Art.60-62)
Technical Assistance and Exchange of Information
Criminal Justice And Institution-Building
Training Programmes
Voluntary Contributions
UN Funding Mechanism
Percentage of Proceeds of Crime
Studies, Research and Evaluation
Assistance to Developing Countries and Countries in Transition


Mechanisms for implementation (Art.63-64)
•Promote, Facilitate and Review Implementation
•Make recommendations
•Facilitate Information Exchange
COSPs
8th Ad Hoc Committee
Prepared Draft Rules of Procedure
25-27 Jan. 2006
Entry into Force
14 Dec 2005

IMPLEMENTATION OF THE CONVENTION

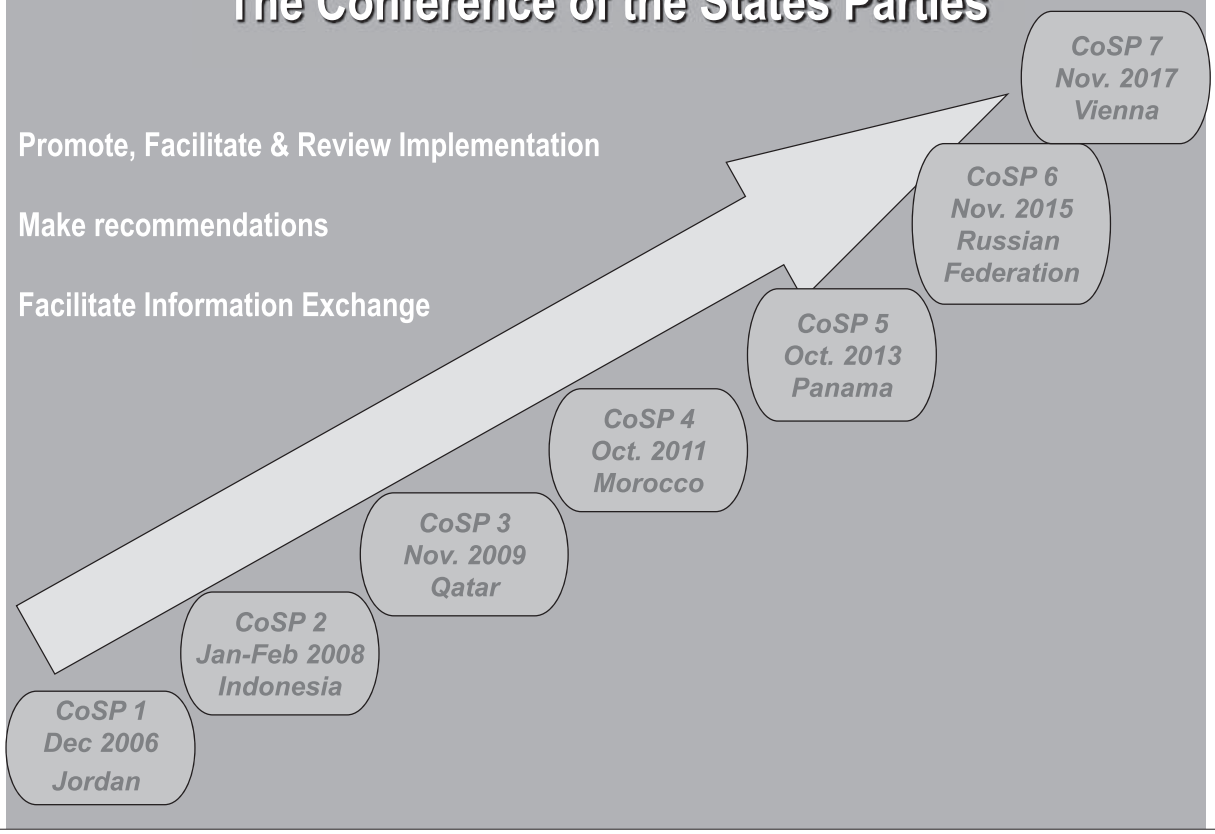
THE CONFERENCE OF STATES PARTIES AND ITS REVIEW MECHANISM

The Conference of the States Parties

Promote, Facilitate & Review Implementation

Make recommendations

Facilitate Information Exchange



Mechanism for the Review of Implementation of the United Nations Convention against Corruption

- Adopted by 3rd session of the CoSP in Qatar in Nov 2009
- Peer review process
- Drawing of lots One phase = two cycles of five years
  - 1st cycle: chapters III & IV
  - 2nd cycle: chapters II & V
- Sources of information: self-assessment reports, supporting documentation, constructive dialogue
- Countries to aim for broad consultations at the national level with all relevant stakeholders, including business representatives

Terms of Reference – Main Elements

- Peer review process
- Drawing of lots for each year of the review cycle
- One phase = two cycles of five years
  - First cycle: chapter III (Criminalization and law enforcement); and IV (International cooperation)
  - Second cycle: chapters II (Preventive measures); and V (Asset recovery)
- Desk review of self-assessment reports
- Dialogue between State under review and reviewing States
- Possibility of direct dialogue
- Outcome of review process (report) and executive summaries
- Role of the Secretariat
- Funding

Review Mechanism - Structure

I. Introduction
II. Guiding principles and characteristics of the Mechanism
III. Relationship with the Conference of the States Parties
IV. Review Process
    A. Goals
    B. Country review
    C. Implementation Review Group (IRG)
    D. CoSP
V. Secretariat
VI. Languages
VII. Funding
VIII. Participation of Signatories in the Mechanism

Open-ended Intergovernmental Working Groups on Prevention and Asset Recovery

Expert Meeting on International Cooperation

UNCAC Implementation Review Mechanism

Mandatory peer-review process for all States parties

Two Cycles of Review
2009 – 2014: Chapters III and IV
2015 – 2020: Chapters II and V

Self-Assessment Checklist → Desk Review and Country Visit → Final Reports agreed

Executive Summaries of the reports from all reviews available on UNODC Website.

Documents for the Review Mechanism

- UNCAC
- COSP resolutions
- Terms of Reference of the Review Mechanism
- Guidelines for governmental experts and the secretariat, adopted at CoSP III and finalized by the Implementation Review Group
- Blueprint for country review reports

Guidelines – Main Elements

- General and specific guidance
- Indicative timelines
- General guidance: purpose of the review and confidentiality
- Specific guidance:
  - Process to follow during the different stages of review
  - Self-assessment
  - Outcome of desk review
  - Dialogue including direct dialogue
  - Draft report
  - Agreement on country review report

- Blueprint for country review reports and executive summaries

The Implementation Review Mechanism – Impact

Emerging trends following analysis of country reviews in first 4 years

Implementation of Chapter III
(Criminalization and Law Enforcement)
Examples of challenges *:*

- adoption of measures to criminalize bribery in the private sector,
- introduction of procedures regarding the protection of witnesses and the protection of reporting persons (whistle-blowers)

Implementation of Chapter IV
(International Cooperation in Criminal Matters)
Examples of challenges *:*

- Need for appropriate training, access to information, language skills to enhance international cooperation
- Need to strengthen channels of communication between competent anti-corruption authorities
- Need to further develop special investigative techniques in relation to corruption offences

Impact of the Implementation Review Mechanism

Translating commitment into results

- Dialogue and momentum generated as a catalyst for anti-corruption reforms
- Evidence:
  - ✓ 183 parties (incl. the EU)
  - ✓ More than 1,500 anti-corruption practitioners trained, creating a global community
  - ✓ More than 40 States have received UNODC support to amend legislation
  - ✓ Near 100% response rate
  - ✓ Widened inclusion of stakeholders, e.g. private sector and civil society organisations

Impact of the Implementation Review Mechanism

Enhanced understanding of UNCAC and sharing experiences

- Discussion and dialogue has resulted in:
  - ✓ enhanced understanding for creating an enabling environment for businesses and private sector involvement
  - ✓ focus on misappropriation of public funds, bribery of foreign public officials and officials of public international organizations, bribery in the private sector, the liability of legal persons and their principals
- Encouragement to engage with the private sector to understand and address its needs
- Sharing experiences across regions and legal systems

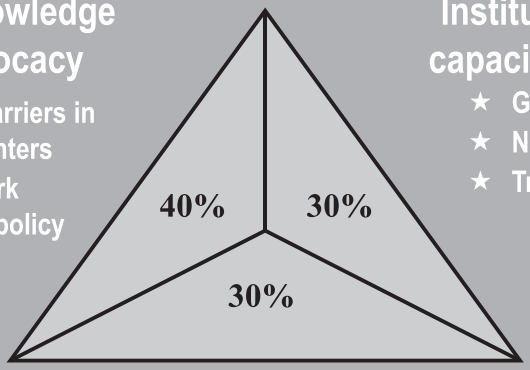
JOINT PROJECTS AND TECHNICAL ASSISTANCE TOOLS

The Stolen Asset Recovery (StAR) Initiative

StAR
World Bank and UNODC

Global knowledge and advocacy

- ★ Lowering barriers in financial centers
- ★ Analytic work supporting policy
- ★ Guides and handbooks



Institutions and capacity building

- ★ Gap Analysis
- ★ Networks
- ★ Training

Country engagement: recovery of stolen assets

- ★ Honest broker
- ★ Preparatory assistance: capacity building on asset tracing and mutual legal assistance

Encourage and facilitate more systematic and timely return of assets stolen by politically exposed persons through acts of corruption

Judicial Integrity Resource Guide

Thematic Areas:

- Recruitment, Evaluation and Training
- Court Personnel: Function and Management
- Case and Court Management
- Access to Justice and Legal Services
- Court Transparency
- Evaluation of Courts and Court Performance
- Codes of Conduct and Disciplinary Mechanisms
- BANGALORE PRINCIPLES OF JUDICIAL CONDUCT

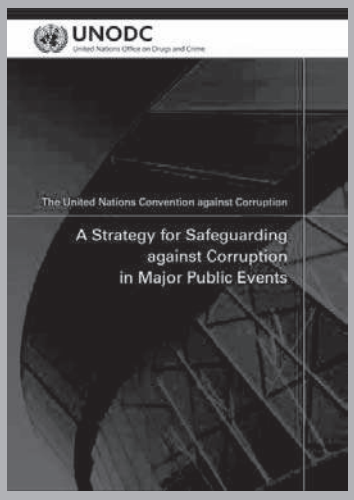
UNCAC Legal Library (TRACK)

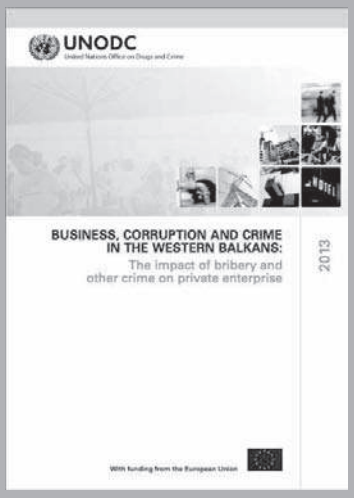
- **Collection, organization and online availability of:**
  - Corruption-related laws;
  - National anti-corruption plans/strategies;
  - Anti-corruption bodies;
  - Corruption-related cases.

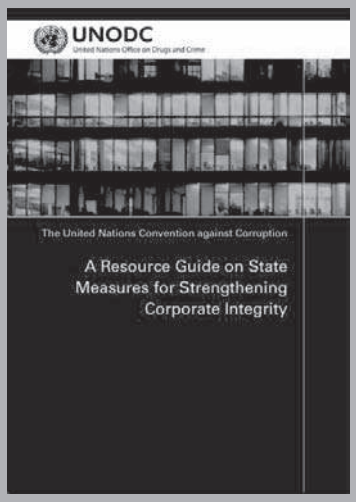
- **Added benefits:**
  - Practical implementation guidance;
  - Resource for national legislators, anti-corruption authorities, assistance providers;
  - Supporting analytical efforts;
  - Convertible into training and educational materials;
  - Promoting innovation.

TRACK: Tools and Resources for Anti-Corruption Knowledge
http://www.track.unodc.org/Pages/home.aspx

UNODC Publications and Technical Tools







Fighting Corruption through Education

- Increasing recognition of the need to ally institutional reform with education
- Article 13 UNCAC requires States parties to undertake public education programmes, including school and university curricula
- UNODC is assisting States in this regard through the Anti-Corruption Academic Initiative
- UNODC is also an active partner in other Building Integrity Initiatives with relevant partners such as the Global Compact, IACA and IAACA

ACAD – Anti-Corruption Academic Initiative

- **Idea:** to facilitate the integration of anti-corruption teaching into the curricula of universities and other institutes of higher education
- **Concept:**

"*Menu of course topics*" – wide choice of anti-corruption teaching subjects; annotated with bibliography, case studies, materials; textbook/teacher's manual

- Open-source, free of charge, accessible online, module-based, across disciplines/jurisdictions
- Series of regional and interregional training seminars and workshops

For additional information:

http://www.unodc.org/unodc/en/treaties/CAC/index.html

Thank you for your attention.

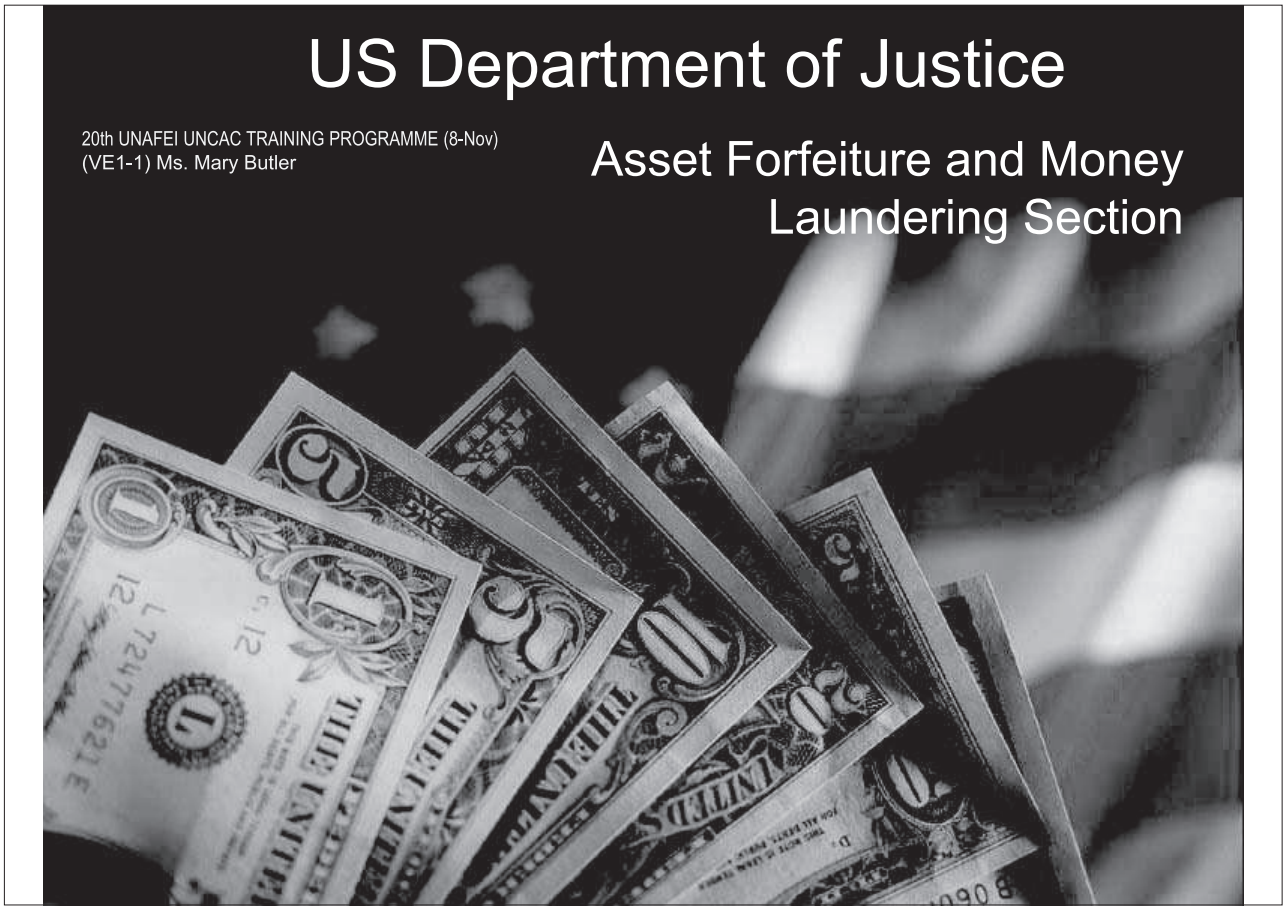
Eduardo Vetere

Vice President

IAACA

THE INTERNATIONAL ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES

eduardo@vetere.info


US Department of Justice
20th UNAFEI UNCAC TRAINING PROGRAMME (8-Nov)
(VE1-1) Ms. Mary Butler
Asset Forfeiture and Money Laundering Section


How US prosecutors and investigators use anti-money laundering laws to investigate and prosecute domestic and foreign corruption affecting the US

3 Main Goals

Provide information about

- **US domestic official corruption prosecutions**
- **US - Anti-corruption programs focused on foreign corruption–**
  - **Enforcement of the Anti-Foreign Bribery Statute** – Focused on U.S.-based foreign bribery
  - **Kleptocracy Asset Recovery Initiative -**Focused on money laundering and assets linked to foreign corruption affecting the U.S.

What is money laundering?

What is Money Laundering?

- Concealment –
  - Converting property gained from illegal activity into property that appears legitimate so that its illegal source cannot be traced
- Promotion –
  - Using illicit proceeds to promote an illegal activity

Traditional Money Laundering Typologies

(1) Use regulated “financial institutions” to structure transactions to avoid reporting requirements

(2) Use cash couriers & bulk cash smuggling (BCS)

(3) Use money services businesses (MSBs) & informal value transfer systems (hawala)

(3) Use trusts and corporations to hold assets and conceal beneficial ownership

Three principle money anti-laundering laws

- Prohibiting financial transactions linked to corruption related offenses
- Prohibiting deposits of $10,000 or more of proceeds of corruption in a financial institution

Disclosure Requirements

- Requirements to disclose:
  - bringing $10,000 or more into/out of US
  - Sources of the funds in bank deposits/wires
  - the connection between account holders and PEPs
  - control over a foreign bank account

No unexplained wealth law in the US

Overview

- Corruption crimes are generally committed in secret by people who do not want to be found out
- Even people who were threatened or pressured want to continue to do business
- Guilty plea and cooperation agreements are key tools for investigating and prosecuting complex crimes

Corruption Involving US Government Officials and Law Enforcement Officials

US Mechanisms to prevent and disclose corruption

- Regular audits
- Offices of Inspector Generals/Professional misconduct investigators
- Asset/lobbying disclosure requirements
- Tax enforcement
- Free press and FOIA to access info
- State and federal specialized prosecutors and investigators

Corruption involving US officials (that we know about):

- Bribes are relatively small
- Often in the form of trips, home improvements, expensive watches, jobs after public service, jobs for spouses or children, “gambling winnings,” and cash for narcotics investigators
- Corruption risks:
  - Campaign support – can be large/disclosure varies
  - Charities run by public officials or their staff and friends

As a result:

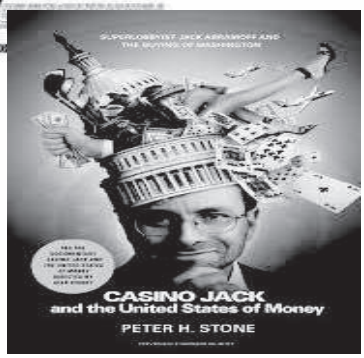
– Few bribes to US officials paid overseas or laundered overseas
  - Not necessary - relatively small amounts compared to the value of official action
  - Not necessary -- Paid In kind
  - Needed in the for US campaign expenses

Embezzlement – (that we know about):

- Often detected if it is large scale by Inspector general's or auditors looking for waste, fraud and abuse of government funds and programs
- Often detected when long term employees are away from their jobs

--Money laundering violations are common in spending the stolen money

Bribery Case -- Lobbyist Jack Abramoff



Bribery Scheme: "Operation Rainmakers"

- Lobbyist Jack Abramoff
  - Defrauded his clients and paid a US Congressman and many federal congressional staff and executive branch officials for official action--
    - expensive sports tickets
    - Extravagant golf trips
    - employment with his firm
    - regular expensive meals
    - Jobs for spouses
    - Campaign support/contributions

Investigation Team

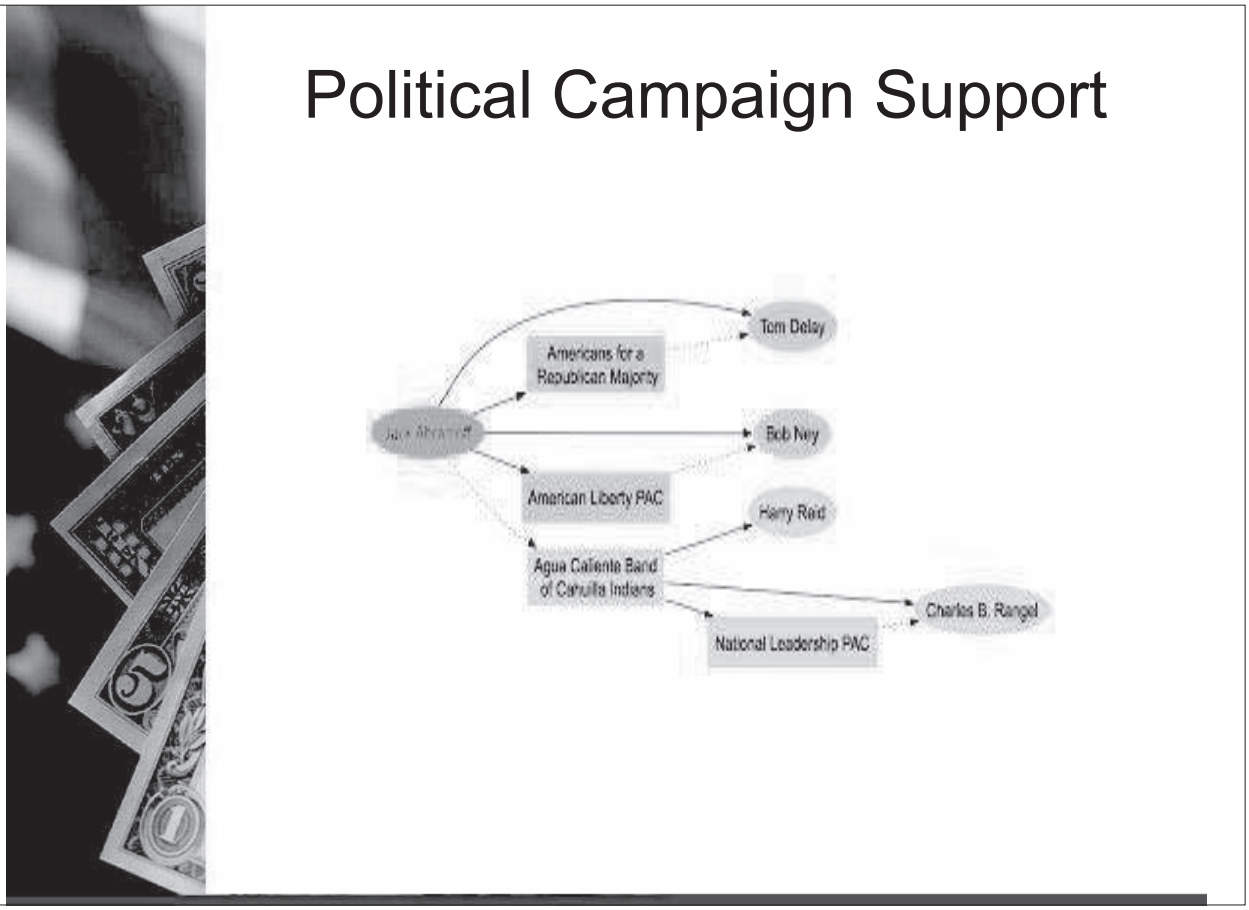
- FBI corruption investigators
- IG's from various agencies
- Tax investigators (IRS)
- Federal Prosecutors

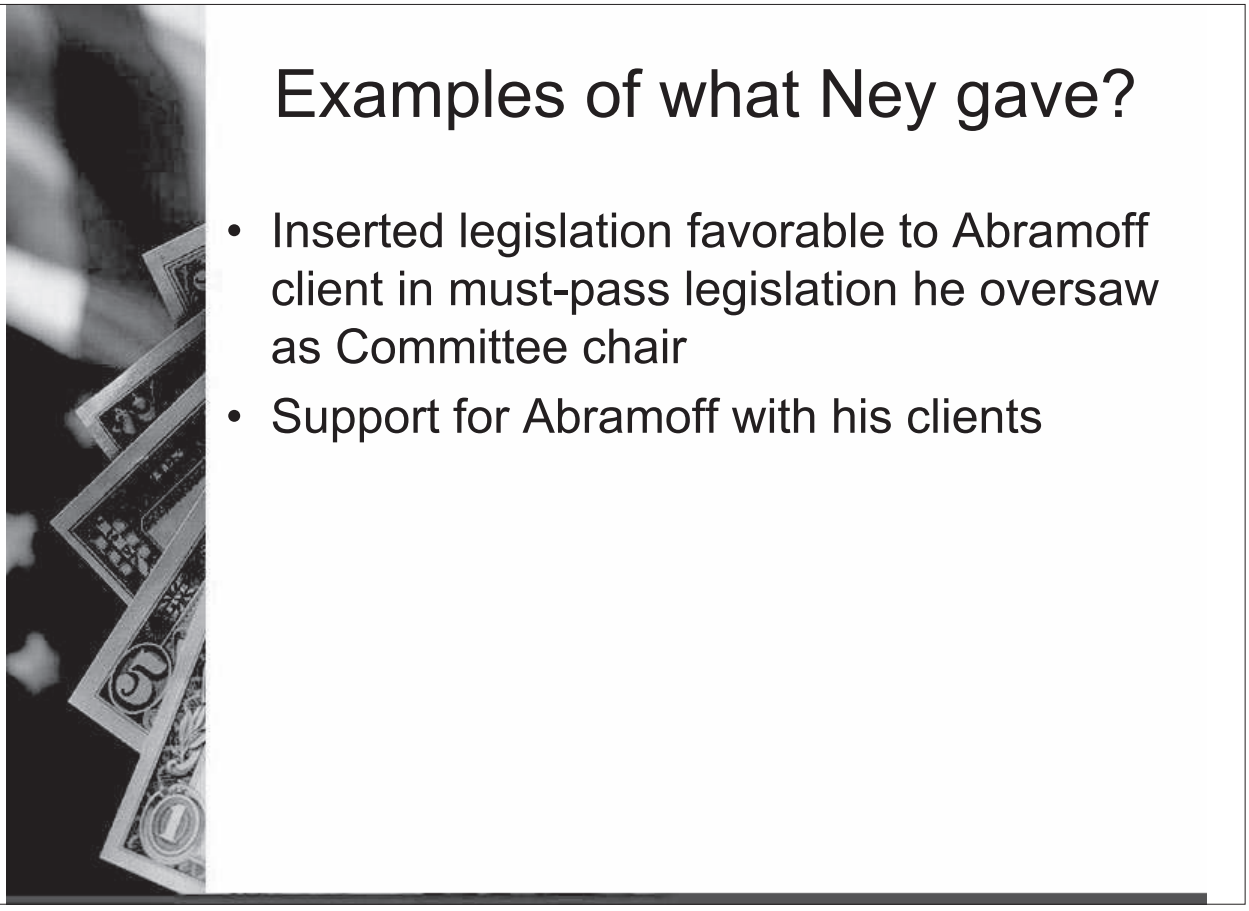
US Representative Robert Ney, his chief of staff and former chief of staff

Things of value to Ney and his staff

- Lobbying job to chief of staff (Neil Voltz)
- Regular high end meals at *Signatures*
- Scotland golf trip on chartered plane
- Campaign support
- Introduction to Speaker of the House

Scotland golf trip


Political Campaign Support
Tom Delay
Americans for a Republican Majority
Bob Ney
American Liberty PAC
Harry Reid
Agua Caliente Band of Cahuilla Indians
Charles B. Rangel
National Leadership PAC


Examples of what Ney gave?
• Inserted legislation favorable to Abramoff client in must-pass legislation he oversaw as Committee chair
• Support for Abramoff with his clients

Evidence

- **Extensive emails** = written record of who the lobbyists intended to bribe, for what, when and how
  - Few emails from public officials
- **Evidence provided by co-conspirators who pled guilty for sentencing leniency**
- Lobbying/asset disclosure records
- Public records of actions taken
  - Legislation introduced or opposed
  - Hearings conducted
  - Other official action by executive branch officials

Limited Use of ML laws

- Money laundering offense is the financial transaction by the criminal or agent
  - after the bribe is paid
- ML transactions were mainly spending of salaries, gambling winnings, illegal campaign support
- Charges included conspiracy, honest services fraud, false disclosures and tax offenses

Results: convictions

- 22 people
  - Several lobbyists
  - One US Representative
  - Several congressional staff members
  - Former Chief of Staff to an executive agency
  - Former Deputy Secretary of executive branch office for Native American Indian Affairs
  - NGO operators

Prison sentences - sometimes reduced by guilty plea and cooperation agreements

- Abramoff - 9 years reduced to 4 years plus fines and penalties and requirement to file corrected taxes
- Scanlon – 3 years after cooperation
- Congressman Ney - 18 months - no cooperation
- Deputy Interior Secretary – 12 months – no cooperation
- Safavian - Chief of Staff GSA -
- Others – supervised release/ home arrest to 24 months

Embezzlement Scheme– $53.7 million Stolen from City over 17 years

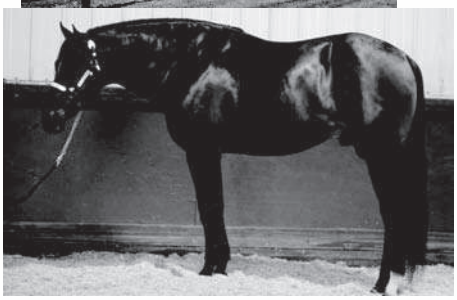
Rita Crundwell, Comptroller of City of Dixon, Illinois

Pled guilty to one count of embezzlement – sentenced to 19 years and 3 months

Rita Crundwell

- 30 year head-budget official of a medium size US city
- Diverted city money from city bank accounts into a breeding farm for race horses (about 400 American Quarterhorses)
  - Bought champion quarter horses
  - Bred and raised champion horses
  - Built a ranch in rural area
  - Hired skilled care
  - Bought a $2M motor home

Laundered stolen funds



US Marshals Service conducted auctions

How did she do it?

- Maintained sole control over books and records of income and disbursements
- Created a “reserve account” and used phony invoices to withdraw funds
- Weak and ineffective outside audits
- Was well-liked and trusted
- Good liar – published false accounting reports

Recovery for victim about $10 M

- Forfeiture and sale proceeds of
  - Horses
  - Real property
  - Motor home
  - cars
  - Trophies and prizes
  - Valuable clothing and personal items

Additional Recovery for victim

- Civil law suits for damages against accounting firms and law firms for negligence

DEA Supervisory Special Agent Rene De La Cova

Assigned to arrest Manuel Noreiga
Talented undercover agent

Theft of US government funds--Narcotics investigator

- Later Rene De la Cova – DEA group supervisor
  - Posing as a money launderer
    - "Store front" operations
    - Stole $1m seized from drug dealers
- Pled guilty to theft of government funds; sentenced to 24 months and ordered to pay $760,000

Stole $1M from Colombian drug dealers

- Posing as a money launderer in a u/c money laundering operation,
  - he received and "laundered" and sent back to drug traffickers 3 loads of $1m each over a few months with DEA agents
  - picked up $1million from the drug dealers by himself and kept it – flew back to South Florida with the money in suitcases with wheels stuffed with cash

How Discovered ?

- Drug dealers asking for their money back raised suspicions of other narcotics investigators
- Irritated a bank teller
- OPR for DEA investigated
  - Identified a large amount of cash in a safe deposit box
  - a new boat
  - several bank accounts in his name
  - thousands of dollars concealed in his house

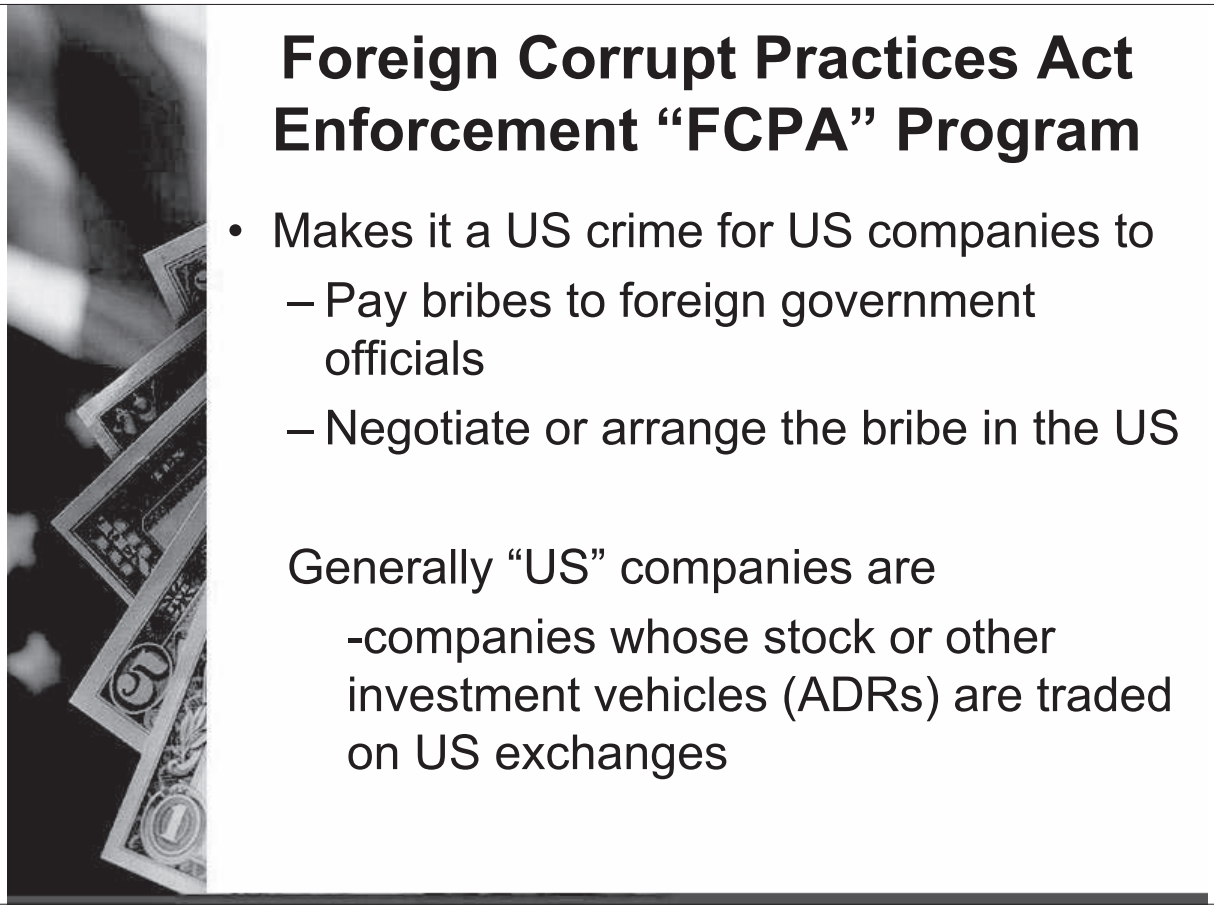
US Representative Corrine Brown- 25 year career until charges

- Congresswoman established a charity "one Door to Education" to benefit children run by her chief of staff
- Solicited $800,000 from public and people who wanted official actions
- Used money to pay for personal expenses and luxury items in office and after she left office. Gave $1,000 in schoarships
- Convicted of income tax fraud and wire fraud - awaiting sentencing

How Discovered?

- False and incomplete disclosures required for charities
- No evidence she used the money for children which was the stated charitable purpose
- FBI investigation –
  - Evidence proved by chief of staff who pled guilty for sentencing leniency
  - Audit of the receipts and disbursements and sources of her expenditures


US Programs to Address Foreign Bribery


Foreign Corrupt Practices Act Enforcement "FCPA" Program
• Makes it a US crime for US companies to
– Pay bribes to foreign government officials
– Negotiate or arrange the bribe in the US
Generally "US" companies are
-companies whose stock or other investment vehicles (ADRs) are traded on US exchanges

USE FCPA

- Prosecute companies or enter into Deferred Prosecution Agreements (DPAs)
  - Fines and penalties to disgorge profits
  - Consequences
    - Debarment from contracting
    - Expensive monitoring
    - Civil suits by shareholders
- Prosecute individuals
  - Officers/directors
  - Agents/ intermediaries
    - Jail terms
    - Fines and penalties
    - Contracting debarment or license canceled

FCPA related prosecutions

- Self reporting common
- Use cooperation in the form of evidence provided by company -
- Money laundering cases against bribe payers or facilitators
- Forfeiture of proceeds or instrumentalities

ODEBRECHT, S.A and Braskem S.A. (subsidiary)

- Prosecuted in Brazil, US and Switzerland
- Cooperated
  - in US to obtain reductions in fines
    - entered into plea and cooperation agreements /$788 m in bribes -2001 - 2015
    - Paid a total of approx. $2.6B
    - Provided information
    - Admitted to paying bribes to officials for contracts in 11 countries

Vimpelcom & Telia Sonora

- Telecommunications companies operating in Uzbekistan prosecuted in US, Neitherlands and cooperated
  - Paid over $114M and $331M in bribes to Uzbek official for rights and assistance
  - In US entered into DPA with monitor appointed
  - Paid $230M and $965M in fines to US and Sweden
  - Provided information about how bribes were paid and to whom

SEC Whistleblower program

- Money for tips leading to prosecution
- Involvement is not a bar but may limit recovery

Kleptocracy Asset Recovery Initiative

- Mission to meet US and UNCAC obligations
  - to prevent the US from being a safe haven for corruption proceeds
  - to deter criminals from using US financial system to move illicit proceeds
  - to remove dirty money from the US through forfeiture

FCPA – KARI

Uzbek corruption example

- FCPA prosecutions
- NCB forfeiture
  - Restrained $850 M in assets during the investigation
    - With help of Swiss, Belgium and Luxemberg
  - Forfeiture pending

United Nations Convention Against Corruption (UNCAC)

- Negotiated January 2002 to October 2003
- Opened for signature December 9, 2003 in Merida, Mexico
- Entered into force December 14, 2005
- Ratified by 137 States Parties
- U.S. ratified in 2006

HIGHLIGHTS FOR ASSET RECOVERY

- Detection, identification – Articles 14, 52, 58
- Money laundering, confiscation – Articles 23, 31
- Required ability to provide assistance in forfeiture – Articles 53, 54
- Forfeiture assistance – Article 55
- Disposition of forfeited property – Article 57
- Dual criminality – Article 46 (9)

Criminal Prosecutions and Asset Recovery Linked to Foreign Corruption

- Since 2015, charged 8 defendants with money laundering and other offenses

Non-conviction based (NCB) and Criminal Asset Forfeiture

- NCB – Against the Property
  - Useful for assets of dead, people who cannot be extradited, are legally immune and practically immunize
  - Must be able to trace the asset to the criminal activity
  - Obtain judgments forfeiting specific assets to the US
- Criminal – Against the person
  - Part of sentencing
  - Can trace but NO tracing required –
  - Judgments for value of ilicit profits and/or specific assets
  - Can collect against substitute assets

Rights of Third parties or property holders

Criminal

- Court enters preliminary order of forfeiture after conviction and hearing
- Gov't provides notice and opportunity to claim to known claimants and by publication
  - Claimants have burden to show by preponderance of evidence they purchased before crime
  - for value and without knowledge of involvement in crime
  - Representation may be provided

Civil Forfeiture

- All known potential claimants given notice and publication upon filing of complaint
- Parties compel information from each other – documents and depositions
- Government first proves link between crime and asset
  - Then claimant must show by preponderance of evidence they purchased for value
  - Without knowledge of involvement in crime
  - Rights to legal representation
  - Could recover attorneys fees

ENFORCEMENT OF FOREIGN CONFISCATION JUDGMENTS

28 U.S.C. § 2467

- US can enforce Criminal and *in rem* Judgments
  - Foreign offense must be one that would be a basis for forfeiture if committed in the U.S.
  - Treaty or Agreement requiring cooperation by the US
  - Attorney General Certification of fair process in foreign jurisdiction

Restrained by court order approx. $3.3 billion in assets to date

Nigeria: $630 M stolen by Dictator Sani Abacha (deceased)
$144 M related to Oil bribery

Malaysia: $1.6 stolen from sovereign wealth fund – 1MDB

Uzbekistan: $850 M in bribes paid to President's daughter

Ukraine: $280 M in bribes, extortion payments and fraud proceeds
Ukrainian Prime Minister Pavlo Lazarenko

Honduras: Approx. $2M in rental property in kickbacks paid to former Social Services Agency head

Chad: $33 M in stocks and cash paid to former Chad Ambassador US and Canada, his DCM and their wives in oil scheme

Philippines: $12.5 M in real estate and stock in proceeds of bribery kickback scheme

Recovered and Being Repatriated since 2010: Approx. $170 million under UNCAC

- $115 M for the benefit of people of Kazakhstan – bribe money intended for unnamed Kazakh officials
- $30 M for the benefit of people of South Korea representing bribe proceeds of former President Chun Doo-hwan
- $1.5 for the benefit of people of Taiwan representing bribe proceeds of former President Shui-Bian Chen
- $30 M being repatriated for the benefit of people of Equatorial Guinea

Recovered and repatriated before 2010

- $117 million to Italy
- $115 million for benefit of citizens of Kazakhstan
- $22.2 million to Peru

- $2.7 million to Nicaragua
- $7.8 million for Taiwan government

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20th UNAFEI UNCAC TRAINING PROGRAMME (8,9-Nov)
(VE1-2) Ms. Mary Butler

UNITED STATES' AML LAWS

- Basic Money Laundering Statute (18 U.S.C. § 1956)
- Spending Statute (18 U.S.C. § 1957)
- Bulk Cash Smuggling (31 U.S.C. § 5332)
- Unlicensed Money Remitter (18 U.S.C. § 1960)
- Structuring transactions to avoid reporting (31 U.S.C. § 5324)

Money Laundering §1956

- To conduct or attempt to conduct a financial transaction
- Knowing that the property involved
- Represents the proceeds of "some form" of specified unlawful activity
  - To Promote the Crime or
  - To violate U.S tax laws or
  - Knowing that the transaction is designed
    - To conceal or disguise the source, ownership or control of the money or
    - To avoid a transaction reporting requirement

Specified Unlawful Activities We Use

- Offense against a foreign nation involving
  - bribery of a public official, or
  - misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official
  - Or International Theft of Stolen Property, Wire Fraud, foreign bank fraud, US bank fraud

18 U.S.C. 1957 (Spending Statute)

- Makes it a crime to knowingly engage in a "monetary transaction" in criminally derived property that is greater than $10,000 from SUA

§ 1956(a)(1)(B)(ii) – to Avoid Financial Reporting Requirements of Bank Secrecy Act (BSA)

- Currency & Foreign Transactions Reporting Act of 1970 [31 U.S.C. § 5311, et seq.]
- Currency Transaction Reports (CTRs) (US bank > $10,000)
- Currency Transaction Reports – Casinos (CTR-C)
- Form 8300 by businesses (>$10,000)
- Currency and Monetary Instrument report (CMIR) (int'l >$10,000)
- Suspicious Activity Report (SAR)
- Foreign Bank Account Report (FBAR) (> $10,000)
- IRS Form 8300 (commercial transactions > $10,000)

CONSPIRACY

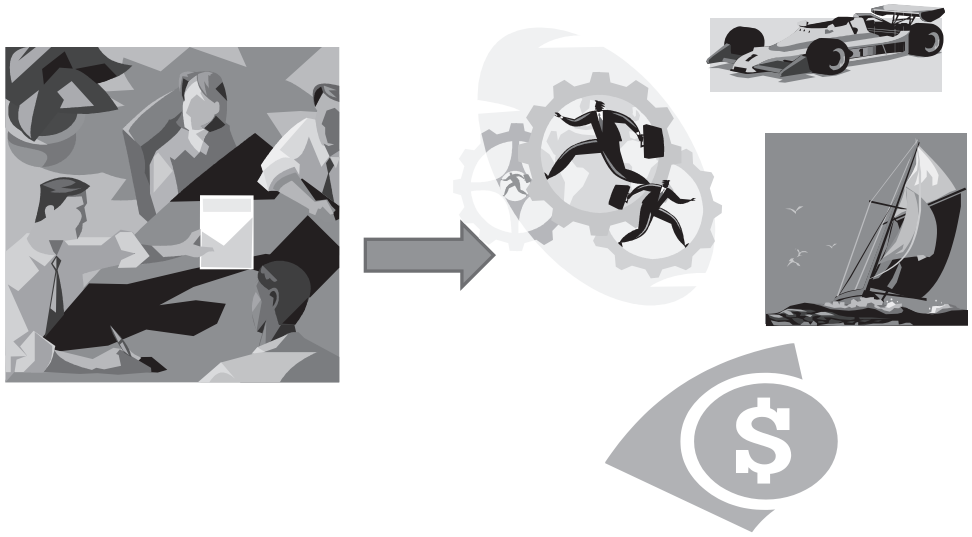
- **§ 1956 (h)**

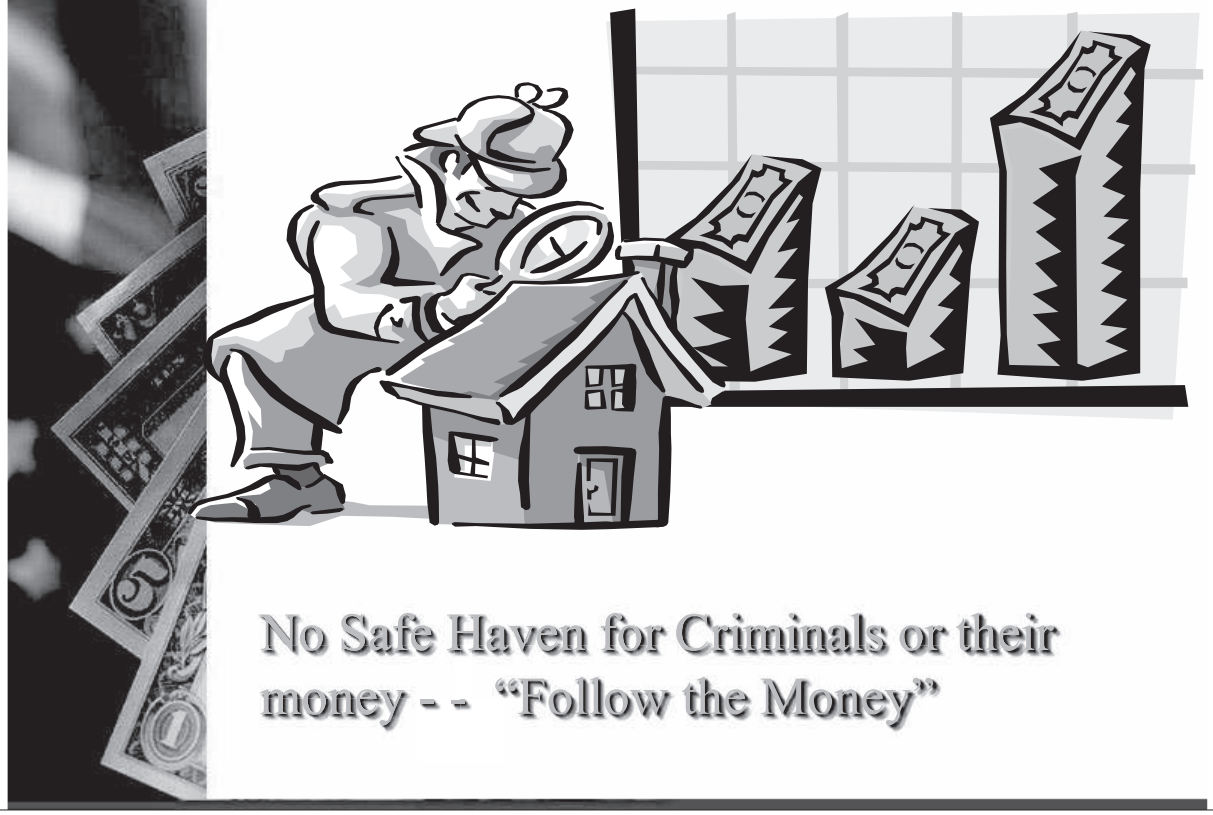
Agreement to Violate the Law

US JURISDICTION

- Conduct in the US
- Assets in the US – real estate, cash, boats, planes, etc.
- U.S. Correspondent Banking Transactions

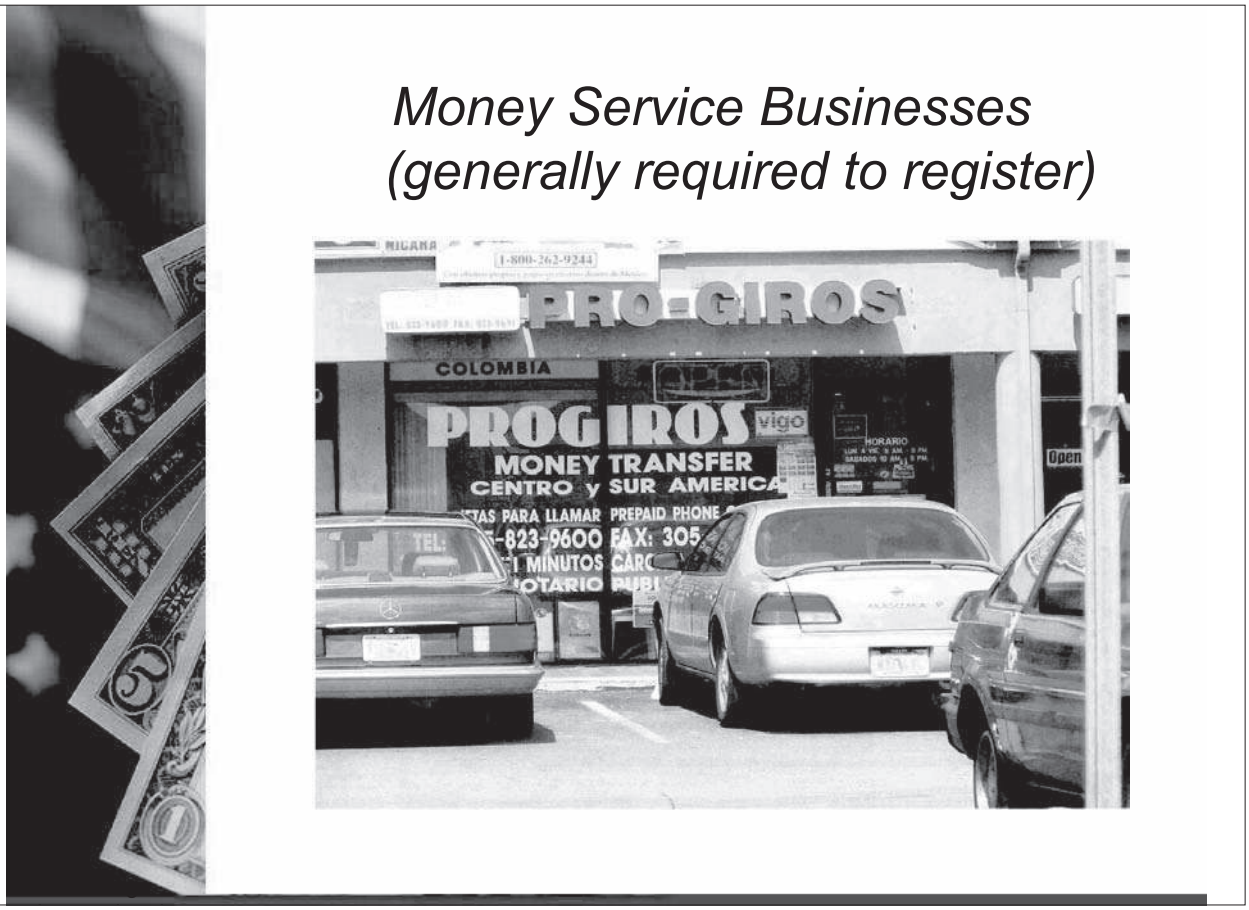
Connect the asset to the corruption

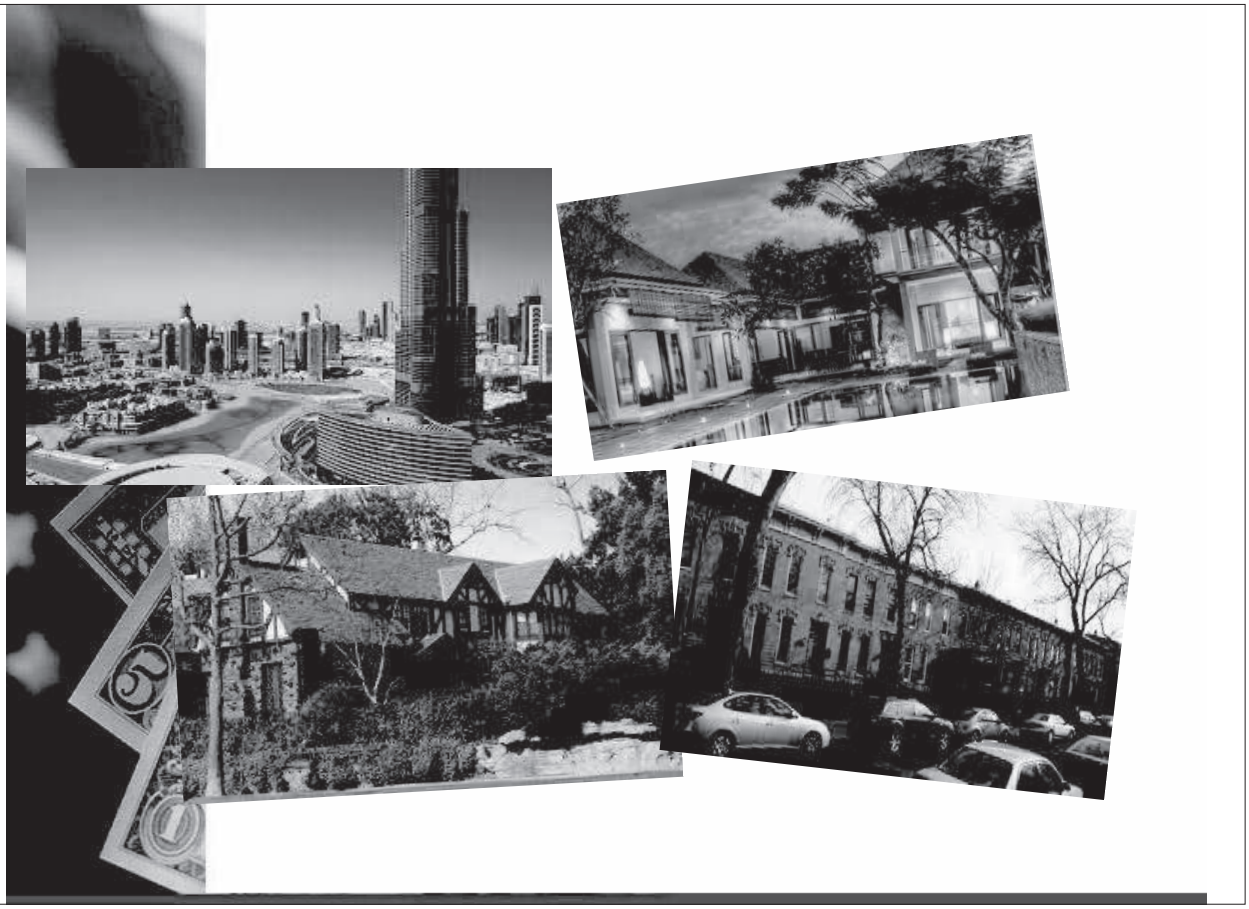


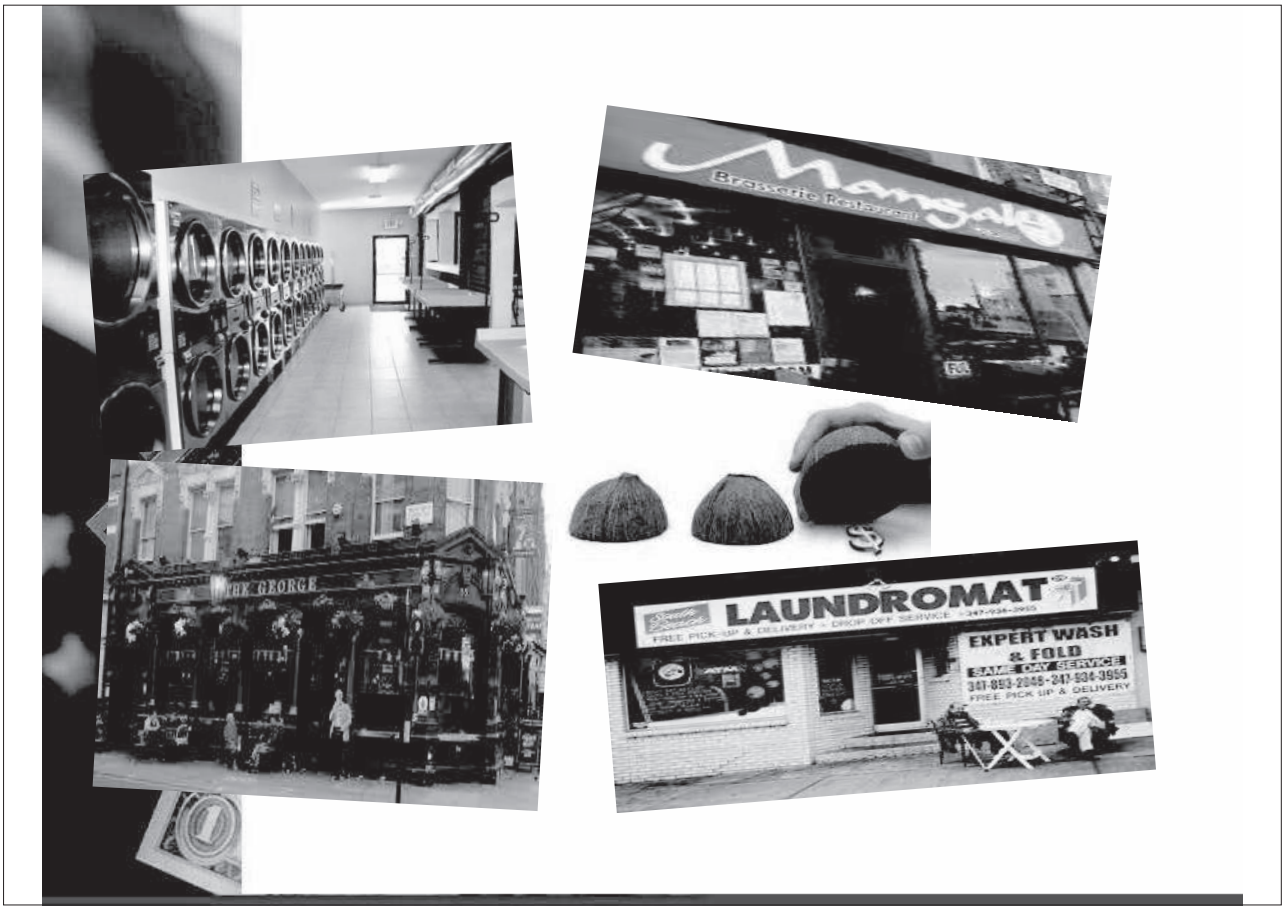


Methods of Moving Money

- Use of "gatekeepers" to set up complex trusts, private companies to conduct bank transactions and to own real estate, yachts, planes, etc.
  - e.g., Use of Mosack Fonseca law firm disclosed in "Panama Papers"
- Use of high limit credit cards
- Purchase high value art and use as collateral to borrow money
- Sell shares of shell corporations that hold assets


Money Service Businesses
(generally required to register)
PRO-GIROS
COLOMBIA
PROGIROS
MONEY TRANSFER
CENTRO y SUR AMERICA




Brasserie Restaurant
LAUNDROMAT
EXPERT WASH
& FOLD
SAME DAY SERVICE
FREE PICK UP & DELIVERY

Many Barriers

- Difficulty proving underlying crime
- Difficulty proving financial relationships
- Resource intensive
- Differences in legal systems
- Distrust of ultimate use by victim state of repatriated funds

Case Study: Use of Non-Conviction Based Forfeiture In Foreign Corruption Affecting US

- Equatorial Guinea
  - Rich in natural resources
- Government
  - Second Vice President
  - Salary less than $100,000 per year

Obiang Case Study

Scheme 1 – Timber Export Extortion

Scheme 2 – Infrastructure Firm Extortion

Obiang Case Study

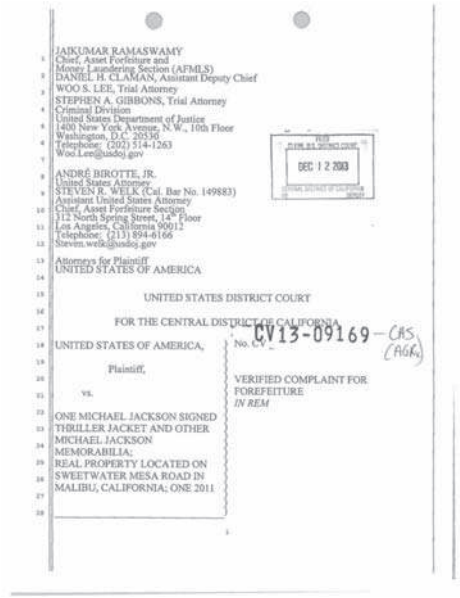
Challenges

- No illicit wealth violation
- No witnesses to corruption in the US
- Possible bank fraud
- Judge very skeptical of our circumstantial evidence

Opportunities

- Judge liked our bank fraud theory
- Obiang removed the glove and other Michael Jackson paraphernalia in violation of court order
- Obiang did not want to come to US for his deposition or anywhere else

Results



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Steven.welk@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE MICHAEL JACKSON SIGNED THRILLER JACKET AND OTHER MICHAEL JACKSON MEMORABILIA; REAL PROPERTY LOCATED ON SWEETWATER MESA ROAD IN MALIBU, CALIFORNIA; ONE 2011

No. CV13-09169 CAS (AGRx)

VERIFIED COMPLAINT FOR FOREFEITURE
IN REM

DEC 12 2013

- House, Ferrari, and memorabilia sold
  - $11 million to United States
  - Approximately $20 million to charity to benefit people of Equitorial Guinea
- Keep jet in Equatorial Guinea
- Declare and remove any other assets from United States

Case Study: Non-Conviction Based Forfeiture Involving Foreign Corruption Affecting the US

- Republic of Korea convicted former President Chun Doo Hwan of bribery
  - Net $1.5 M forfeited and returned
  - Net $27.5 M returned voluntarily

Property Recovered Linked to Bribes Paid To Former Taiwan President

- Forfeited from a son living in the U.S. and his second wife representing bribe money:
  - Proceeds of house sales in Georgia and then in California
  - Interest in EB-5 program investment in Philadelphia investment fund
- Also during investigation, another person in U.S. returned $27.5 million in to Taiwan representing bribe money from the former president

Former Peruvian President Alberto Fujimori

Ex-Peruvian Spymaster Vladimiro Montesinos

Vladimiro Montesinos

- This image, broadcast on Peruvian television allegedly shows Agustin Mantilla pocketing a bribe from Peruvian ex-spy chief and top adviser to former President Fujimori, Vladimiro Montesinos.

Vladimiro Montesinos

- Peruvian legislator Ernesto Gamarra, right, appears in an undated video receiving cash from Luis Venero, who has been linked to fugitive spy chief Vladimiro Montesinos.

U.S. COMMITMENT TO ASSET RECOVERY IN PRACTICE

- Montesinos/Venero (Peru)
  - August 2004 repatriation of $20.2 million
  - Assistance led associates of Fujimori/Montesinos/Venero to voluntarily repatriate substantial additional assets
- Byron Jerez (Nicaragua)
  - December 2004 repatriation of $2.7 million to Nicaragua
  - Technical Assistance to financial investigators

INTERNATIONAL PARTNERS RESULTS

- Abacha
  - Switzerland $500 million repatriated
  - Jersey $160 million repatriated
- Fujimori/Montesinos
  - Switzerland $77.5 million repatriated in 2002
  - Switzerland additional $48 million
  - United States PIB accts - $20.2 million repatriated
  - Cayman Islands PIB “loan” to Peruvian bank of $33 million
  - Additional funds frozen in Luxembourg, Panama, Mexico

Other Successful Resolutions

- $117 million to Italy
- $115 million for benefit of citizens of Kazakhstan
- $22.2 million to Peru
- $2.7 million to Nicaragua
- $7.8 million for Taiwan government

TOOLS WE USE

Cooperation Between FIUs

-Formal and Informal Cooperation Between Investigators/prosecutors

Plus: Open source information

Social media information

Egmont Requests: The Egmont Group of Financial Intelligence Units –121 Member FIUs

- 1995 – Egmont Arenberg Palace, Brussels
- Informal group to stimulate int'l cooperation
- Goals: expand int'l cooperation
  increase FIU effectiveness
  better communication w Egmont Secure Web (ESW)

The Egmont Group of Financial Intelligence Units

Request for FIU Information

What information do you need from the disclosing FIU?

For what purpose(s) will the information requested be used?

Are there ongoing formal investigations or judicial proceedings?

Do you anticipate asset forfeiture or securement in this case?

State the amount and type, or nature, of assets involved in this case.

Ask for what you need?

- Are there wire transfers in your country
  - Specify approximate amount, dates, names of possible persons/entities used
  - Identify the banks and other information so effective MLA is possible

Tools we use: U.S. SUSPICIOUS ACTIVITY REPORTS (SARs)

- 31 USC 5318(g) requires financial institutions to file Suspicious Activity Reports "SARS" with (FinCEN)
- SAR is required if transaction involves or aggregates at least $5,000 in funds or other assets and bank knows or has reason to suspect the transaction:
- (1) involves funds derived from illegal activities or is conducted to hide or disguise funds derived from illegal activities,
- (2) is designed to evade reporting requirements, or
- (3) has no business or apparent lawful purpose or is not the type of transaction in which the customer would normally be expected to engage.
- Banks retain SAR and "supporting documentation" for 5 years

TRADITIONAL USES OF SARS

- To support existing investigations –
  - To investigate money laundering of drug organization, access the FIU's database for CTRs, 8300s, or SARs filed for the targets
  - Give FIU a list of criteria, subjects or money flows to watch for or analyze
- SAR itself is not evidence and may not be disclosed
- Use other authorities to obtain documentation behind the SAR and other reports

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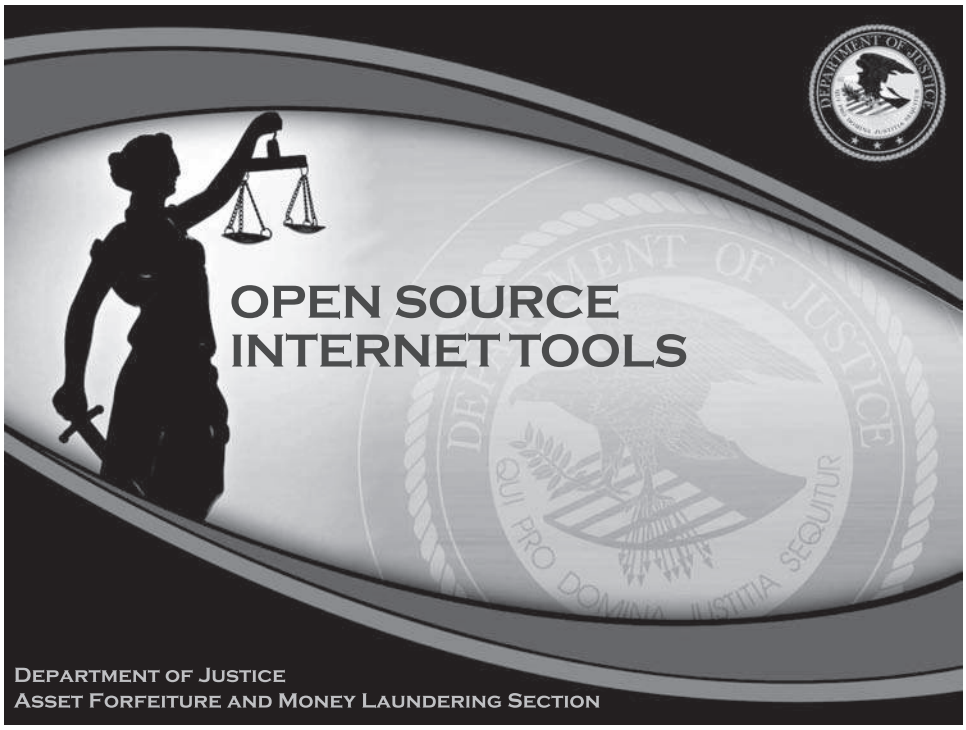


Ideas for how this stuff could be used to

- Assess the credibility of allegations
- Assess the degree of difficulty of making a successful case

Consider its use

- As a basis for developing an investigative plan
- To prepare to interview and interviewing witnesses
- To establish a basis to for certain investigative techniques
- For use at hearings before courts on matters like
  - setting conditions of release
  - requiring that people not have contact with each other
- For Trial to determine guilt or innocence
  - as evidence
  - to cross examine witnesses on issues like bias for the defendant or against the government

Major Categories of open source material available

Investigative Reporting/ NGO reports - use Google Translate if you need to

Official Public records – records of incorporation or birth, death, marriage, property ownership

Private/ commercial or law enforcement databases of property, credit reports and bank accounts accessible to limited groups by subscription

Moveable Asset tracking sites: Plane and vehicle tracking cites

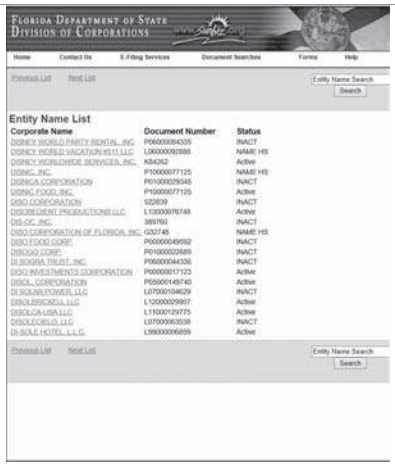
Social media postings

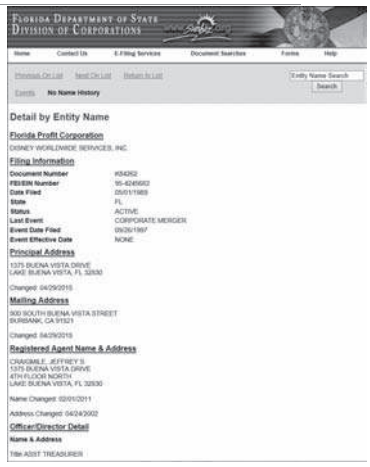
- **links to the beneficial owners of assets that may be recovered**
- **links to the location of individuals and assets under investigation**

Information describing the confiscation legal authorities of other countries

- **FATF reports www.FATF.gov, Informational Country reports on www.state.gov , NGO sites**

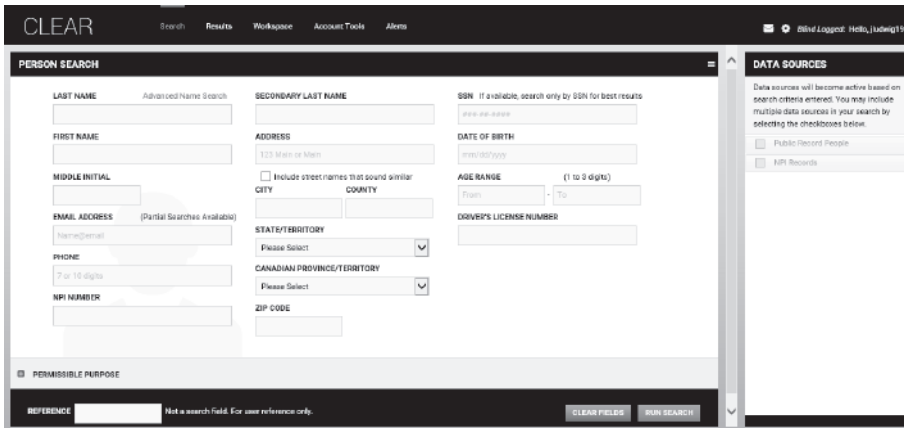
Official public records – By State in US



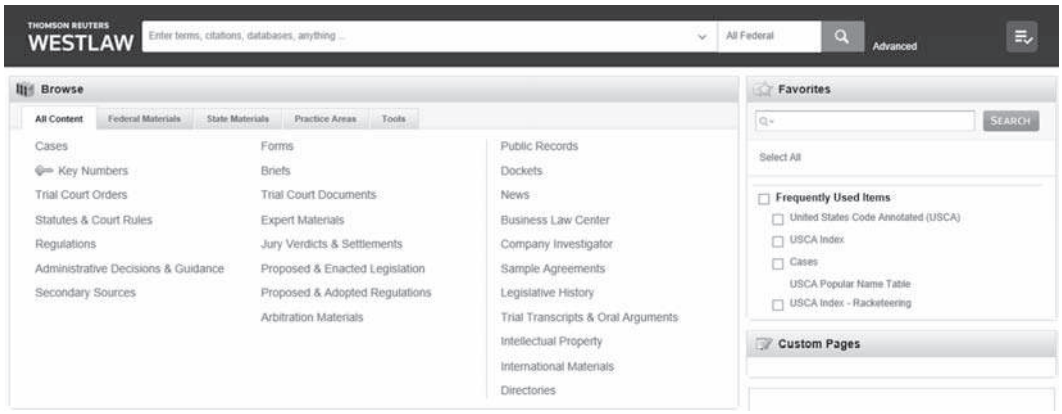


Incorporation Record – Florida Corporation

Private commercial databases for public information about people and legal entities

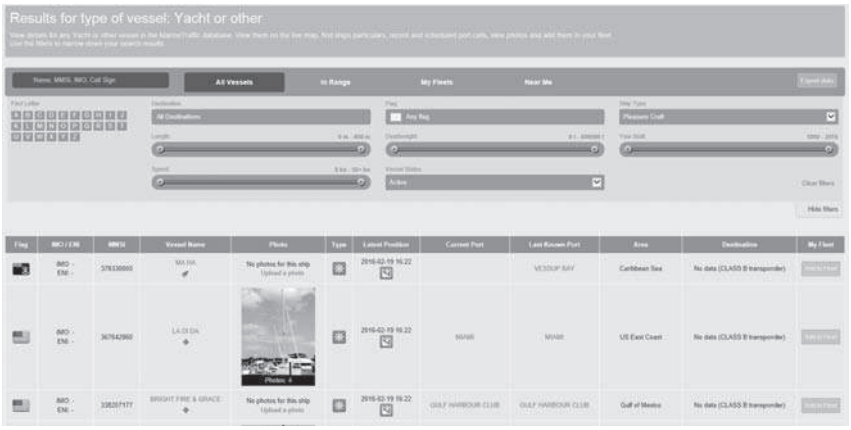


Add'l limited access databases



Various asset tracking sites: Yacht tracking

Find where pleasure craft or commercial boats have last been seen



Flight tracker – Use to find location of planes?

Locating Assets, People, Their Travel and Relationships Using Social Media and other tools

Instagram

Facebook

Google translate

Google Earth

Locating Assets with INSTAGRAM Posts and GOOGLE EARTH MAPS

Can this stuff be used as evidence ?

#1 Depends on your law, code of evidence and procedural code
- Consider if it can be used as a basis for search warrants or other investigative techniques?
- Could it be used in proceedings where the degree of reliability required to be established is lower
  - at certain hearings like on conditions of release than at trial ?
  - As a basis to question a witness on cross examination or direct examination?

#2 Summary information from databases is not likely to be evidence to be relied on at trial
- ORIGINAL SOURCES ARE USUALLY REQUIRED EVEN IF COPIES ARE PERMITTED

#3 Usual key issues to consider for any evidence:
- How can I prove it is what I say it is?
  - A picture of who, when and where?
- How can I prove it has not been altered?
- REMEMBER: It may not be there when you go back for it

Contact:

Mary Butler
US Department of Justice
Asset Forfeiture and Money Laundering Section
Washington, DC
Mary.Butler@usdoj.gov
(202) 598-6711

The 167th International Training Course

The 167th International Training Course (UNAFEI, 23 August - 22 September 2017)

Left to Right:

Above
Dr. Andrea Moser (Canada), Dr. Rohan Gunaratna (Singapore)

4th Row
Ms. Odagiri (Chef), Ms. Hisa (JICA), Mr. Ohno (Staff), Mr. Ueki (Staff), Prof. Umemoto, Mr. Ohta (Staff), Mr. Furuhashi (Staff), Mr. Haneda (Staff), Ms. Oda (Staff), Mr. Hirose (Staff), Prof. Yoshimura, Ms. Iwakata (Staff), Ms. Yamada (Staff)

3rd Row
Ms. Nagahama (Staff), Prof. Watanabe, Mr. Yamane (Japan), Mr. Adachi (Japan), Mr. Takayama (Japan), Mr. Abe (Japan), Mr. Soares Cabeleira (Brazil), Ms. Camposanto (Philippines), Ms. Visser (Namibia), Mr. Tsukahara (Japan), Mr. Sakatani (Japan), Prof. Akashi, Prof. Watanabe

2nd Row
Prof. Yamada, Mr. Bayle (Philippines), Mr. Rakasiwi (Indonesia), Ms. Uiyyasathian (Thailand), Mr. Marcal Belo (Timor-Lest), Mr. Ahoujil (Morocco), Ms. Wilson (Thailand), Mr. Altaharwah (Jordan), Mr. Azim (Maldives), Mr. Youn (Korea), Ms. Li (Hong Kong), Ms. Lemisio (Samoa), Mr. Tshewang (Bhutan), Mr. Kono (Japan)

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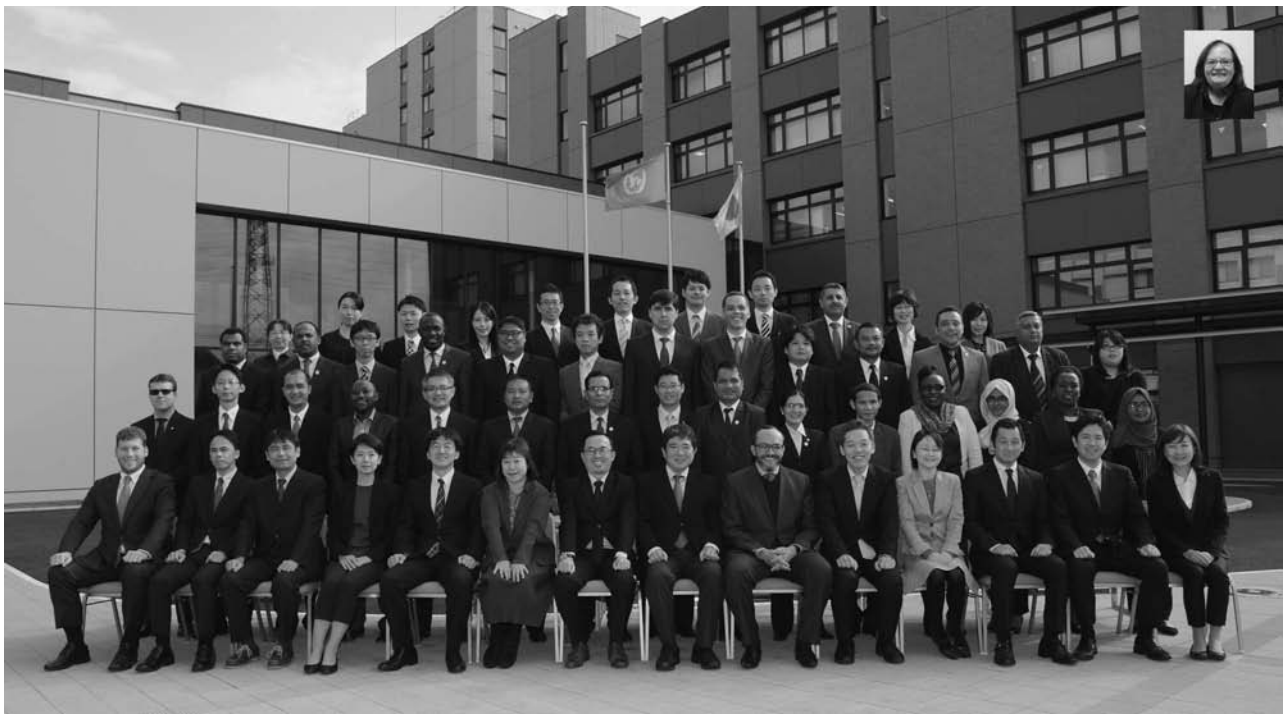
The 20th UNAFEI UNCAC Training Programme



The 20th UNAFEI UNCAC Training Programme (UNAFEI, 1 November - 7 December 2017)

Left to Right:

Above
Ms. Mary Butler (United States)

4th Row
Ms. Yamada (Staff), Ms. Iwakata (Staff), Mr. Haneda (Staff), Ms. Nagahama (Staff), Mr. Kiguchi (Staff), Mr. Ueki (Staff), Mr. Furuhashi (Staff), Mr. Ohno (Staff), Mr. Alsaedi (Iraq), Ms. Yamamoto (JICA), Ms. Oda (Staff)

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2nd Row
Mr. Lieberenz (Brazil), Mr. Manabe (Japan), Mr. Suryadi (Indonesia), Mr. Nyakizee (Tanzania), Mr. Akagi (Japan), Mr. Penjor (Bhutan), Mr. Ibrahim (Bangladesh), Mr. Srin (Cambodia), Mr. Adhikari (Nepal), Ms. Sharma Subedi (Nepal), Mr. Somvorachit (Lao PDR), Ms. Takuva (Zimbabwe), Ms. Shahuma (Maldives), Ms. Nyaga (Kenya), Ms. Liusha (Maldives)

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RESOURCE MATERIAL SERIES INDEX			
Vol.	**Training Course Name**	**Course No.**	**Course Dates**
1	Public Participation in Social Defence	25	Sep-Dec 1970
2	Administration of Criminal Justice	26	Jan-Mar 1971
3	[Corrections]	27	Apr-Jul 1971
	[Police, Prosecution and Courts]	28	Sep-Dec 1971
4	Social Defence Planning	29	Feb-Mar 1972
	Treatment of Crime and Delinquency	30	Apr-Jul 1972
5	United Nations Training Course in Human Rights in the Administration of Criminal Justice	n/a	Aug-Sep 1972
	Administration of Criminal Justice	31	Sep-Dec 1972
6	Reform in Criminal Justice	32	Feb-Mar 1973
	Treatment of Offenders	33	Apr-Jul 1973
7	[Administration of Criminal Justice]	34	Sep-Dec 1973
8	Planning and Research for Crime Prevention	35	Feb-Mar 1974
	Administration of Criminal Justice	36	Apr-Jun 1974
9	International Evaluation Seminar	37	Jul 1974
	Treatment of Juvenile Delinquents and Youthful Offenders	38	Sep-Nov 1974
10	The Roles and Functions of the Police in a Changing Society	39	Feb-Mar 1975
	Treatment of Offenders	40	Apr-Jul 1975
	NB: Resource Material Series Index, Nos. 1-10 (p. 139)	n/a	Oct 1975
11	Improvement in the Criminal Justice System	41	Sep-Dec 1975
12	Formation of a Sound Sentencing Structure and Policy	42	Feb-Mar 1976
	Treatment of Offenders	43	Apr-Jul 1976
13	Exploration of Adequate Measures for Abating and Preventing Crimes of Violence	44	Sep-Dec 1976
14	Increase of Community Involvement	45	Feb-Mar 1977
	Treatment of Juvenile Delinquents and Youthful Offenders	46	Apr-Jul 1977
15	Speedy and Fair Administration of Criminal Justice	47	Sep-Dec 1977
	Prevention and Control of Social and Economic Offences	48	Feb-Mar 1978
	Report of United Nations Human Rights Training Course	n/a	Dec 1977
16	Treatment of Offenders	49	Apr-Jul 1978
	Dispositional Decisions in Criminal Justice Process	50	Sep-Dec 1978
17	Treatment of Dangerous or Habitual Offenders	51	Feb-Mar 1979
	Community-Based Corrections	52	Apr-Jul 1979
18	Roles of the Criminal Justice System in Crime Prevention	53	Sep-Dec 1979
19	Arrest and Pre-Trial Detention	54	Feb-Mar 1980
	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
20	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
	Integrated Approach to Effective and Efficient Administration of Criminal Justice	56	Sep-Nov 1980
	NB: Resource Material Series Index, Nos. 1-20 (p. 203)		Mar 1981
21	Crime Prevention and Sound National Development	57	Feb-Mar 1981

	Integrated Approach to Effective Juvenile Justice Administration (including Proposed Guidelines for the Formulation of the Standard Minimum Rules for Juvenile Justice Administration: A draft prepared by UNAFEI on the basis of the reports of the study groups at the 58th International Training Course)	58	May-Jul 1981
22	Contemporary Problems in Securing an Effective, Efficient and Fair Administration of Criminal Justice and Their Solutions	59	Feb-Mar 1982
	Secruing Rational Exercise of Discretionary Powers at Adjudication and Pre-adjudication Stages of Criminal Justice Administration	60	Apr-Jul 1982
23	Improvement of Correctional Programmes for More Effective Rehabilitation of Offenders	61	Sep-Nov 1982
24	Promotion of Innovations for Effective, Efficient and Fair Administration of Criminal Justice	62	Feb-Mar 1983
	Community-Based Corrections	63	Apr-Jul 1983
25	The Quest for a Better System and Administration of Juvenile Justice	64	Sep-Dec 1983
	Documents Produced during the International Meeting of Experts on the Development of the United Nations Draft Standard Minimum Rules for the Administration of Juvenile Justice	n/a	Nov 1983
26	International Cooperation in Criminal Justice Administration	65	Feb-Mar 1984
	Promotion of Innovation in the Effective Treatment of Prisoners in Correctional Institutions	66	Apr-Jul 1984
27	An Integrated Approach to Drug Problems	67	Sep-Dec 1984
28	Contemporary Asian Problems in the Field of Crime Prevention and Criminal Justice, and Policy Implications	68	Feb-Mar 1985
	Report of the Fifth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Mar 1985
	Report of the International Workshop on the Role of Youth Organizations in the Prevention of Crime Among Youth	n/a	Jul 1985
	Follow-up Team for Ex-Participants of UNAFEI Courses	n/a	Dec 1985
	Community-Based Corrections	69	Apr-Jul 1985
29	In Pursuit of Greater Effectiveness and Efficiency in the Juvenile Justice System and Its Administration	70	Sep-Dec 1985
30	Promotion of Innovation in Criminal Justice Administration for the Prevention of New Criminality	71	Feb-Mar 1986
	The Quest for Effective and Efficient Treatment of Offenders in Correctional Institutions	72	Apr-Jul 1986
31	Economic Crime: Its Impact on Society and Effective Prevention	73	Sep-Nov 1986
	Report of the International Seminar on Drug Problems in Asia and the Pacific Region	n/a	Aug 1986
32	Advancement of Fair and Humane Treatment of Offenders and Victims in Criminal Justice Administration	74	Feb-Mar 1987
	Non-institutional Treatment of Offenders: Its Role and Improvement for More Effective Programmes	75	Apr-Jun 1987

33	Evaluation of UNAFEI's International Courses on Prevention of Crime and Treatment of Offenders, and Drug Problems in Asia	76	Aug-Sep 1987
	Crime Related to Insurance	77	Oct-Dec 1987
	Report of the Sixth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Sep 1987
	Report of the Workshop on Implementation Modalities for the Twenty-Three Recommendations Adopted by the International Seminar on Drug Problems in Asia and the Pacific Region	n/a	Sep 1987
34	Footprints, Contemporary Achievements and Future Perspectives in Policies for Correction and Rehabilitation of Offenders	78	Feb-Mar 1988
	Search for the Solution of the Momentous and Urgent Issues in Contemporary Corrections	79	Apr-Jul 1988
	Resolution of the Asia and Pacific Regional Experts Meeting	n/a	Mar 1988
	Report of the Meeting of Experts on the United Nations Draft Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules)	n/a	Jul 1988
35	Quest for Effective International Countermeasures to Pressing Problems of Transnational Criminality	80	Sep-Nov 1988
36	Advancement of the Integration of Criminal Justice Administration	81	Feb-Mar 1989
	Innovative Measures for Effective and Efficient Administration of Institutional Correctional Treatment of Offenders	82	Apr-Jul 1989
	Report of the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region	n/a	Aug 1989
37	Crime Prevention and Criminal Justice in the Context of Development	83	Sep-Nov 1989
	International Workshop on Victimology and Victim's Rights	n/a	Oct 1989
38	Policy Perspectives on Contemporary Problems in Crime Prevention and Criminal Justice Administration	84	Jan-Mar 1990
	Wider Use and More Effective Implementation of Non-custodial Measures for Offenders	85	Apr-Jun 1990
39	Search for Effective and Appropriate Measures to Deal with the Drug Problem	86	Sep-Dec 1990
40	Development of an Effective International Crime and Justice Programme	87	Jan-Mar 1991
	Institutional Treatment of Offenders in Special Categories	88	Apr-Jul 1991
	NB: Resource Material Series Index, Nos. 21-40 (p. 333)	n/a	n/a
41	Effective and Innovative Countermeasures against Economic Crime	89	Sep-Dec 1991
42	Quest for Solutions of the Pressing Problems of Contemporary Criminal Justice Administration	90	Jan-Feb 1992
	Further Use and Effectual Development of Non-Custodial Measures for Offenders	91	Apr-Jul 1992
43	Quest for Effective Methods of Organized Crime Control	92	Sep-Nov 1992
44	Policy Perspective for Organized Crime Suppression	93	Feb-Mar 1993
	Current Problems in Institutional Treatment and Their Solution	94	Apr-Jul 1993

45	Effective Countermeasures against Crimes Related to Urbanization and Industrialization—Urban Crime, Juvenile Delinquency and Enviromental Crime	95	Sep-Dec 1993
46	Promotion of International Cooperation in Criminal Justice Administration	96	Jan-Mar 1994
	Effective Treatment of Drug Offenders and Juvenile Delinquents	97	Apr-Jul 1994
47	Economic Crime and Effective Countermeasures against It	98	Sep-Dec 1994
48	The Effective Administration of Criminal Justice: Public Participation and the Prevention of Corruption	99	Jan-Mar 1995
	The Institutional Treatment of Offenders: Relationships with Other Criminal Justice Agencies and Current Problems in Administration	100	Apr-Jul 1995
49	The Fair and Efficient Administration of Criminal Justice: The Proper Exercise of Authority and Procedural Justice	101	Sep-Dec 1995
50	Crime Prevention through Effective Firearms Regulation	102	Jan-Mar 1996
51	Improvement of the Treatment of Offenders through the Strengthening of Non-custodial Measures	103	Apr-Jul 1996
	International Cooperation in Criminal Justice Administration	104	Sep-Nov 1996
52	The Effective Administration of Criminal Justice for the Prevention of Corruption by Public Officials	105	Jan-Feb 1997
	The Quest for Effective Juvenile Justice Administration	106	Apr-Jul 1997
53	The Role and Function of Prosecution in Criminal Justice	107	Sep-Nov 1997
	The Ninth Meeting of the Ad Hoc Advisory Committee of Experts on UNAFEI Work Programmes and Directions	n/a	Oct 1997
54	Current Problems in the Combat of Organized Transnational Crime	108	Jan-Feb 1998
	Effective Treatment Measures for Prisoners to Faciliate Their Reintegration into Society	109	Apr-Jul 1998
55	Effective Countermeasures against Economic and Computer Crime	110	Aug-Nov 1998
	The Role of Police, Prosecution and the Judiciary in the Changing Society	111	Jan-Feb 1999
56	Participation of the Public and Victims for More Fair and Effective Criminal Justice	112	Apr-Jul 1999
	The Effective Administration of Criminal Justice for the Prevention of Corrupt Activities by Public Officials	113	Aug-Nov 1999
57	International Cooperation to Combat Transnational Organized Crime—with Special Emphasis on Mutual Legal Assistance and Extradition	114	Jan-Feb 2000
	Current Issues in Correctional Treatement and Effective Countermeasures	115	May-Jun 2000
58	Effective Methods to Combat Transnational Organized Crime in Criminal Justice Processes	116	Aug-Nov 2000
	Current Situation and Countermeasures against Money Laundering	117	Jan-Feb 2001
59	Best Practices in the Institutional and Community-Based Treatment of Juvenile Offenders	118	May-Jul 2001

	Current Situation of and Countermeasures against Transnational Organized Crime	119	Sep-Nov 2001
60	Effective Administration of the Police and the Prosecution in Criminal Justice	120	Jan-Feb 2002
61	Enhancement of Community-Based Alternatives to Incarceration at all Stages of the Criminal Justice Process	121	May-Jul 2002
62	The Effective Administration of Criminal Justice to Tackle Trafficking Human Beings and Smuggling of Migrants	122	Sep-Oct 2002
63	The Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process Specifically Considering Restorative Justice Approaches	123	Jan-Feb 2003
64	The Effective Prevention and Enhancement of Treatment for Drug Abusers in the Criminal Justice Process	124	Apr-Jun 2003
65	Effective Countermeasures against Illicit Drug Trafficking and Money Laundering	125	Sep-Oct 2003
	Sixth International Training Course on Corruption Control in Criminal Justice	6th UNCAC	Nov 2003
66	Economic Crime in a Globalizing Society—Its Impact on the Sound Development of the State	126	Jan-Feb 2004
67	Implementing Effective Measures for the Treatment of Offenders after Fifty Years of United Nations Standard Setting in Crime Prevention and Criminal Justice	127	May-Jun 2004
	Measures to Combat Economic Crime, Including Money Laundering	128	Aug-Oct 2004
68	Crime Prevention in the 21st Century—Effective Prevention of Crime Associated with Urbanization Based upon Community Involvement and Prevention of Youth Crime and Juvenile Delinquency	129	Jan-Feb 2005
69	Integrated Strategies to Confront Domestic Violence and Child Abuse	130	May-Jun 2005
	Seventh Special Training Course on Corruption Control in Criminal Justice	7th UNCAC	Oct-Nov 2005
70	The Use and Application of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power—Twenty Years after Its Adoption	131	Aug-Oct 2005
71	Strengthening the Legal Regime for Combating Terrorism	132	Jan-Feb 2006
	Eighth International Training Course on Corruption Control in Criminal Justice	8th UNCAC	Oct-Nov 2005
72	Effective Prevention and Enhancement of Treatment for Sexual Offenders	133	May-Jun 2006
73	Challenges in the Investigation, Prosecution and Trial of Transnational Organized Crime	134	Aug-Oct 2006
	Ninth International Training Course on Corruption Control in Criminal Justice	9th UNCAC	Oct-Nov 2006
74	Promoting Public Safety and Controlling Recidivism Using Effective Interventions with Offenders: An Examination of Best Practices	135	Jan-Feb 2007
75	Effective Measures for the Treatment of Juvenile Offenders and their Reintegration into Society	136	May-Jun 2007

76	Corporate Crime and the Criminal Liability of Corporate Entities	137	Sep-Oct 2007
	Tenth International Training Course on the Criminal Justice Response to Corruption	10th UNCAC	Oct-Nov 2007
77	Effective Legal and Practical Measures for Combating Corruption: A Criminal Justice Response	138	Jan-Feb 2008
78	Profiles and Effective Treatment of Serious and Violent Juvenile Offenders	139	May-Jun 2008
79	The Criminal Justice Response to Cybercrime	140	Sep-Oct 2008
	Eleventh International Training Course on the Criminal Justice Response to Corruption	11th UNCAC	Oct-Nov 2008
	The Improvement of the Treatment of Offenders through the Enhancement of Community-Based Alternatives to Incarceration	141	Jan-Feb 2009
80	Effective Countermeasures against Overcrowding of Correctional Facilities	142	May-Jun 2009
	Twelfth International Training Course on the Criminal Justice Response to Corruption	12th UNCAC	Jul-Aug 2009
	Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials	143	Sep-Nov 2009
81	The Enhancement of Appropriate Measures for Victims of Crime at Each Stage of the Criminal Justice Process	144	Jan-Feb 2010
82	Effective Resettlement of Offenders by Strengthening Community Reintegration Factors	145	May-Jun 2010
83	Attacking the Proceeds of Crime: Identification, Confiscation, Recovery and Anti-Money Laundering Measures	146	Aug-Oct 2010
	The 13th International Training Course on the Criminal Justice Response to Corruption	13th UNCAC	Oct-Nov 2010
84	Community Involvement in Offender Treatment	147	Jan-Feb 2011
85	Drug Offender Treatment: New Approaches to an Old Problem	148	May-Jun 2011
86	Securing Protection and Cooperation of Witnesses and Whistle-blowers	149	Aug-Sep 2011
	Effective Legal and Practical Measures against Corruption	14th UNCAC	Oct-Nov 2011
87	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	150	Jan-Feb 2012
88	Evidence-Based Treatment of Offenders	151	May-Jun 2012
89	Trafficking in Persons—Prevention, Prosecution, Victim Protection and Promotion of International Cooperation	152	Aug-Sep 2012
	Effective Legal and Practical Measures against Corruption	15th UNCAC	Oct-Nov 2012
90	Treatment of Female Offenders	153	Jan-Feb 2013
91	Stress Management of Correctional Personnel—Enhancing the Capacity of Mid-Level Staff	154	May-Jun 2013
92	Effective Collection and Utilization of Evidence in Criminal Cases	155	Aug-Oct 2013
	Effective Measures to Prevent and Combat Corruption and to Encourage Cooperation between the Public and Private Sectors	16th UNCAC	Oct-Nov 2013
93	Protection for Victims of Crime and Use of Restorative Justice Programmes	156	Jan-Feb 2014

94	Assessment and Treatment of Special Needs Offenders	157	May-Jun 2014
95	Measures for Speedy and Efficient Criminal Trials	158	Aug-Sep 2014
	Effective Measures to Prevent and Combat Corruption Focusing on Identifying, Tracing, Freezing, Seizing, Confiscating and Recovering Proceeds of Corrpution	17th UNCAC	Oct-Nov 2014
96	Public Participation in Community Corrections	159	Jan-Feb 2015
97	The State of Cybercrime: Current Issues and Countermeasures	160	May-Jun 2015
98	Staff Training for Correctional Leadership	161	Aug-Sep 2015
	Effective Anti-Corruption Enforcement and Public-Private and International Cooperation	18th UNCAC	Oct-Nov 2015
99	Multi-Agency Cooperation in Community-Based Treatment of Offenders	162	Jan-Feb 2016
100	Children as Victims and Witnesses	163	May-Jun 2016
101	Effective Measures for Treatment, Rehabilitation and Social Reintegration of Juvenile Offenders	164	Aug-Sep 2016
	Effective Anti-Corruption Enforcement (Investiagation and Prosecution) in the Area of Procurement	19th UNCAC	Oct-Nov 2016
102	Juvenile Justice and the United Nations Standards and Norms	165	Jan-Feb 2017
103	Criminal Justice Procedures and Practices to Disrupt Criminal Organizations	166	May-Jun 2017
104	Rehabilitation and Social Reintegration of Organized Crime Members and Terrorists	167	Aug-Sep 2017
	Effective Measures to Investigate the Proceeds of Corruption Crimes	20th UNCAC	Nov-Dec 2017

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