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PREVENTION OF CRIME AND TREATMENT OF OFFENDERS

UNAFEI'S RESOURCE MATERIAL SERIES

ANNUAL REPORT FOR 2019 and RESOURCE MATERIAL SERIES NO. 111

FEATURED ARTICLES

RESOCIALIZATION AND REHABILITATION OF OFFENDERS IN THE COMMUNITY – THE CROATIAN PROBATION SERVICE
Jana Špero (Croatia)

PREVENTING REOFFENDING IN SINGAPORE
Matthew Wee Yik Keong (Singapore)

RE-ASSESSING THE ROLE OF COMMUNITY-BASED SENTENCES IN THE CONTEXT OF THE SUSTAINABLE DEVELOPMENT GOALS
Dr. Matti Joutsen (Thailand Institute of Justice)

The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

PREVENTION OF CRIME AND TREATMENT OF OFFENDERS

ANNUAL REPORT FOR 2019

AND

RESOURCE MATERIAL SERIES No. 111

PREVENTION OF REOFFENDING AND FOSTERING SOCIAL INCLUSION: FROM POLICY TO GOOD PRACTICE

UNAFEI

Akishima, Tokyo, Japan **October 2020**

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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 UNAFEI's Resource Material Series No. 111 under a new title – *Prevention of Crime and Treatment of Offenders.* The new title is intended to emphasize UNAFEI's core mission in the field of crime prevention and criminal justice and to promote the dissemination of criminal justice policies and practices to an expanded readership. This issue contains the Annual Report for 2019 and the work produced in the 174th International Senior Seminar, conducted from 16 January to 14 February 2020. The main theme of the 174th seminar was the *Prevention of Reoffending and Fostering Social Inclusion: From Policy to Good Practice.*

In order to build a safe and inclusive society, it is crucial not only to prevent reoffending but also to facilitate offenders' rehabilitation and reintegration as responsible members of society. The United Nations General Assembly adopted the Sustainable Development Goals (SDGs), which, among others, promote "peaceful and inclusive societies for sustainable development, . . . access to justice for all and . . . effective, accountable and inclusive institutions at all levels" (Goal 16). Towards the goal of building inclusive societies, it is important for criminal justice authorities to take measures to ensure each offender's rehabilitation and reintegration into society as a law-abiding citizen. These measures should include rehabilitative approaches to sentencing and corrections, conducting assessments of each offender and tailoring treatment to each offender's unique criminogenic needs, and the provision of treatment through multi-stakeholder partnerships and community engagement.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held this seminar to explore various issues that relate to reducing reoffending and promoting the reintegration of offenders into society. This issue of the *Resource Material Series*, in regard to the 174th International Senior Seminar, contains papers contributed by visiting experts and selected individual-presentation papers from among the participants. I regret that not all the papers submitted by the participants of the seminar 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.

October 2020

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SETO Takeshi
Director of UNAFEI

PART ONE

ANNUAL REPORT
FOR 2019

- *Main Activities of UNAFEI*
- *UNAFEI Work Programme for 2020*
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UNAFEI

MAIN ACTIVITIES OF UNAFEI
(1 January 2019 – 31 December 2019)

I. ROLE AND MANDATE

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan, in 1962 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in the Asia and the Pacific region by promoting regional cooperation in the field of crime prevention and criminal justice, through training and research.

UNAFEI has paid utmost attention to the priority themes identified by the Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up urgent, contemporary problems in the administration of criminal justice in the region, especially problems generated by rapid socio-economic change (e.g. transnational organized crime, corruption, economic and computer crime, and the reintegration of prisoners into society) as the main themes and topics for its training courses, seminars and research projects.

II. TRAINING

Training is the principal area and priority of the Institute's work programmes. In the international training courses and seminars, participants from different areas of the criminal justice field discuss and study pressing problems of criminal justice administration from various perspectives. They deepen their understanding with the help of lectures and advice from the UNAFEI faculty, visiting experts and ad hoc lecturers. This so-called "problem-solving through an integrated approach" is one of the chief characteristics of UNAFEI programmes.

Each year, UNAFEI conducts two international training courses (six weeks' duration) and one international seminar (five weeks' duration). Approximately one hundred government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA is an independent administrative institution for ODA programmes) each year to participate in all UNAFEI training programmes.

Training courses and seminars are attended by both overseas and Japanese participants. Overseas participants come not only from the Asia-Pacific region but also from the Middle and Near East, Latin America and Africa. These participants are experienced practitioners and administrators holding relatively senior positions in the criminal justice field.

By the end of 2019, UNAFEI had conducted a total of 173 international training courses and seminars. Over 5,800 criminal justice personnel representing 139 different countries and administrative regions have participated in these training courses and seminars. UNAFEI also conducts a number of other specialized courses, both country and subject focused, in which hundreds of other participants from many countries have been involved. In their respective countries, UNAFEI alumni have been playing leading roles and hold important posts in the fields of crime prevention and the treatment of offenders, and in related organizations.

A. The 171st International Senior Seminar

1. Introduction

The 171st International Senior Seminar was held from 9 January to 7 February 2019. The main theme was the "Criminal Justice Response to Crime Motivated by Intolerance and

Discrimination". Thirteen overseas participants and six Japanese participants attended the seminar.

2. Methodology

Firstly, the seminar participants introduced the roles and functions of criminal justice agencies in their respective countries in regard to the main theme. After receiving lectures from UNAFEI professors and visiting experts, the participants were then divided into group workshops as follows:

Group 1: The Challenges and Best Practices to Encounter Crimes Motivated by Intolerance and Discrimination

Group 2: Crimes Motivated by Intolerance and Discrimination: Problems and Their Resolution

Group 3: Best Practices for Supporting Victims of Crime Motivated by Intolerance and Discrimination

Each group elected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) in order to facilitate the discussions. During group discussion, the group members studied the designated topics and exchanged views based on information obtained through personal experiences, the individual presentations, lectures and so forth. The groups presented their reports during the report-back session, where they were endorsed as the reports of the seminar. The full texts of these reports were published in UNAFEI Resource Material Series No. 108.

3. Outcome Summary

(i) The Challenges and Best Practices to Encounter Crimes Motivated by Intolerance and Discrimination

Group 1 explored challenges faced by the participating countries in combating crimes motivated by intolerance and discrimination (hereinafter, "intolerance crimes"), as well as best practices to respond to such crimes. Recognizing that gender-based violence is a common problem in all countries, the group reported that some countries face unique intolerance crimes (such as those related to ethnicity, political ideology, sorcery and tribal conflict). The group offered recommendations to enhance the response to intolerance crimes, stressing the importance of establishing legal frameworks to overcome intolerance crimes.

There are a number of underlying problems which limit the ability of criminal justice authorities to respond to intolerance crimes. These problems include: the lack of specific legal frameworks, making it difficult to prosecute and impose appropriate sentences; lack of recognition by some within criminal justice systems that violence against women (VAW) and domestic violence (DV) are crimes; the prevalence of revictimization; social stigma against victims of abuse; lack of gender sensitivity; and lack of skilled human and financial resources.

To respond to these problems, specific recommendations were offered in reference to the following categories: (1) legal framework and political will; (2) human resources and staff training; (3) monitoring and reporting of intolerance crimes; (4) inclusion of victims' perspectives in policymaking; and (5) public awareness and access to victim support services. Further, it was noted that social barriers—such as socio-cultural beliefs, attitudes toward domestic violence, lack of awareness of legal rights and options, and fear of retaliation—weaken efforts to counter intolerance crimes.

Group 1 stressed the importance of establishing legal frameworks to overcome intolerance crimes. Each of the countries participating in the group relied on international conventions, constitutional provisions, penal codes and domestic violence legislation. Several countries have established national action plans to respond to intolerance crimes, while others have adopted specific legislation focused on vulnerable groups in need of protection.

(ii) Crimes Motivated by Intolerance and Discrimination: Problems and Their Resolution

The members of Group 2 conducted a comprehensive review of the victim and witness protection measures and legislative approaches to addressing intolerance crimes in the participating countries. Noting that intolerance crime is a global problem, each country reported challenges, particularly in terms of public awareness of victim and witness protection measures, lack of public confidence in the effectiveness of such measures, and lack of public and professional understanding of laws enacted to counter intolerance crimes.

The group's analysis focused on intolerance crimes and responses in all five participating countries. While the specific forms of intolerance crime and the target groups of these crimes vary from country to country, the group agreed that intolerance crimes are a global problem. Target groups include religious minorities, immigrants, racial minorities, the LGBT community, indigenous communities, among many others.

The group's review of key measures taken to counter intolerance crimes focused on legislative measures to enhance victim and witness protection and legislative measures to criminalize or enhance punishment of intolerance crimes. Regarding victim and witness protection, the challenges identified include: (1) the lack of victim and witness protection programmes in some countries, (2) lack of public awareness of victim and witness protection measures, (3) lack of faith in the effectiveness of such measures, resulting in less cooperation from the public in law enforcement investigations, and (3) insufficient human and financial resources.

From the perspective of legislative measures to criminalize or punish intolerance crimes, some countries have elected to create new substantive offences to criminalize intolerance crimes, while other have opted for penalty enhancement. Challenges identified include (1) lack of understanding of the new laws and reluctance to prosecute, (2) lack of sentencing parameters for judges and (3) restrictive definitions of protected groups.

(iii) Best Practices for Supporting Victims of Crime Motivated by Intolerance and Discrimination

Group 3 reviewed the current situation of intolerance crime in the participating countries and identified best practices to support victims. Intolerance crimes target persons and groups based on ethnicity, race, disability, religious beliefs etc. and include gender-based violence. To counter these crimes, the group stressed the need to protect victims and witnesses throughout all stages of the criminal justice process.

In response to intolerance crimes, a number of approaches used in various jurisdictions were reported: legislative measures to protect victims and witnesses, special laws for gender-based violence, the creation of special-victim and witness-protection agencies and specific police units for gender-based violence, and measures to protect victims and witness throughout the judicial process, including when giving testimony. While victim and witness protection measures do encourage cooperation with law enforcement authorities, the group found that cooperation can be limited due to lack of confidence in the criminal justice system,

fear of revictimization, the attitude of the victims (including economic dependency, community norms etc.), and insufficient levels of victim support.

To ensure sufficient support for victims and witnesses, their unique needs during the pre-trial, trial and post-trial stages must be addressed. Throughout all stages, the confidentiality of victims' identities should be maintained in order to prevent revictimization. During the pre-trial stage, measures to facilitate reporting of crime include providing interpreters, psychological and legal support, providing hotlines for reporting crimes and utilization of specialized units for handling intolerance crimes. To facilitate police investigations, the group recommended establishing safehouses and interview rooms suitable to victims, judicial and police protection, and the provision of financial support to victims. During the trial stage, the group recommended a number of measures including the use of video-link and witness screening equipment, providing personal and legal support etc. During the post-trial stage, the group stressed the importance of ensuring adequate victim compensation. Further, the group recommended providing psychological support, safehouses, and keeping the victim appropriately informed of the status of the offender's conviction and sentence.

B. The 172nd International Training Course

1. Introduction

The 172nd International Training Course was held from 15 May to 20 June 2019. The main theme was the "Criminal Justice Response to Trafficking in Persons and Smuggling of Migrants". Twenty-one overseas participants and seven Japanese participants attended the Course.

2. Methodology

The objectives of the course were primarily realized through the individual presentations, lectures by visiting experts and group workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the course. The group workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into groups to discuss the following topics under the guidance of faculty advisers:

Group 1: Effective Measures to Ensure Cooperation of Witnesses and to Secure Their Testimony

Group 2: Prevention and Detention of Trafficking in Persons and Smuggling of Migrants, Including Suppression of Related Crimes

Group 3: International Cooperation, Focusing on the Deprivation of Illicit Profits

The three groups each elected a chairperson, co-chairperson(s), a rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the designated subtopics and exchanged their views based on information obtained through personal experience, the individual presentations, lectures and so forth. The groups presented their reports during the report-back session, where they were endorsed as the reports of the course. The full texts of the reports were published in full in Resource Material Series No. 109.

3. Outcome Summary

(i) Effective Measures to Ensure Cooperation of Witnesses and to Secure Their Testimony

Group 1 addressed the topic of witness cooperation and witness protection in the context of trafficking in persons and smuggling of migrants ("TIP/SOM"). Securing witness cooperation is fundamental to the criminal justice process and is vitally important to the successful prosecution of TIP/SOM crimes. However, the group reported a number of challenges that prevent or discourage witnesses from cooperating with law enforcement, such as the failure to report trafficking crimes, legal and procedural obstacles, and challenges that prevent international cooperation.

Victims and witnesses fail or refuse to report trafficking crimes for a number of reasons. These include lack of knowledge about the reporting process, distrust of the criminal justice system, fear of retaliation or punishment, language, cultural and social barriers, etc. Moreover, victims are discouraged from reporting due to the physical harm and psychological trauma arising from the crime, including the secondary victimization that results from proceeding through the criminal justice system. Legal and procedural obstacles, such as the failure to recognize trafficked persons as victims, the lack of legal support etc., discourage victims and witnesses from cooperating with authorities. The group recommended the following countermeasures: (i) establishing multi-agency and private-sector reporting channels that accommodate multiple languages; (ii) establishing victim/witness protection and support programmes; (iii) creating national strategies, specialized units and standards of operation for combating TIP/SOM; (iv) overcoming legal challenges through the use of immunity in exchange for testimony and video recording of testimony and (v) enhancing international and inter-agency cooperation during investigations and in the provision of victim support.

Too often, the evidence collected from victims and witnesses is insufficient to prove the case against the defendants in court. Numerous challenges related to the credibility of victim testimony were discussed, including the cross-border nature of TIP/SOM cases, vulnerability due to age, psychological status, fear of physical harm or reprisal etc. At the same time, the criminal justice system faces the challenges of improperly obtained evidence, insufficient investigator skill or experience, insufficient testimony from forensic experts etc. Ultimately, these challenges can result in false or fabricated evidence being presented in court or insufficient evidence to obtain conviction. Accordingly, the group stressed the importance of corroborative evidence. Additionally, new investigative techniques and forensic examination can provide credible and corroborative evidence, and the investigation and trial process must be speedy in order to avoid memory lapses of the testifying victims and witnesses. Finally, capacity-building of investigators and prosecutors must be increased.

(ii) Prevention and Detention of Trafficking in Persons and Smuggling of Migrants, Including Suppression of Related Crimes

The members of Group 2 focused on the prevention and detection of TIP/SOM, noting the importance of prosecuting such crimes in order to suppress both supply and demand. Specifically, Group 2 addressed immigration issues including (i) entry by legal means, (ii) illegal entry across unmanaged borders and (iii) illegal entry with fake documents.

In the case of entry by legal means, immigrants enter the country legally but then overstay their visas. Additionally, the group identified the practice of using forged or fraudulent documents in the visa application process. Countries should enhance inter-agency cooperation to ensure that fraudulent visa applications are identified, and training in TIP/SOM should be provided to relevant government officials in order to facilitate detection.

It was also pointed out that TIP victims are likely to be included among those persons who overstay their visas. Thus, it is important to identify these victims and to obtain information from them on the criminal organizations that trafficked them.

Whether a landlocked or an island nation, national borders are always challenging to control. Illegal entry across unmanaged borders occurs when a person crosses a national border without undergoing an immigration check. Such border crossings are criminalized, as is providing assistance to those who cross. In many cases, criminal organizations facilitate such crossings, and a number of persons trafficked are exploited by being pressed into forced labour or prostitution. To counter this threat, the group recommended the criminalization of illegal hiring, the use of high-tech tools to manage borders, working with the community to gather intelligence and leads, to pursue the leaders of criminal organizations (i.e. the "big fish"), and to secure testimony through plea bargaining and grants of immunity.

Finally, illegal entry with fake documents involves entering based on fraudulent information or by assuming the identity of another (spoofing). Thus, more effort needs to be placed into procedures that ensure the passport holder is its true holder. Forgery has become difficult due to the use of IC chips in passports, so bribery of immigration officers has become a common practice. To counter corruption, the group recommended improving recordkeeping in electronic databases to identify corrupt officials and enhancing ethics education and training.

In conclusion, the group recommended enhanced efforts in the following areas to prevent and detect TIP/SOM: (i) the adoption of legislative measures to ensure the protection of victims; (ii) strengthening of international cooperation, particularly in terms of information-sharing on visa overstays between the country of residence and the immigrant's home country; (iii) law enforcement officer training and introduction of modern technologies; and (iv) public awareness campaigns in countries of origin.

(iii) International Cooperation, Focusing on the Deprivation of Illicit profits

Group 3 addressed the issue of international cooperation for the purpose of depriving criminals of their illicit profits obtained through TIP/SOM crimes. In doing so, the group considered financial investigations, informal cooperation and formal cooperation. To properly identify, trace, freeze, seize or confiscate proceeds of crime, law enforcement agencies need to know the type, location, ownership and transfer histories of relevant assets. However, in conducting financial investigations, the group reported that bank secrecy is one of the challenges to obtaining relevant financial information. To enhance the use of financial investigation, the group encouraged states to: (i) develop more training courses for financial analysis/investigation on TIP/SOM and (ii) improve their official websites to share more information with other countries.

Informal cooperation is useful in financial investigations because it facilitates the exchange of information that can be used as leads and useful to complete investigations without having to resort to formal requests for assistance. However, this information generally cannot be used at trial. To enhance the use of informal cooperation, the group encouraged states to: (i) develop more cooperation frameworks with other countries, especially those with shared or related languages; (ii) exchange information through FIUs etc.; (iii) create information-sharing networks among law enforcement officers.

Finally, formal cooperation is governed by domestic legislation, bilateral agreements etc. It is a time-consuming process, as diplomats act as intermediaries between the law enforcement agencies of the requesting and the requested countries. Each country selects a "central authority" to serve as the primary point of contact for mutual legal assistance (MLA) requests. Accordingly, it is always recommended to communicate with the requested central authority prior to submitting the request. In order to facilitate formal cooperation, regional associations and joint investigations have also been used. To enhance the use of formal cooperation, the group encouraged states to: (i) consider UNTOC as a legal basis for extradition; (ii) accept MLA requests flexibly; (iii) contact counterparts in advance (exchanging MLA drafts); (iv) participating in international meetings to develop cooperation frameworks; (v) stationing legal/police attachés abroad; (vi) preparing updated manuals on MLA and conducting training programmes for officers on other legal systems.

C. The 173rd International Training Course

1. Introduction

The 173rd International Training Course was held from 21 August to 20 September 2019. The main theme was "Tackling Violence against Women and Children through Offender Treatment: Prevention of Reoffending". Twenty-two overseas participants (including one course counsellor) and five Japanese participants attended.

2. Methodology

The participants endeavoured to explore the topic primarily through a comparative analysis of the current situation and the problems encountered. The participants' in-depth discussions enabled them to put forth effective and practical solutions.

The objectives were primarily realized through the individual presentations, lectures by visiting experts and the group workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of his or her country with respect to the main theme of the course. To facilitate discussions, the participants were divided into groups workshops.

Group 1: Introducing and Promoting Evidence-Based Practice in the Treatment of VAWC Offenders

Group 2: Multi-Stakeholder Cooperation to Promote VAWC Offender Rehabilitation and Prevent Reoffending

Group 3: Non-Custodial Measures for VAWC Offender Rehabilitation and Reoffending Prevention

Each group elected a chairperson, co-chairperson(s), rapporteur and co-rapporteur(s) to organize the discussions. The group members studied the situation in each of their countries and exchanged their views based on information obtained through personal experience, the individual presentations, lectures and so forth. Both groups examined the course theme. The groups presented their reports in the report-back sessions, where they were endorsed as the reports of the course. The reports were published in full in UNAFEI Resource Material Series No. 110.

3. Outcome Summary

(i) Introducing and Promoting Evidence-Based Practice in the Treatment of VAWC Offenders

Addressing the issue of evidence-based practice (EBP) in the treatment of violence against women and children (VAWC) offenders, the group began by reviewing the historical debate surrounding the effectiveness of offender treatment, noting that randomized control trials, quasi-experiments, systematic review and meta-analysis are all scientific methods that have been developed to measure programme effectiveness. In the 1980s, Andrews and Bonta developed the Risk-Need-Responsivity (RNR) Model, which establishes criminogenic needs (dynamic risk factors) as the appropriate targets for offender treatment. These needs should be treated through effective evidence-based measures such as Cognitive Behavioural Therapy (CBT) and Family Group Conferences (FGC).

Despite this well-established basis for offender treatment, the group identified a number of challenges to the implementation of effective treatment programmes. In response, the group offered the following recommendations: (i) improve stakeholder awareness (including the awareness and motivation of correctional staff) by promoting the benefits of EBP, such as public safety, prevention of reoffending and cost effectiveness; (ii) increase the number of specialists and trained staff by enhancing academic and legal studies and cooperation with non-governmental organizations; (iii) enhance programme effectiveness by drafting detailed manuals to standardize programme implementation; (iv) reduce disparities between research and practice by ensuring that researchers perform their studies in realistic correctional environments; (v) enshrine principles of inter-agency cooperation in relevant legislation; and (vi) motivate offenders to change, which can be achieved by ensuring that judges impose rehabilitative sentences and by offering offenders incentives to participate in rehabilitation programmes, such as meetings with family members, early release etc.

Noting the varied status of EBP in the participating jurisdictions, the group stressed the importance of implementation of EBP and offered recommendations aimed toward ensuring programme effectiveness. EBP must be objective (i.e. not based on subjective opinions), and the results of such practices must be able to be replicated. However, because EBP is not universally known or understood, the first challenge is to raise awareness by explaining the EBP philosophy to fellow practitioners. Second, implementing EBP throughout a system may be an overwhelming, impossible task. Practitioners are encouraged to identify a specific area of work, such as sexual offences or domestic violence, to focus on. Third, it is important to build capacity of correctional staff through education and training. Once these elements are in place, the final step is the adoption of certified, effective programmes in accordance with local needs and requirements.

(ii) Multi-Stakeholder Cooperation to Promote VAWC Offender Rehabilitation and Prevent Reoffending

Noting the linkages between criminal justice and promoting gender equality as established by the Sustainable Development Goals, the group addressed the importance of multi-stakeholder cooperation to facilitate the treatment of VAWC offenders and to prevent them from reoffending. The group concluded that, contrary to the traditional approach of punishment by incarceration, correctional systems should prioritize treatment and rehabilitation. The rehabilitative approach should prioritize alternatives to imprisonment, enabling multiple institutions, both inside and outside the criminal justice system, to facilitate offender treatment. Furthermore, multi-stakeholder cooperation promises to reduce rates of imprisonment and recidivism, as well as costs to the correctional system.

The group stressed that rehabilitation programmes must be country specific and must target appropriate individuals and identified the following as factors that lead VAWC offenders toward recidivism: (i) reintegration issues (social stigma, problems finding accommodations, lack of funds for sustainable treatment); (ii) the lack of aftercare and other support services, which leads offenders to return to their antisocial peers and criminal enterprises; (iii) the failure to leverage key stakeholders throughout the lengthy process of offender rehabilitation; (iv) the underreporting of crimes against women due to their fear of losing social and financial security, lack of access to justice etc.; and (v) lack of education and guidance for juveniles, which damages their self-esteem, leading them toward a life of crime.

In response to these challenges, the following best practices and recommendations were identified, inter alia: (i) enhancing the role of public prosecutors by enabling them to commence rehabilitation at the initial stage by making referrals to psychologists, rehabilitation volunteers and other religious or community resources; (ii) establishing mechanisms to share information and statistics between stakeholders involved in offender treatment; (iii) enhancing responses to children in conflict with the law through the use of specialized judges, Gesell Chambers for interviews with and counselling for juveniles, maintaining juveniles' confidentiality etc.; (iv) conducting continuous assessments for VAWC offenders using the RNR and Good Lives models; (v) making use of restorative justice and alternative dispute resolution programmes.

By providing rehabilitative treatment and support to VAWC offenders continuously and as early as possible, criminal justice systems can improve the offenders' chances to rehabilitate themselves and avoid repeating their crimes. This requires a team-based, multi-stakeholder approach drawing on specialized expertise of public officials and private organizations.

(iii)Non-Custodial Measures for VAWC Offender Rehabilitation and Reoffending Prevention

The group considered the importance of non-custodial measures to the rehabilitation of VAWC offenders and recidivism prevention, finding that imprisonment is no panacea for prevention of recidivism. Non-custodial measures have the following advantages: the reduction of incarceration, the reduction of recidivism, the effectiveness of rehabilitation and the enhancement of community involvement. Such measures should be implemented at all relevant stages of the criminal justice system, particularly the pre-trial stage, the trial and sentencing stage, and the post-sentencing stage.

At the *pre-trial stage,* the principal non-custodial measure is non-prosecution or suspension of prosecution. This enables the prosecutor to consider factors such as the gravity of the offence, the age and other characteristics of the offender, the circumstances under which the offence was committed etc. During the *trial stage,* the sentencing authority should consider the nature of the offence, the purpose of the sentence, the personality of the offender and the protection of the victim. In implementing non-custodial measures, the following practices are widely used: suspension of execution of sentence, economic sanctions (fines), confiscation of property, community service orders and the "Weekend Jail System", which enables the offender to work during weekdays in order to support his or her family. At the *post-sentencing stage,* probationers and parolees are permitted to serve all or a portion of their sentences in the community, which allows them to work and maintain their liberty subject to supervision by the relevant governmental and/or community authorities. They must also abide by certain conditions that steer them toward rehabilitation. Community support,

such as accommodation at halfway houses and other counselling or mentoring programmes, is also available.

After identifying a number of challenges facing the implementation of non-custodial measures (lack of awareness, lack of educational/vocational programmes, lack of community acceptance, and ongoing threats to victim and public safety), the group made the following recommendations: (i) ensuring that non-custodial measures are sufficiently incorporated into legislation and guidelines for prosecutors and judges; (ii) exploring the use of electronic monitoring as a tool to support the effective implementation of non-custodial measures; (iii) implementing community-based treatment measures and support, such as volunteer probation officers, halfway houses, cooperative employers, Circles of Support and Accountability (CoSA) etc.; (iv) establishing crisis shelters to provide protection, guidance and support for victims.

III. SPECIAL TRAINING COURSES AND TECHNICAL ASSISTANCE

A. The Follow-Up Seminar on the Third Country Training Programme for Development of Effective Community-Based Treatment of Offenders in the CLMV Countries

From 22 to 24 April 2019, UNAFEI co-hosted the Follow-Up Seminar on the Third Country Training Programme for Development of Effective Community-Based Treatment of Offenders in the CLMV Countries (Cambodia, Laos, Myanmar and Viet Nam).

B. The Comparative Study of Myanmar and Japan to Improve Prison Management

From 8-19 July 2019, 10 participants from Myanmar attended to study and compare prison management practices.

C. The 22nd UNAFEI UNCAC Training Programme

UNAFEI's annual general anti-corruption programme, the UNAFEI UNCAC Training Programme, took place from 9 October to 15 November 2019. The main theme of the Programme was "Detection, Investigation, Prosecution and Adjudication of High-Profile Corruption". 26 overseas participants and 6 Japanese participants attended.

D. The Joint Study on the Legal Systems of Japan and Viet Nam 2019 RTI-SPP Exchange Programme (Japan Session)

From 25 to 29 November 2019, two Vietnamese participants discussed effective questioning of witnesses and coordination between superior offices and subordinate offices.

E. The Third Training Course on Legal Technical Assistance for Viet Nam

From 25 November to 3 December 2019, ten Vietnamese participants discussed witness examination and cooperation between high prosecutors' offices and lower prosecutors' offices.

F. The Thirteenth Regional Seminar on Good Governance for Southeast Asian Countries

From 17 to 19 December 2019, UNAFEI held the Thirteenth Regional Seminar on Good Governance at UNAFEI in Tokyo, Japan. Approximately twenty anti-corruption practitioners from the ASEAN member countries and Timor-Leste attended as official delegates to address anti-money-laundering measures and asset recovery.

IV. INFORMATION AND DOCUMENTATION SERVICES

The Institute continues to collect data and other resource materials on crime trends, crime prevention strategies and the treatment of offenders from Asia, the Pacific, Africa, Europe and the Americas, and makes use of this information in its training courses and seminars. The Information and Library Service of the Institute has been providing, upon request, materials and information to United Nations agencies, governmental organizations, research institutes and researchers, both domestic and foreign.

V. PUBLICATIONS

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2019, the 107th, 108th and 109th editions of the Resource Material Series were published. Additionally, issues 158 to 160 (from the 171st Senior Seminar to the 173rd International Training Course, respectively) of the UNAFEI Newsletter were published, which included a brief report on each course and seminar and other timely information. These publications are also available on UNAFEI's website at http://www.unafei.or.jp/english.

VI. OTHER ACTIVITIES

A. Public Lecture Programme

On 25 January 2019, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the participants of the 171st International Senior Seminar. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

The Public Lecture Programmes increase the public's awareness of criminal justice issues, through comparative international study, by inviting distinguished speakers from abroad. In 2019, Ms. Santanee Ditsayabut, Provincial Public Prosecutor, Office of the Attorney General of Thailand, and Dimosthenis Chrysikos of the Organized Crime and Illicit Trafficking Branch, Division for Treaty Affairs, United Nations Office on Drugs and Crime (UNODC), were invited as speakers. They presented on "Thailand's Effort to End Violence Against Women Which is One Form of Crime Motivated by Gender Discrimination" and "International Efforts to Follow-Up on the Doha Declaration of the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice", respectively.

B. Assisting UNAFEI Alumni Activities

Various UNAFEI alumni associations in several countries have commenced, or are about to commence, research activities in their respective criminal justice fields. It is, therefore, one of the important tasks of UNAFEI to support these contributions to improve the crime situation internationally.

C. Overseas Missions in 2019

Deputy Director Ishihara and Professor Hirano visited Bangkok, Thailand from 22 to 24 January to attend the Asia and Pacific Regional Preparatory Meeting for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice.

Professor Yamada visited Attard, the republic of Malta from 31 January to 1 February to attend the workshop titled "IIJ Global Central Authorities Initiative: Expert Meeting – Curriculum Development".

Deputy Director Ishihara, Professor WATANABE Hiroyuki and Professor Ohinata visited Santiago, Chile, from 2 to 8 February to attend the Latin American and Caribbean Regional Preparatory Meeting for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice.

Deputy Director Ishihara, Professor Futagoishi, Chief International Administration Officer Fujita and International Training Officer Oda visited Singapore from 4 to 8 March to have meetings with the Home Team Academy and the Corrupt Practices Investigation Bureau (CPIB).

Professor Yamamoto visited Manila, Philippines, from 5 to 13 March to have meetings about offender treatment with the Bureau of Jail Management and Penology (BJMP), the Bureau of Corrections (BuCor) and the Parole and Probation Administration (PPA).

Director Seto and Professor Futagoishi visited Santiago and Valparaíso, Chile, from 13 to 15 March to attend the IPPF Colloquium 2019.

Director Seto and Deputy Director Ishihara visited Beirut, Lebanon, from 18 to 21 March to attend the Western Asian regional preparatory meetings for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice.

Deputy Director Ishihara, Professor WATANABE Hiroyuki and International Training Officer Iinuma visited Phnom Penh, Cambodia, from 20 to 22 March to have meetings about the situations and preparation for community corrections in Cambodia with the Ministry of Interior and the Ministry of Justice.

Director Seto, Professor Futagoishi and Professor Furuhashi visited Addis Ababa, Ethiopia, from 9 to 11 April to attend the African regional preparatory meeting for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice.

Professor Yamamoto visited Manila and Davao, Philippines, from 22 to 26 April to hold a meeting about the Workshop on Management of Offenders to Prevent Violent Extremism.

Director Seto, Professor Futagoishi and Professor WATANABE Machiko visited Vienna, Austria, from 23 to 25 April to attend the European Regional Preparatory Meeting for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice.

Director Seto, Deputy Director Ishihara, Professor Yamamoto, Professor Morikawa, Chief International Administration Officer Fujita, Senior International Training Officers Yamada and Saito visited Vienna, Austria, from 23 to 25 May to participate in the twenty-eighth session of the Commission on Crime Prevention and Criminal Justice.

Director Seto and Professor Yamamoto visited Manila, Philippines, from 10 to 14 June to hold the Workshop on Management of Offenders to Prevent Violent Extremism.

Professor WATANABE Hiroyuki visited Bangkok, Thailand, from 17 to 19 June to attend a UNODC Expert Meeting.

Professor Yamamoto visited Jakarta, Indonesia, from 24 to 25 June to attend the Countering Violent Extremism (CVE) Working Group Workshop on Counter and Alternative Narratives.

Professor WATANABE Machiko stayed in Garmisch-Partenkirchen, Germany, from 10 July to 1 August to attend the Program on Countering Transnational Organized Crime.

Professor Yamamoto visited Dili, Timor-Leste, from 16 to 19 July to hold a workshop entitled the “Management of Offenders to Prevent Violent Extremism: Strengthening the Assessment System in Prisons”.

Professor WATANABE Hiroyuki, Professor Morikawa and International Training Officer Matsuda visited Bangkok, Thailand, from 23 to 27 July to attend the Regional Workshop on Community-based Treatment for Terrorists and Violent Extremist Offender (VEO).

Professor WATANABE Hiroyuki visited Bangkok, Thailand, on 30 August to attend the Conference on “40 Years of Probation with Probation 4.0”.

Professor Otani visited Bangkok, Thailand, from 4 to 6 September to attend the International Seminar on Conflicts of Interest (hosted by the Office of the National Anti-Corruption Commission).

Professor Kitagawa visited Arlington, USA, from 15 to 18 September to attend the forum on Criminal Justice hosted by the National Criminal Justice Association (NCJA) and the International Community Corrections Association (ICCA.)

Professor Furuhashi and Senior International Training Officer Onda visited Ulaanbaatar, Mongolia, from 22 to 26 September to attend the 39th Asian and Pacific Conference of Correctional Administrators (APCCA) 2019.

Deputy Director Ishihara, Professor WATANABE Hiroyuki, Professor Hosokawa and Professor Morikawa visited Nairobi, Kenya, from 23 to 28 September to attend the JICA meeting with juvenile justice authorities.

Professor Futagoishi visited Hanoi and Ho Chi Minh City, Viet Nam, from 23 to 28 September to attend the Research and Training Institute of the Ministry of Justice – Supreme People's Procuracy Exchange Programme, Viet Nam Session.

Professor Furuhashi visited Bangkok, Thailand, from 28 to 29 October to deliver a lecture at the 4th Training on the Management of Women Prisoners hosted by Thailand Institute of Justice.

Professor WATANABE Hiroyuki and Professor Yamamoto visited Buenos Aires, Argentina, from 27 October to 1 November to attend the annual conference of the International Corrections and Prisons Association Conference (ICPA).

Director Seto and Professor Morikawa visited Canberra, Australia, from 30 October to 1 November to attend the 2019 Autumn Coordination Meeting of the United Nations Crime Prevention and Criminal Justice Programme Network and the 2019 conference of the Australia and New Zealand Society of Evidence Based Policing (ANZSEBP)

Professor Otani, Professor Hosokawa, Professor Kitagawa and International Training Officer Kondo visited Kathmandu, Nepal, from 3 to 5 November to hold a meeting with the Office of the Attorney General of Nepal, the Supreme Court, the National Judicial Academy and the Nepal Police.

Professor Yamamoto visited Davao, Philippines, from 11 to 15 November to hold a workshop entitled the “Management of Offenders to Prevent Violent Extremism”.

Deputy Director Ishihara and Professor Yamamoto visited Glasgow, Scotland, from 24 to 28 November to have a meeting with Dr. Fergus McNeill, Professor of Criminology and Social Work at the University of Glasgow.

Professor WATANABE Hiroyuki, Professor Furuhashi and Senior International Training Officer Hirose visited Mandalay and Insein, Myanmar, from 15 to 20 December to have meetings about prison management and offender treatment with the Myanmar Prison Department of the Ministry of Home Affairs.

D. Assisting ACPF Activities

UNAFEI cooperates and collaborates with the ACPF to improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of the ACPF’s membership consists of UNAFEI alumni, the relationship between the two is very strong.

VII. HUMAN RESOURCES

A. Staff

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and approximately nine professors are selected from among public prosecutors, the judiciary, corrections, probation and the police. UNAFEI also has approximately 15 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

B. Faculty and Staff Changes

Ms. WATANABE Machiko, formerly an attorney, General Affairs and Planning Department, Research and Training Institute of the Ministry of Justice, was appointed as a professor of UNAFEI in April 2019.

Mr. HOSOKAWA Hidehito, formerly a judge, Kumagaya Branch, Saitama Family Court, was appointed as a professor of UNAFEI in April 2019.

Mr. MORIKAWA Takeshi, a probation officer of the Tokyo Probation Office, was appointed as a professor of UNAFEI in April 2019.

Mr. YAMADA Masahiro, formerly a professor of UNAFEI, was transferred to the Yamaguchi District Public Prosecutors' Office in April 2019.

Mr. HIRANO Nozomu, formerly a professor of UNAFEI, was transferred to the Nagoya District Court in April 2019.

Mr. OHINATA Hidenori, formerly a professor of UNAFEI, was transferred to the Second Training Department, Research and Training Institute of the Ministry of Justice, in April 2019.

Mr. KOSEKI Takahiro, formerly an officer of the Tokyo District Prosecutors' Office, was appointed as the chief of the Training and Hostel Management Affairs Section of UNAFEI in April 2019.

Mr. ONDA Keisuke, formerly an instructor of the Kakogawa Juvenile Training School, was appointed as a senior officer of the Training and Hostel Management Affairs Section of UNAFEI in April 2019.

Mr. KONDO Tomohiro, formerly an officer of the International Cooperation Department, Research and Training Institute of the Ministry of Justice, was appointed as an officer of the Training and Hostel Management Affairs Section of UNAFEI in April 2019.

Ms. KIKUCHI Yoshimi, formerly a chief of the Financial Affairs Section of UNAFEI, was transferred to the Finance Division, Minister's Secretariat, Ministry of Justice, in April 2019.

Mr. KIGUCHI Ryo, formerly a senior officer of the Financial Affairs Section of UNAFEI, was transferred to the Tokyo District Public Prosecutors' Office in April 2019.

Mr. OTA Masaru, formerly an officer of the Financial Affairs Section of UNAFEI, was transferred to Kasamatsu Prison in April 2019.

Ms. TSUJII Yayoi, formerly an officer of the General Affairs Section of UNAFEI, was transferred to the Kansai Airport District Immigration Office in April 2019.

Mr. TOYODA Yasushi, formerly a chief of the Training and Hostel Management Affairs Section of UNAFEI, was transferred to the International Cooperation Department, Research and Training Institute of the Ministry of Justice, in April 2019.

Ms. NAGAHAMA Arisa, formerly a senior officer of the Training and Hostel Management Affairs Section of UNAFEI, was transferred to the International Affairs Division, Minister's Secretariat, Ministry of Justice, in April 2019.

Ms. ODA Michie, formerly an officer of the Training and Hostel Management Affairs Section of UNAFEI, was transferred to the Tokyo High Public Prosecutors' Office in April 2019.

VIII. FINANCES

The Ministry of Justice primarily provides the Institute's budget. UNAFEI's total budget for its programmes is approximately ¥70 million per year. Additionally, JICA and the ACPF provide assistance for the Institute's international training courses and seminars.

UNAFEI WORK PROGRAMME FOR 2020

I. TRAINING

A. Training Courses & Seminars (Multinational)

1. The 174th International Senior Seminar

The 174th International Senior Seminar was held from 16 January to 14 February 2020. The main theme of the Seminar was “Prevention of Reoffending and Fostering Social Inclusion: From Policy to Good Practice”. Sixteen overseas participants and seven Japanese participants attended.

2. The 175th International Training Course

The 175th International Training Course was to be held from May to June 2020. The main theme of the Course is “Achieving Inclusive Societies through Effective Criminal Justice Policies and Practices”. The training course was postponed due to the COVID-19 pandemic.

3. The 176th International Training Course

The 176th International Training Course was to be held from August to September 2020. The main theme of the Course is the "Treatment of Women Offenders”. The training course was postponed due to the COVID-19 pandemic.

4. The 23rd UNAFEI UNCAC Training Programme

UNAFEI’s annual general anti-corruption programme, the UNAFEI UNCAC Training Programme, was to take place from October to November 2020. The main theme of the programme addresses anti-corruption measures and best practices. The programme was postponed due to the COVID-19 pandemic.

5. The Fourteenth Regional Seminar on Good Governance for Southeast Asian Countries

From 2 to 7 December 2020, UNAFEI was scheduled to hold the Fourteenth Regional Seminar on Good Governance in Tokyo, Japan, on the theme of “Integrity and Independence of Judges, Prosecutors and Law Enforcement Officials”. The programme has been postponed to March 2020 due to the COVID-19 pandemic. Among other participants, 20 anti-corruption practitioners from the 10 ASEAN countries are expected to attend as official delegates. The programme was postponed due to the COVID-19 pandemic.

B. Training Course (Country Specific)

1. The Comparative Study on the Criminal Justice Systems of Japan and Nepal

From 19-27 February 2020, twelve Nepalese participants attended to analyse the issues from a comparative point of view and improve the practice of the criminal justice system in Nepal under the new Criminal Procedure Code.

Distribution of Participants by Professional Backgrounds and Countries

(1st International Training Course - 174th International Senior Seminar, U.N.Human Rights Courses and 1 Special Course)

研修参加者・セミナー参加者　地域別・職種別一覧表　（第1回国際研修から第174回国際高官セミナーまで）

As of 2 October 2020

	Country/Area	国・地域名	Judicial and Other Administration 司法行政（矯正・保護行政を含む）	Judge 裁判官	Public Prosecutors 検察官	Police Officials 警察官	Correctional Officials (Adult) 矯正官（成人）	Correctional Officials (Juvenile) 矯正官（少年）	Probation Parole Officers 保護観察官	Family Court Investigation Officers 家裁調査官	Child Welfare Officers 児童福祉職員	Social Welfare Officers 社会福祉職員	Training & Research Officers 教育・研究・調査機関職員	Others その他	**Total 計**
1	Afghanistan	アフガニスタン	11	9	6	5		1							32
2	Bangladesh	バングラデシュ	24	15		22	5	1	4			6		2	79
3	Bhutan	ブータン				23									23
4	Brunei	ブルネイ	4				2								6
5	Cambodia	カンボジア	1	3	1	7	1								13
6	China	中　国	13	5	5	10							8		41
7	Georgia	グルジア				1									1
8	Hong Kong	香港	22			12	32	3	9		1	3	1		83
9	India	イ ン ド	15	10		55	7	1	1			2	6	4	101
10	Indonesia	インドネシア	23	25	33	33	15		4			6		3	142
11	Iran	イ ラ ン	5	12	8	8	6						2	1	42
12	Iraq	イ ラ ク	6	3	3	8	5	5					2		32
13	Jordan	ヨルダン	1	1	3	7	2								14
14	Korea	韓国	13	3	53	6	37	4					3		119
15	Kyrgyzstan	キルギス	1			2									3
16	Laos	ラ オ ス	16	9	7	10									42
17	Malaysia	マレーシア	24	2	7	52	37	8	4		1	6	3	1	145
18	Maldives	モルディヴ	6	4	5	9	2		2						28
19	Mongolia	モンゴル	3		1	3							2		9
20	Myanmar	ミャンマー	12	1	1	12	4								30
21	Nepal	ネパール	38	18	18	34								3	111
22	Oman	オマーン			1	4									5
23	Pakistan	パキスタン	22	13	3	48	8	1	2				2	2	101
24	Palestine	パレスチナ	2		4	1			1			1			9
25	Philippines	フィリピン	23	9	29	44	11	3	16	3	1	7	5	7	158
26	Saudi Arabia	サウジアラビア	5			7	3						1	1	17
27	Singapore	シンガポール	11	18	5	12	10	3	10			3	1	1	74
28	Sri Lanka	スリランカ	24	25	22	25	20	1	11		1	3		1	133
29	Taiwan	台湾	12	4	2	2	1								21
30	Tajikistan	タジキスタン	2	3											5
31	Timor-Leste	東ティモール					1							1	2
32	Thailand	タ　イ	29	51	46	19	22	9	21	1		8	8	1	215
33	Turkey	ト ル コ	2	1	1	2							1	1	8
34	United Arab Emirates	アラブ首長国連邦	1												1
35	Uzbekistan	ウズベキスタン		4	2	1							1	1	9
36	Viet nam	ベトナム	15	5	6	8	1					4	6		45
37	Yemen	イエメン	2			2									4
	A S I A	**小計（アジア州）**	388	253	272	494	232	40	85	4	4	49	52	30	1,903
1	Algeria	アルジェリア		4	2										6
2	Botswana	ボツワナ	2		1	5	2					1			11
3	Cameroon	カメルーン	4		1										5
4	Cote d'Ivoire	コートジボアール		13	4	2									19
5	Democratic Republic of the Congo	コンゴ民主共和国	2	3	4	2									11
6	Egypt	エジプト	1	5	3	3							3	1	16
7	Ethiopia	エチオピア	3			2									5
8	Gambia	ガンビア				2									2
9	Ghana	ガ ー ナ	1		1	5	1								8
10	Guinea	ギ ニ ア	2		1	4									7
11	Kenya	ケ ニ ア	13	6	3	14	10	2	20		1		2		71
12	Lesotho	レ ソ ト				1			2						3
13	Liberia	リベリア											1		1
14	Madagascar	マダガスカル				1									1
15	Malawi	マラウィ		2	1										3
16	Mali	マリ	1	1	2										4
17	Mauritius	モーリシャス		1			2								3
18	Morocco	モロッコ	2	1	1	4							1	1	10
19	Mozambique	モザンビーク	1			1	1								3
20	Namibia	ナミビア	3		1	1	2								7
21	Niger	ニジェール			1										1
22	Nigeria	ナイジェリア	1		1	6	7							1	16
23	Somalia	ソマリア	1												1
24	South Africa	南アフリカ共和国				4	3					1	1		9
25	Seychelles	セーシェル				4			1						5
26	Sudan	スーダン	2		1	13	1		1				2		20
27	Swaziland	スワジランド				2									2
28	Tanzania	タンザニア	4	3	7	9	2								25
29	Tunisia	チュニジア		1		1									2
30	Uganda	ウガンダ			1	5								1	7
31	Zambia	ザンビア		1	1	6									8
32	Zimbabwe	ジンバブエ	1		3	8									12
	A F R I C A	**小計（アフリカ州）**	44	41	40	105	31	2	24	0	1	2	10	4	304
1	Australia	オーストラリア			1				1			1			3
2	Cook Islands	クック諸島	1						3						4
3	Fiji	フィジー	7	1	9	22	17					1			57
4	Kiribati	キリバス	1												1
5	Marshall Island	マーシャル	1			4									5
6	Micronesia	ミクロネシア				1			1						2
7	Nauru	ナ ウ ル				1	1								2
8	New Zealand	ニュージーランド	1			1									2
9	Palau	パラオ				2	1								3
10	Papua New Guinea	パプアニューギニア	17	1	6	27	10		9			1		4	75
11	Samoa	サモア	5			2	1		3					1	12
12	Solomon Islands	ソロモン	3		2	2	2								9
13	Tonga	ト ン ガ	2	1		7	4		4				1		19
14	Vanuatu	バヌアツ			1	4	2		1						8
	THE PACIFIC	**小計（大洋州）**	38	3	19	73	38	0	22	0	0	3	1	5	202
1	Antigua and Barbuda	アンティグア・バーブーダ				1			1						2
2	Argentina	アルゼンチン	2	2	0	2								1	7
3	Barbados	バルバドス				2			1						3
4	Belize	ベリーズ	1			2									3
5	Bolivia	ボリビア		1										1	2
6	Brazil	ブラジル	4	1	23	32	4				1	1			66
7	Chile	チ　リ	1		1	4	2								8

	Country/Area	国・地域名	Judicial and Other Administration 司法行政（矯正・保護行政を含む）	Judge 裁判官	Public Prosecutors 検察官	Police Officials 警察官	Correctional Officials (Adult) 矯正官（成人）	Correctional Officials (Juvenile) 矯正官（少年）	Probation Parole Officers 保護観察官	Family Court Investigation Officers 家裁調査官	Child Welfare Officers 児童福祉職員	Social Welfare Officers 社会福祉職員	Training & Research Officers 教育・研究・調査機関職員	Others その他	Total 計
8	Colombia	コロンビア	3	1	2	6					1			1	14
9	Costa Rica	コスタリカ	3	5	5								1	2	16
10	Dominican Republic	ドミニカ共和国				2									2
11	Ecuador	エクアドル			1	4		1							6
12	El Salvador	エルサルバドル	2	1	1	5	1						1	1	12
13	Grenada	グレナダ				1									1
14	Guatemala	グアテマラ	2			1	1							1	5
15	Guyana	ガイアナ				3	1								4
16	Haiti	ハイチ				1									1
17	Honduras	ホンジュラス			2	8								1	11
18	Jamaica	ジャマイカ	3			2	5	1							11
19	Mexico	メキシコ	2			2								1	5
20	Nicaragua	ニカラグア		1											1
21	Panama	パ ナ マ	1		9	5								2	17
22	Paraguay	パラグアイ	1		1	9		1							12
23	Peru	ペ ル ー	4	10	4	5	1						1	2	27
24	Saint Christopher and Nevis	セントクリストファー・ネイヴィス			1	1									2
25	Saint Lucia	セントルシア	1			1	1								3
26	Saint Vincent	セントビンセント				2									2
27	Trinidad and Tobago	トリニダード・トバゴ	1				1								2
28	U.S.A.	米国								1					1
29	Uruguay	ウルグアイ				3									3
30	Venezuela	ベネズエラ	1		1	12							1		15
	NORTH & SOUTH AMERICA	**小計（アメリカ州）**	32	22	51	116	17	3	2	1	2	1	4	13	264
1	Albania	アルバニア	1			2									3
2	Armenia	アルメニア	1												1
3	Azerbaijan	アゼルバイジャン	1												1
4	Bulgaria	ブルガリア				1									1
5	Estonia	エストニア			1										1
6	Former Yugoslav Republic of Macedonia	マケドニア旧ユーゴスラビア共和国	2												2
7	Hungary	ハンガリー	1												1
8	Lithuania	リトアニア				1									1
9	Moldova	モルドバ				1									1
10	Poland	ポーランド				1									1
11	Ukraine	ウクライナ	1	2	4								1	1	9
	EUROPE	**小計（欧州）**	7	2	5	6	0	0	0	0	0	0	1	1	22
	United Nations Office on Drugs and Crime	**国連薬物・犯罪オフィス**												1	1
1	**JAPAN**	**日　　本**	119	214	336	113	110	102	235	72	38	2	48	93	1, 482
##	**TOTAL**	**合　　計**	628	535	723	907	428	147	368	77	45	57	116	147	4, 178

MAIN STAFF OF UNAFEI

Faculty:

Mr. SETO Takeshi	Director
Ms. ISHIHARA Kayo	Deputy Director
Mr. FUTAGOISHI Ryo	Professor
Mr. OTANI Junichiro	Professor
Mr. WATANABE Machiko	Professor
Mr. WATANABE Hiroyuki	Professor, Chief of Information and Public Relations
Mr. HOSOKAWA Hidehito	Professor
Ms. KITAGAWA Mika	Professor
Dr. YAMAMOTO Mana	Professor, Chief of Research Division
Mr. FURUHASHI Takuya	Professor
Mr. MORIKAWA Takeshi	Professor
Mr. Thomas L. Schmid	Linguistic Adviser

Secretariat:

Mr. FUJITA Takeshi	Chief of Secretariat
Mr. KOSEKI Takahiro	Chief of Training and Hostel Management Affairs Section
Ms. OKUMOTO Ako	Chief of General Affairs Section
Mr. TAOMOTO Akira	Chief of Financial Affairs Section

AS OF 31 DECEMBER 2019

2019 VISITING EXPERTS

THE 171ST INTERNATIONAL SENIOR SEMINAR

Ms. Cristina M. Finch	Head, Tolerance and Non-Discrimination Department ODIHR/OSCE
Mr. Mark Walters	Professor of Criminal Law and Criminology School of Law, Politics and Sociology University of Sussex
Ms. Santanee Ditsayabut	Provincial Public Prosecutor, Assistant Secretary to the Deputy Attorney General Office of Attorney General
Mr. Dimosthenis Chrysikos	Crime Prevention and Criminal Justice Officer, United Nations Office on Drugs and Crime (UNODC) Division for Treaty Affairs

THE 172ND INTERNATIONAL TRAINING COURSE

Ms. Janice Brennan	Barrister United Kingdom
Mr. Martin Fowke	Team Leader, Normative & Policy Human Trafficking & Migrant Smuggling Section Division of Treaty Affairs United Nations Office on Drugs and Crime (UNODC)
Mr. Severino H Gana, Jr.	Former Senior Deputy State Prosecutor Department of Justice Republic of the Philippines

THE 173RD INTERNATIONAL TRAINING COURSE

Dr. Kattiya Ratanadilok	Director Justice Research and Development Institute Office of Justice Affairs Thailand
Ms. Mariana Martin	Commissioner: Rehabilitation Namibian Correctional Service Ministry of Safety and Security Namibia
Dr. Franca Cortoni	Professor, School of Criminology Université de Montréal Canada

THE 22ND UNAFEI UNCAC TRAINING PROGRAMME

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PART TWO

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VISITING EXPERTS' PAPERS

RESOCIALIZATION AND REHABILITATION OF OFFENDERS IN THE COMMUNITY – THE CROATIAN PROBATION SERVICE

Jana Špero[*]

I. INTRODUCTION

This paper has the aim to inform practitioners from different countries about the criminal justice system in the Republic of Croatia. The key is to present changes regarding the enforcement of the sanctions for offenders who committed a crime after the introduction of the probation service and the possibilities to work with offenders in the community.

A. The Republic of Croatia

The Republic of Croatia is a European country and a member state of the European Union. The Republic of Croatia became independent after the dissolution of the Socialist Federal Republic of Yugoslavia in 1991. Croatia became the 28th member state of the European Union on 1 July 2013 and is still the youngest one. The population of the Croatia is 4.3 million, and it is located in the middle of south-eastern Europe. It is a Mediterranean country with more than 1,200 islands in the Adriatic Sea.

From 1 January to 30 June 2020, Croatia took over the presidency of the Council of the European Union. Also, the Croatian city Rijeka is the European Capital of Culture in 2020, with the motto "Port of Diversity". The capital of the Republic of Croatia is Zagreb. To the north, Croatia borders Slovenia and Hungary; to the east, Serbia; to the south, Bosnia and Herzegovina, and Montenegro, while a long maritime border separates it from Italy.

B. Enforcement of Sanctions

When it comes to the aspect of safety, the Republic of Croatia is a very safe country. One of the youngest workings of the Croatian criminal justice system is the probation service. In a short period of time, the probation service has become an important professional aspect for the enforcement of sanctions for persons who committed a crime, with a strong orientation to the resocialization and rehabilitation of offenders into the community. For many years, persons who committed a crime were sent to prison to serve a prison sentence. The key criminal justice laws are the Criminal Code and the Criminal Law Procedure Act, but in this paper the focus will be on the Law on the Enforcement of the Prison Sanctions and Probation Act.

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II. HISTORY OF ALTERNATIVE SANCTIONS IN CROATIA

When talking about the development of the probation system in the Republic of Croatia, we must go back in history before the service was developed to see its roots. For a long period of time, dating even before the independence of Croatia, while Croatia was part of the Socialist Federal Republic of Yugoslavia, the only alternative to imprisonment was the suspended sentence. At that time, suspended sentence was a sanction where an offender received a prison sentence but was not sent to prison. Instead the offender was permitted to remain in the community provided that the offender did not commit a new crime within a certain period of time, usually a few years. However, this possibility shows that the concept of "alternative sanctions", in a way, already existed in the Croatian legal system, though not in its present form.

It is also very important to point out that, for many years, measures were available for juvenile offenders in Croatia very similar to probation measures. As in the past, today's measures for juvenile offenders are under the jurisdiction of the social welfare system and will not be included in this paper. Alternative sanctions under the jurisdiction of the modern, professional probation service in Croatia are for adult offenders only.

So, for adult offenders, a suspended sentence with protective supervision as a sanction, though different in form from probation, was regulated in 1976 by the provisions of the Criminal Code of the Socialist Federal Republic of Yugoslavia. After becoming an independent state, Croatia's Criminal Code of 1997 introduced the possibility of replacing prison sentences with community work orders but did not develop a probation service at the time. We can say that the system that was created at the time was a forerunner for the probation service that Croatia has today. After declaring its independence, the Republic of Croatia took over this Act, and the sanction was kept and developed. Croatia's Criminal Code of 1997 introduced the possibility of replacing prison sentences with community work orders. Looking to the past, we can say that first community sanctions and measures started being implemented at the end of 2001, when the changes in the new Criminal Code led to the development of the special Supervision of Suspended Sentence and Community Service Act. Under that Act, community sanctions were executed by professionals called "commissioners". Work of the commissioners was within the jurisdiction of the Directorate for Prison System. Commissioners had university degrees mainly in social pedagogy, social work and psychology, and they were mostly employees of the Ministry of Justice–Prison System or the Ministry of Social Welfare. Commissioners had their full-time jobs in prisons, penitentiaries, correctional institutions for juvenile offenders, social welfare centres etc. and only worked part-time with offenders. However, having commissioners demonstrated that Croatia was open to the concept of alternative sanctions and was ready to work with the offenders in the community even on a larger scale. The best value of this early system was that commissioners were promoting the idea of probation in the wider community.

III. THE IDEA OF BUILDING A PROFESSIONAL PROBATION SERVICE

After the period in which "commissioners" were enforcing some alternatives to imprisonment in Croatia, the need to establish and develop a more integral probation system was recognized by the governmental structures. This new development was

supported by the Council of Europe recommendations and other positive European practices.

It is also important to underline that this was a time during Croatia's accession negotiations for EU membership and related judicial reforms, so we can say that there was "a good wind" for the development of the probation service.

As a member state of the Council of Europe and future member state of the European Union, Croatia had a duty and a strong will to reach the highest standards regarding the human rights of the persons in prisons. This period offered the possibility to learn from different countries in Europe through European projects. Starting from the year 2007, Croatia started implementing European projects orientated to building a professional probation service. During the following years, there was cooperation with many European countries in order to learn about practices conducted in Europe, what works and what to avoid when establishing a probation system. This led to the development of the modern professional probation service in Croatia.

A. Prison Population at the Time

After the judicial reforms started in 2005, a strong initiative was presented to further develop the probation system. The main goals of the reform were to reduce the number of prisoners in overcrowded prisons, make enforcement of criminal sanctions more humane and help to reintegrate offenders into the community, taking into consideration its safety. During that time, the Government had concerns about the large prison population and lack of effective means to secure many early release cases.

At that time, Croatia was struggling with the problem of an increasing prison population. From the year 2005 to year 2011, the prison population was increasing on a daily basis. The prison system was making all efforts to increase the capacity of prisons, but overcrowding remained. In 2005, there was capacity for 3,009 prisoners, while there were 3485 prisoners; by 2007 there was capacity for 3,267 prisoners, but there were 4,290 prisoners. The capacity in 2008 was increased to 3,351, but the number of prisoners was increasing even more: 4,891 prisoners in 2009 and 5,165 prisoners in 2010. Taking into account that many Croatian prisoners were serving short prison sentences, this was a perfect time to build a professional probation service.

B. European Projects

Looking for solutions, there was strong support for the development of probation, and it was decided to draw on European experience to help develop the best model. At the time, there were many European projects available to help and support Croatia during the negotiating time to become an EU member state.

1. CARDS 2004 Project

Within the framework of the CARDS 2004 project, the Ministry of Justice, Directorate for Prison System, along with the National Offender Management System from the UK, conducted in 2007 the EU Twinning light project, "Support to the Development of a Probation System in Croatia". Within this project, an array of European practices and experiences were reviewed, enabling Croatia to consider a wide range of options in the strategic planning process. Also, the gaps and needs analysis regarding the establishment of a probation system in Croatia was conducted. Part of this project was also a SWAT analysis – strengths, weaknesses, opportunities and threats – regarding the

future probation service in Croatia. At the end of 2007, as a main result of the project, Croatia had a five-year strategy for the establishment of a probation service in Croatia.

This new strategy had two goals:

1. Development of professional probation practice;

2. Development of the professional probation service.

The strategy also included future goals:

- Prepare and present the Probation Act to the Croatian Parliament;

- Build a professional probation service with 70 probation officers;

- By the year 2012, develop a network of probation offices in the Republic of Croatia;

- Request more assistance from the EU in finding best European probation solutions.

The goals of this strategy were:

- Increasing the efficiency of the criminal justice system;

- Increasing human rights of the offenders;

- Increasing the number of offenders with whom the work will be in the community;

- Decreasing recidivism among offenders;

- Good control of alternative sanctions;

- Decreasing the prison population.

2. <u>The Bilateral SPF Project, "Transitional Support to the Development of the Probation System in the Republic of Croatia"</u>

The bilateral project between the United Kingdom and Croatia, "Transitional support to the development of the probation system in the Republic of Croatia", was implemented in the period from April 2008 to March 2010. This was an "in between" project that had the purpose to assist with the development of a probation service in Croatia between the CARDS 2004 project and the new IPA2008 project. During this project, the following documents were produced:

- Analysis of the cost for the development of the probation service;

- Law on Probation draft;

- National standards for the enforcement of community sanctions;

- Assessment tool for offenders;
- Plans regarding human resources.

The IPA2008 project, "Development of Probation System in the Republic of Croatia", lasted for two years. Partners on this project were professionals from the United Kingdom and the Czech Republic. This was the key EU project that assisted in building a modern probation service in Croatia. The project started in 2011 and was successfully completed in 2013. During this project, the following were developed and conducted:

- Standards and professional guidance for probation officers regarding all probation tasks;
- Harmonization with EU standards;
- Development of the central database – probation information system;
- Management framework;
- Comprehensive training of probation officers;
- Programme and long-term probation training strategy;
- Communication strategy;
- Proposal of a new Probation Development Strategy in the Republic of Croatia.

3. The Transition Facility Project, "Support to further development and strengthening of Probation Service in Croatia"

Under the Transition Facility in 2013, the European Commission accepted the project on "Support to further development and strengthening of the Probation Service in Croatia". The project lasted 18 months. The partners on the project were Germany and Spain. This project included:

- procurement of official cars for the probation service;
- implementation of the pilot project on "electronic monitoring";
- education of probation officers for the implementation of special treatment.

C. Formal Beginning of the Probation Service

The process of building the new service formally started after the Strategy for the Development of the Croatian Probation Service 2008–2012 was adopted. The key year was 2009, when the first ever Probation Act was passed in the Croatian Parliament. Unfortunately, not all other aspects were ready for the start of a probation service so "the theory and practice" were timely separated for a short period of time.

If we view the growth of the Probation Service in the Republic of Croatia like the building of a house, we can say that the ground floor was the Probation Act in 2009, the main parts of the house were infrastructural preparations in 2010, consisting of staff recruitment, staff training and the preparation of the offices, followed by preparation of all relevant bylaws in 2011 and a new law in 2013. The roof of this house is the merging of the Probation Service with the prison system in 2017 and the opening of new offices in 2018.

D. Challenges

When building a new service within the criminal justice system, there are many challenges to face. First of all, you need to explain both to the decisionmakers and to the general population why we need a new system. Considering that not all people will sympathize with the offenders, talking about the new system that is "easier" for them can be very challenging. If there is a good prison system in the country, new ideas for working with offenders will not be accepted by the general population from the start. It is not only the general public; it is also a big challenge to present this system both to prosecutors and judges that have been dealing with offenders in a different way for many years. This is why it is good to present all benefits of the future service from the point of view of financial savings but also through the facts that offenders that are serving sentences in the community are less likely to be recidivists. It is also important to show examples with real statistical data from different countries, especially those countries that are similar in population, culture, type of crimes committed etc. It is important to prepare different data and statistics depending on different stakeholders you need to address.

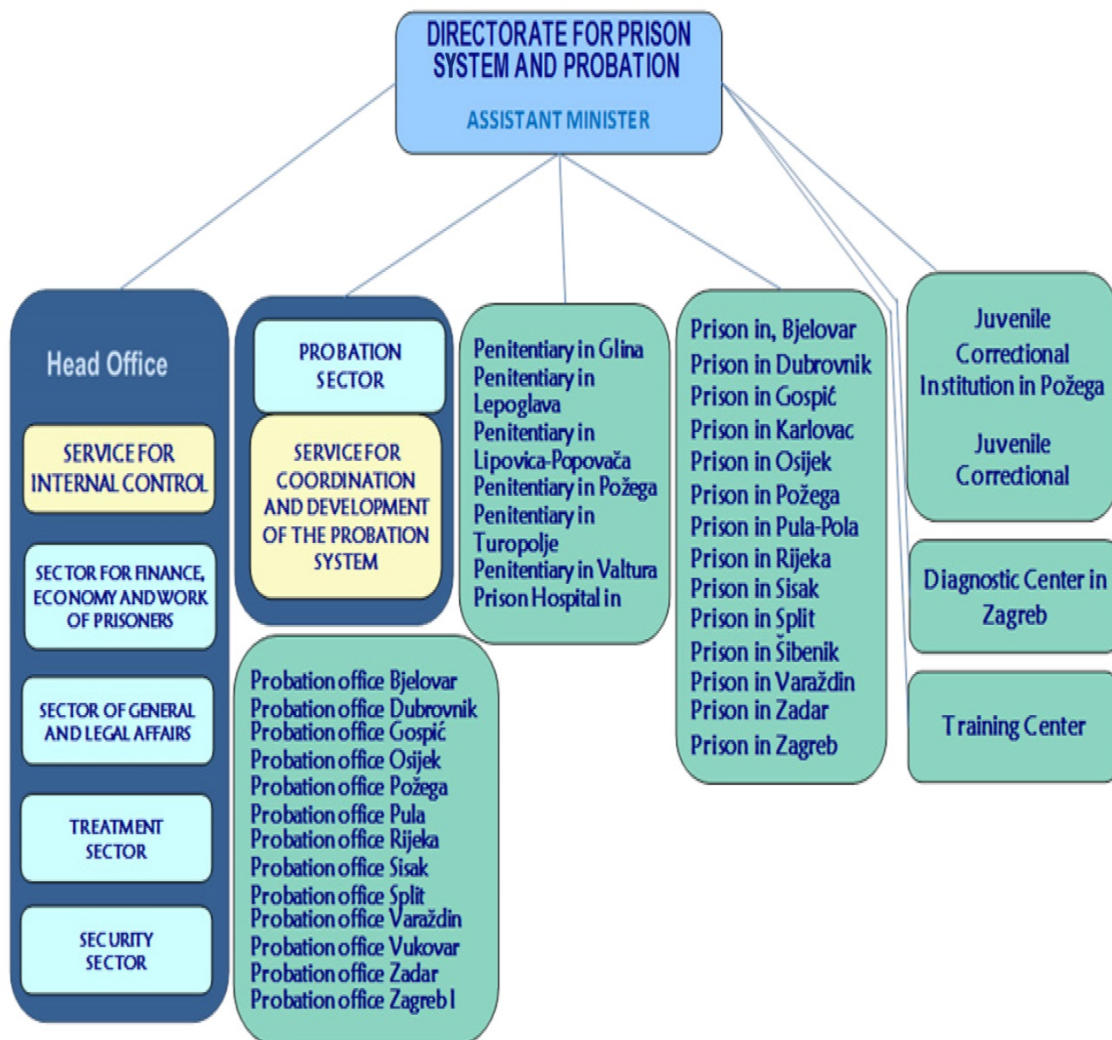
Another issue is the infrastructure of the future service. For a new service you need offices, staff, training, cars and computers, and numerous other issues need to be addressed. All this is a burden on the budget. That is why there needs to be a good prediction of the long run cost savings. Preparing an office for probation services is not easy, and it is connected with many challenges. First, an office needs to be suitable for work with offenders, an area that can be approached by offenders but bearing in mind safety issues for the staff. Some of the offices that are stand-alone can look excellent from the infrastructural point of view but will not be the best from the security point of view. In Croatia, the last two offices that we opened in 2018, after several years of work with offenders, we decided to open them in the court building, and we hope that we will be able to move the "old" offices to court buildings in the future. When it comes to staff, it is crucial to attract enthusiastic professionals willing to learn in order to "produce" a first generation of probation officers. First probation officers were employees of the prisons, homes for children and social welfare offices. It is important to bear in mind that all probation officers will do the same work with offenders; they do not work in teams. This means that there should be a good system of education with a special focus on different topics for probation officers with different educational backgrounds. For example, if you have a person with a background in psychology, this person knows very well how to conduct motivational interviews but will need more training regarding legal issues and communication with the courts. On the other hand, if you have a probation officer with an educational background from a law university, they will know all about the law but will need training regarding motivation and conducting interviews.

It is very important to prepare instructions and training that will be delivered to all probation staff. It is crucial to insist on harmonization of the treatment around the country because it is the only way to show other stakeholders what to expect from the new service.

It is always a good idea when building a new service that is treatment orientated to include academia from the start. Good research from independent experts will help in many ways: to show benefits of the service and to get ideas on how to develop it even further.

IV. PROBATION SERVICE TODAY

Today the probation service in Croatia is recognized as a valued and important part of the Croatian criminal justice system. The Sector for Probation is part of the Directorate for Prison System and Probation at the Ministry of Justice of the Republic of Croatia. It is a professional and specialized service within the criminal justice system. The first Probation Act in Croatia was enacted in 2009, and the first probation offices opened in 2011. Since the beginning of 2013, the professional probation service has been available to all citizens. The majority of the probation offices were opened in 2011, but during the first few years it was noticed that Croatia needed a broader net of probation offices in its territory, so two new offices were opened in 2018.



A. Organization of the Probation Service

Governance of probation is the responsibility of the Sector for Probation, and its work is under the direction of the Ministry of Justice. The Sector for Probation is an administrative body. During the first years of its existence, it was separated from the prison system. However, after six successful years of probation it was decided in 2017 to merge the prison and probation systems under the same directorate in the Ministry of Justice of the Republic of Croatia – Directorate for the Prison System and Probation. The Sector for Probation consists of the Central Office and 14 local probation offices across the country. Every probation office has a head of the office, probation officers and administrative staff. The Central Office manages coordination and service development. It includes the Department for Probation Tasks, the Department for Probation Tasks During and After Enforcement of Prison Sentence and Conditional Release, the Department for Legal Support to the Probation System, and the Department for Strategic Planning, Development and Analytics. Probation supervision and direct services for the offenders are delivered through local probation offices in Bjelovar, Dubrovnik, Gospić, Osijek, Požega, Pula, Rijeka, Sisak, Split, Varaždin, Vukovar, Zadar and Zagreb (two offices). Some offices cover larger and some smaller territorial areas depending on population size and distribution.

B. Probation Officers

All probation work is carried out by probation officers. Probation officers in Croatia are civil servants employed by the Ministry of Justice. Probation officers are highly educated and professional; they hold degrees in law, psychology, social pedagogy, social work, pedagogy and, exceptionally, humanities. In addition to their initial education, all persons, when employed to work as probation officers, receive initial training and are continuously trained by national and international trainers. Education of the probation staff is crucial in order to be able to respond to specific tasks related to the work with offenders. This is why probation officers have a wide range of working methods in order to fulfil the probation tasks. Probation officers perform interviews with the offenders, their families and other relevant persons. Probation officers, who have special training, also conduct group work with offenders with specific needs that have led in the past to criminal behaviour. One of the important tasks of the probation officers is also to analyse and connect different types of information and documents from various sources. Good writing skills and ability to notice details is important for probation officers when performing the task of preparing probation reports. There is special training for new employees when becoming probation officers, and there are many specific programmes to be learned.

C. The Mission of the Probation Service

The mission of the Probation Service in Croatia is to provide supervision and support to the offenders in the community, thus reducing the cost of imprisonment and the risk of reoffending. It is very important to underline that whenever a probation officer is working with the offender there must be two types of work: control and support.

The hardest for the probation officers is to find the appropriate and just balance between control and support. This will always depend on many factors such as the type of probation work, type of crime, support of the family/society to the offender and the offender’s willingness to fulfil all obligations requested by the probation office in accordance with the judgment.

V. PROBATION TASKS IN CROATIA

In general, it is important to say that probation in Croatia is the conditional and supervised freedom of the offender. At this moment, we can say that Croatia has a probation service capable of delivering a wide range of high-quality services.

During conditional freedom, probation officers supervise the offender and apply professional procedures to affect risk factors, with the aim of resocialization and reintegration into the community. This reduces the cost of penal execution and the risk of reoffending. Offenders under community sanctions and measures maintain their family, work and other social relationships. In all of Europe, community sanctions and measures are an established approach to combating crime, finding the right balance between sanction, treatment, reintegration and protection of society. Once again, it is important to point out that probation service in Croatia supervises only adult offenders.

A. Working with Offenders

The law defines the purpose of probation work as the protection of the community from an offender's criminal behaviour; re-socialization and reintegration of offenders in the community. Probation officers, when implementing probation sanctions, are expected to work closely with family members and the various institutions, NGOs and bodies in the community that can contribute to an offender's social integration.

Probation officers' work with offenders is most of the time organized by individual meetings between the probation officer and offender in accordance with the individual programme for that offender, but there are also group programmes for offenders. Probation officers, in order to have more information, also visit offenders in their homes in order to check the enforcement of community sanctions and measures.

Sometimes probation officers work with the same offender during a very long period of time; supervision can last up to five years. The key to resocialization and rehabilitation is in the skills of the probation officers to motivate, support and counsel the offenders in their resocialization process.

In Croatia, we like to say that we have a "holistic" approach to all offenders. This is because probation officers prepare an individual treatment programme for every offender to address the risk factors and criminogenic needs in order to prevent the commission of new crimes. So, there is no "copy-paste" approach to treatment. No two offenders are the same and no two crimes are the same, so no two treatment programmes are the same.

B. Types of Probation Tasks

The Probation Service in Croatia is working with different types of offenders because probation tasks exist at all stages of the criminal proceedings.

1. Tasks before the Initiation of Criminal Procedure

The first tasks of the probation service can be executed before criminal proceedings. This includes drafting reports requested by the State Attorney when deciding on criminal proceedings and later on supervision of fulfilling obligations arising from the decision issued by the State Attorney. Obligations that can arise from this type of decision are, for example, community work and drug, alcohol or other addiction treatment.

2. Tasks during the Criminal Procedure

During the criminal proceeding, the Probation Act gives the probation service the possibility to report to the court on the type and measure of criminal sanction. It is important to bear in mind that this report will never give an order to the court about the sanction. This report is filled with all relevant information that can assist a judge in deciding about the sanction. For example, it will have information if the offender is consuming alcohol. In this case it is to be expected that the court, if thinking of imposing an alternative sanction – a community measure – will more likely decide to give this offender alcohol treatment than community work (unpaid work). The probation service likes to say to judges that probation officers are the "eyes and ears" of the courts in the field, getting information that is not necessarily in the files. These kinds of reports are not requested very often, but in the longer term we do expect them to increase.

3. Community Sanctions

Most probation cases relate to the enforcement of "alternative sanctions" as part of final court judgments, namely community work and suspended sentences with protective supervision and/or special obligations. We can even call this the "core business" because the majority of all probation cases in Croatia since 2011 is the enforcement of sanctions and/or obligations in the community. These tasks are the very best way of conducting resocialization of offenders in the community, the probation service's "heart". These offenders would serve prison sanctions and would be taken away from their families, work and all social connections if there were no alternatives to imprisonment in Croatia. This part of the criminal procedure task is actually serving a prison sentence in the community. Under this task, the Croatian probation service has two different sanctions to supervise:

(1) community work orders;

(2) suspended sentence with protective supervision of the probation service or with the special obligation and/or security measures.

(a) Community work orders

Community work orders are, by the numbers, the most frequent sanction in the community in the Republic of Croatia. A community work order sanction can be enforced as a substitute for a prison sentence or a fine in a way that a prison sentence of up to one year or a fine of up to 360 days' income can be replaced with community work hours. Offenders in Croatia may be ordered to complete a maximum of 730 community work hours. At first, community work orders were "available" to all offenders, but then amendments were introduced to the Criminal Code, and now this sanction is no longer available for recidivists. In Croatia, even a community work order can be ordered together with protective supervision if the court finds it appropriate.

It is important to point out that community work is unpaid work, and it benefits the community. However, taking into account that there is no forced labour in Croatia, offenders must agree to a community work order. Probation officers, in assessing offenders for community work, are responsible for:

1. confirming the offender's consent for replacing a prison sentence with community work;

2. organizing and supervising the enforcement of community work orders.

So, as stated, probation officers are in charge of confirming the offender's consent for the community work. This is the base for all future tasks and the connection between the probation officer and the offender. Following the consent, probation officers assess what type of work in the community would suit the offender the most based on the offender's skills, knowledge, personality and other circumstances. Offenders perform community work in legal entities and public authority bodies which include activities of humanitarian, ecological or communal importance as well as other affairs of general national interest and of the interest of the local community. We can say that offenders are "paying back" the community for the damage they caused with their crime. In the Republic of Croatia, there is a variety of community workplaces: from hospitals, schools, parks, libraries, NGOs working with persons in need, fire stations, the Red Cross, municipalities to homes for elderly and sporting places. Choosing the right placement for the offender is a very important and demanding task for probation officers. It is important to bear in mind all important information both for public safety but also for the human rights of the offender. For example, the offender who committed a crime against children cannot be placed to work anywhere within the reach of children. On the other hand, if an offender is highly educated, it would be useless not to find a place where the offender's knowledge is best put to use. For example, we had medical doctors on community work orders so we did not send them to clean the park, but we found NGOs and homes for the elderly where they could help (they did not lose their medical licence because of the crime they committed). Also, the offender must be able to come to the workplace with no money for traveling, so probation officers find work that is closest to the home of the offender.

The number of community work orders was increasing in Croatia from 2011 to 2018: from 900 to over 2,000 cases per year. But now, with the new limitations regarding recidivists, it has become steady.

The community work orders showed excellent results in Croatia. Community work orders have contributed to a decrease of the prison population in the Republic of Croatia. The decrease of the prison population was one of the goals of establishing a professional probation service. This is the goal in many countries, but not all succeeded in it. Croatia is proud that the prison population did decrease, and one of the main reasons is the alternatives to imprisonment, mainly the community work order. Back in 2012, there were over 5,000 prisoners in Croatia and, as stated before, 1,573 cases in the probation service. During 2015, the probation service and prison system had the same number of offenders, and by the next year the number of offenders under the supervision of the probation service become larger than the number of the prisoners.

Another example of excellent results of the community work is the fact that the offenders are happy to be able not to go to prison. While doing community work, offenders stay in their homes and keep their family relations and jobs. Community work is organized in a way that it does not prevent an offender from keeping the job for which he/she receives money. For offenders who are employed, the community work is organized in the afternoon and during the weekends. So, the community work can also be a new life opportunity for the offenders. Many of the offenders have shown this to us during the past years. Some offenders have been given an opportunity to work for the bodies where they initially performed community work because during that time, they

demonstrated their abilities. Some of the offenders were working in the local community, and they gained the respect they did not have before because they showed the "other side" of their personalities, i.e. helping others. It is great to know that many offenders on community work orders have worked with the homeless, with abandoned animals in shelters and with other vulnerable groups and that they have decided to stay there as volunteers after the community work was done. One more example of the best use of the community work order that Croatia is very proud of is during the serious flooding in Croatia in 2014, the probation service responded by organizing assistance in the affected areas by offenders performing their community work orders directly in the affected areas or by working with services where humanitarian aid was collected and delivered. A group of thirty offenders who provided direct assistance in the flooded areas were housed in a volunteer camp and were involved in flood damage recovery (carcass removal, cleaning streets, pumping water out of buildings etc.) until the closing of the volunteer camp. During these activities, offenders performed a total of 11,000 community work hours in flood relief work.

All good examples presented show how good the decision was to have offenders serving sentences in the community. From being an offender to being a respected neighbour by serving a sentence in the community is the best possible case of the resocialization and reintegration of offenders in the community with the assistance of the probation service.

But when talking about community work orders, of no less importance are the significant budget savings if we compare it to the offender's time in prison. The cost of a day in prison is considerably more expensive than one day under community sanctions. This is logical because people in prison are there 24 hours a day. The prison needs to organize everything for life – food, clothes, medical assistance etc. When the probation service, with the assistance of international experts, analysed the cost of one prison day compared to one under probation, the results showed that one prisoner in Croatia costs the state budget approximately 50 Euro per day, while an offender under probation supervision costs approximately 1.5 Euro per day. In addition to these savings, when an offender is on a community work order, he/she is doing unpaid work for the local community that also helps the budget, so there is a double savings. Considering offenders in Croatia perform more than 500,000 hours of work on community work orders during the year, budget savings are significant.

(b) Suspended sentence with protective supervision

Suspended sentence with protective supervision is the second most represented alternative sanction – sanction in the community – in the Republic of Croatia. Suspended sentence with protective supervision is ordered as a replacement for a prison sentence if the judge considers it is important to monitor and check the behaviour of offenders without imprisonment. The average length of the probation time of suspended sentence with protective supervision is two years, but it can range from one to five years. In order to enforce this sentence, a probation officer will draft an individualized treatment programme and will be in constant contact with the offender. During the supervision, offenders are obliged to cooperate with the probation officer by visiting the office, providing information and consenting to home visits. The offender also has to fulfil the obligations imposed by the court. These special obligations can be alcohol or drug addiction treatment etc. If the special obligation is psychosocial therapy, it can be enforced in the probation office or outside the probation office but under probation

supervision. Treatments regarding the addictions are always enforced outside the probation office in relevant institutions but under the supervision of the probation officer. The probation officers support the offender in meeting the obligations. The duty of the probation officer is to report to the court about the enforcement of the supervision. The key task for the probation officer is to provide professional guidance and assistance to offenders to help them change their behaviour and reduce the risk of reoffending. Meetings with offenders on supervision are often, regular and always include motivational interviews. If a suspended sentence has a special obligation or security measure that is enforced outside the probation office, institutions and other bodies in which the offenders carry them out report the results to the probation office. When assessing the offenders for supervision and in the next phase, probation officers use the offender assessment system (SPP) to assess the risk of reoffending, the risk of serious harm to others and the treatment needs. This assessment is used to create individual treatment programmes but also to draft reports. This assessment tool is based on a comprehensive analysis of criminogenic needs and risk factors generated by the SPP and the professional judgment of the probation officers. Probation officers are specially trained to identify the static and dynamic factors which affect criminal behaviour and to identify means to address the criminogenic needs with the help of the offenders.

4. Tasks during the Enforcement of the Prison Sentence

The last criminal process phase where the Probation Service is involved with its tasks is the phase of the enforcement of the prison sentence. There are two key tasks in this phase:

(1) preparing reports for enforcement judges when reaching decisions on the termination of sentence and conditional release;

(2) supervision of persons on conditional release.

There are also reports for the prison and penitentiary when deciding on the treatment of the inmate and cases where the inmate has to report to the probation office during prison leave, but these cases are rare so they will not be described in detail.

(a) Reports for enforcement judges

Preparing reports for enforcement judges is the most requested report in the Probation Service. Probation officers draft reports for the enforcement judge when deciding on conditional release of prisoners. For many years in Croatia, conditional release was decided by the parole board. During that time, the Probation Service was not involved in the process because it consisted of judges, prosecutors and prison staff. However, there was a change in Croatia, and today conditional release is decided by enforcement judges, judges from the second level courts. Since this change happened, the judges always ask for the probation report before taking a decision. For this purpose, probation officers assess the conditions and risks of the inmate's acceptance in the community and evaluate the possibilities for the continued enforcement of the obligations that started being enforced in prison. Also, this report always addresses specific circumstances of the conditional release request. For example, sometimes prisoners ask for conditional release in order to help with children because someone's wife is in the hospital, so the probation officer will check the information in order to find out whether the wife is in the hospital and if there is anyone else to take care of the children. Another example is if the prisoner states he has to help with the roof damage on the family house, the probation officer will

check the house and sometimes even attach a photo of the house to the report. As in other reports, the probation service will prepare all information for the court but without proposing approval or rejection of the conditional release. The decision is to be made by judges only, and the Probation Service is there to provide relevant information that can help reach a just decision.

(b) Conditional release

Conditional release is a possibility for the prisoner to be conditionally released before the expiration of the terms of imprisonment, but during the time till the end of the initial sentence of imprisonment this person is not "free" even if released from prison to the community. In order to maintain control but also to help persons when they get out of prison, the Probation Service supervises the offender during this time. So, after a prisoner has been approved for supervised conditional release, additional obligations or special obligations, as well as protective supervision, may be ordered for the duration of the conditional release in order to reduce the risk of reoffending. The tasks of the probation officer are to supervise the offender's compliance with the obligations and to provide assistance and support during the process of readjustment to life in the community. During this task, probation officers will have the key role and will put all emphasis on the importance of cooperation between different institutions and the non-governmental sector in order to help with this adjustment. Persons on conditional release are very different, and it is always very individual what will be the key for good resocialization and adjustment. If a person has family, that control will be the key issue for the probation officer. If the person has no family support, then the role of the probation officer will also be to focus on support. The big difference is the fact of how long the person was in prison. If this was a short sentence, then the person is very likely to adjust in the community with no problem. However, if a probation officer is supervising a person who was in prison for a long period of time, then there will be a need for a lot of assistance in order for the person to adjust into the community. Sometimes the Probation Service needs to assist these persons to find appropriate shelter and medical help after release. How demanding this can be is best seen with this example: a young man committed a murder in his local community and was in prison for over 20 years. The changes that had happened in the "outside world" during this time were tremendous: there was a war in Croatia the last time he was free; his parents had died and he had no more family to rely on; he lost all social connections; there was no Internet and there were no bank cards and mobile phones back then. So, after being conditionally released, this person needed more support from the probation officer than he needed supervision. This is also why every probation programme is individual and every approach to each offender depends on different issues.

Supervision of conditional release is a very important task of the Probation Service in Croatia. It is also the task that brings the most dangerous criminals to the probation office. Conditionally released persons are those who committed serious crimes, including war crimes, murder, rape etc. Supervision of this kind is a hard task for every probation officer, but good results and positive changes are the best reward for it.

In this last phase, there is also a possibility of supervision of offenders by the Probation Service even after the completion of the prison sentence in its entirety, but to this day there have not been cases in practice.

C. Special Tasks/Tools

For the purpose of conducting probation tasks, probation officers are making special assessments of criminogenic risk and needs for every person granted probation, when necessary. In accordance with the results of the assessment of criminogenic risk and needs for treatment, probation officers prepare individual treatment programmes for offenders.

1. Assessment of Criminogenic Risk and Needs

The Probation Service in Croatia uses the Offender Assessment System as its specific tool in the work with perpetrators of criminal offences and as the basis for planning their treatments. Using this system, which is based on the English offender assessment system OASYS, assessments of offenders' risks as well as on their criminogenic needs are made. During its application, significant changes have been made to it, and the current version was updated in 2015. The Offender Assessment System was digitalized through an EU project. This tool measures significant factors relevant to the likelihood of recidivism: information on the crime committed, the attitude of the offender, accommodation, education, financial management, relationships, lifestyle, family and friends, drug/alcohol abuse, emotional stability etc.

2. Individual Treatment Programmes

Probation officers create individual treatment programmes for the purpose of conducting probation tasks. Individual treatment programmes must comprise special obligations ordered by the competent court or the State Attorney's Office, including, when necessary, the identification of criminogenic factors affecting the perpetration of the criminal offence committed by the person on probation, determining measures aimed at elimination of these factors, defining methods and deadlines for implementation of such measures, as well as providing a list of bodies competent for certain activities. Persons granted probation take part in drafting the individual treatment programmes, which are based on their personality assessment, personal situation, health condition and expert qualifications, on the assessment of criminogenic risk and needs of the person in question, and other information important for conducting the sanction.

VI. BENEFITS OF THE PROBATION SERVICE

After explaining all alternatives to imprisonment in Croatia – all probation tasks – it is easy to see that the resocialization and rehabilitation of offenders in the community in the Republic of Croatia is very efficient. There are three important components that support this:

1) Financial benefit of the community sanctions – during the European project, the probation service, with the assistance of international experts, made an analysis on the costs of a prison day compared to a probation day. The results showed that one day of one prisoner in prison in Croatia costs the State budget approximately 50 Euro, while one day of one offender under probation supervision costs the State budget approximately 1.5 Euro.

2) The number of prisoners in Croatia has decreased. Croatia had a problem with overcrowded prisons so one of the expected goals of the probation service was to lower the number of prisoners. In 2012, there were over 5,000 prisoners in Croatia

and 1,573 cases under the jurisdiction of the Probation Service. During 2015, the probation service and the prison system had the same number of offenders, and by the next year the number of offenders under the supervision of the Probation Service became larger than the number of prisoners. Today prisons in Croatia are not overcrowded.

3) About 90 per cent of all cases under the supervision of the Probations Service are successfully completed each year.

A. The Workload of the Probation Service

The workload of the probation service is one of the best pieces of evidence that, in a short period of time, the probation service has become a relevant professional service. During the beginning of the work of the Probation Service back in 2011, the Probation Service received 1,040 cases, and in 2012 it received 1,573 cases for enforcement. Already the next year, in 2013, a big change took place. There were new amendments to the Criminal Code that expanded the jurisdiction of the Probation Service. Following the changes to the Criminal Code, the new Probation Act was also prepared and enforced from the beginning of 2013. With this new jurisdiction and the new Probation Act, in 2013 the Probation Service received 3,304 cases. This was a big change for the probation practice, considering that the service doubled the number of cases but also had to adopt its work practices to new tasks. Over the next few years, the number of cases increased: in 2014 the Probation Service received 3,618 cases; 3,911 cases in 2015; 4,147 cases in 2016; and in 2017 the Probation Service received 4,444 cases. The number of cases over the last two years started decreasing (we believe it is better to say that they have "stabilized"). In 2018, the Probation Service received 4,211 cases and 3,851 cases in 2019. The numbers show that the Sector for Probation has become an important partner in the criminal justice system, acknowledged and valued by judges, State attorneys, police and the prison system.

B. The Success of the Probation Service

Croatia received a lot of compliments from different stakeholders worldwide and, in fact, the Croatian Probation Service has been recognized as one of the best models on how to develop a Probation Service by the Council of Europe. Also, in October 2019, Croatia was the first country ever to win the Development of National Probation Service Award by the Confederation of European Probation. Today, probation officers are experts that work on different European projects regarding probation services. Croatian probation officers helped in building the new Probation Service in the Republic of Slovenia. Many probation officers are members of working groups that are developing probation standards at the international level.

C. Future Plans for the Probation Service

The plan of the Probation Service in Croatia is to continue to develop through projects on the international level, to learn from the best and to exchange knowledge with other colleagues across the world. Further development of the Croatian Probation Service should head into two directions:

- the strengthening of its internal capacities and stronger affiliation with other stakeholders such as the prison system;

- the expansion of the scope of the tasks it performs, as well as the advancement in executing existing tasks.

The strengthening of internal capacities of the Probation Service would be realized through improvement of material-technical conditions of existing probation offices and the strengthening of human resources as the most important resource in our service, through providing continuous supervision support and the advancement of knowledge and skills by way of new training, as well as through knowledge and experience exchanged with colleagues of other European probation services. Improvement of professional competencies is a continuous process, and we want to maintain a high standard of staff competence. Croatia wants the best Probation Service we can have and wants to create a performance-led culture which values quality and continuous improvement.

With the new project under the Norway Grants, the Croatian Probation Service is preparing to introduce electronic monitoring. This is a big task that will be implemented together with the prison system and colleagues from the prosecution, the courts and the police.

VII. CONCLUSION

Today, the Probation Service in Croatia is a well-established professional organization. The desired outcomes so far have all been accomplished:

- Full-scale and clear legal and programme frameworks for the performance of probation work;

- Infrastructure tailored to the size and the capacity necessary for the performance of all probation activities throughout the whole territory of the Republic of Croatia;

- Enough well-trained and motivated probation officers qualified for the professional performance of all probation activities;

- Effective organizational structure with clear and efficient mutual communication channels;

- Developed strategies of effective interaction with the community, along with the developed identity of probation as socially responsible and competent.

About 90 per cent of all cases during the year are successfully completed. Nevertheless, the Croatian Probation Service still uses all possibilities to grow and to get to learn good practices from other countries. The financial and expert assistance of the EU has been important in the development of the Sector for Probation in the Republic of Croatia from the beginning, and it still is. Starting in 2019, the Croatian Probation Service started new projects through European funding. As stated with respect to future plans, Croatia also started a partnership with Norway under the Norway Grants. Having said this, and knowing that Croatia won the Development of National Probation Service Award by the Confederation of European Probation in 2019, it is justified to say that resocialization

and rehabilitation of offenders in the community by the Croatian Probation Service represent a great and effective example of criminal justice system practice.

PREVENTING REOFFENDING IN SINGAPORE

Matthew Wee Yik Keong[*]

I. INTRODUCTION

Corrections in Singapore achieved a major breakthrough in the last two decades with several paradigm shifts, including the introduction of various technologies in the management of offenders and initiatives to prepare them for their re-entry to society. The result of this transformation is a 20.7 percentage point drop in the recidivism rate between the cohort released in 1998 (44.4%) and the cohort released in 2016 (23.7%). The prison population has also decreased by 27.7 per cent[1] from 18,000 in 2002 to about 10,800 in 2018.

This paper examines the approach taken by the Singapore Prison Service (SPS) and the Singapore Corporation of Rehabilitative Enterprises (SCORE) in preparing offenders for their eventual reintegration.

II. BACKGROUND – THE SINGAPORE CONTEXT

Singapore is a city-state located in between the Malayan Peninsula and Indonesia's Riau Islands. It is the smallest nation in Southeast Asia at 720 km^2; however, it is one of most densely populated countries in the world at 7,866[2] people per square kilometre.

The city-state is a multi-racial and cultural society with a population of 5,638,700.[3] 76 per cent of the citizen population are Chinese, 15 per cent Malays, 7.5 per cent Indians and 1.5 per cent others. English is the official and working language. Mandarin Chinese, Malay and Tamil are also widely spoken.

Singapore is a parliamentary republic, patterned after the British Westminster model. Its legal system is based on English Common Law traditions. Singapore is well known for being corruption-free and for its strong public and corporate governance. Transparency International's 2018 Corruption Perception Index ranks Singapore as the third least-corrupt country in the world, after Denmark and New Zealand.

Since independence in 1965, Singapore's national income has grown exponentially, transforming the city-state from a fishing village in the 1960s to a metropolis in 2019. It has seen strong growth over the last twenty years in GDP per capita of about US$428[4] to more than US$64,000[5] in 2018.

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[1] SPS Stats Release 2011. "Leading Reform" – Chua, 2017.
[2] Singstats Population and Population Structure 2019.
[3] Singstats Population Trends 2018 and Prime Minister's Office Population Report 2019.
[4] CEIC Data.
[5] IMF Singapore July 2019 Country Report 19/233.

This exponential growth can be attributed to a safe and secure environment for citizens and foreign investors. Singapore has been ranked first in Gallup's Global Law and Order Report for six consecutive years. The most recent Gallup Global Law and Order Report 2019 indicated that Singapore was ranked first in the Law and Order Index. 94 per cent of residents reported that they felt safe walking home alone in their neighbourhoods at night. In addition, Singapore was also ranked first for order and security in the "Rule of Law Index" by the World Justice Project.[6]

A. Crime and Drug Rate in Singapore

A majority of Singapore's population is law abiding. With 581[7] cases of reported crime per 100,000 population in 2018, the crime rate in Singapore is one of the lowest in the world. With an offender population of about 10,800[8], the incarceration rate is 189 per 100,000 population. 70 per cent[9] are convicted for drug-related offences. This is a result of Singapore's zero tolerance policy against drugs. The Central Narcotics Bureau adopts a comprehensive approach in tackling both drug supply and demand. On average, about 3,250[10] drug abusers are arrested each year.

B. The Singapore Prison Service (SPS)

The penal history in Singapore can be traced to 1925 with the setting up of penal settlements to house convicts transported from British India. SPS was institutionalized as a department on its own in 1946. Since independence, SPS had evolved from a traditional custodial agency faced with challenges of overcrowded prisons and manpower shortage due to high staff turnover and poor public perception. Today, SPS is a leading correctional agency characterized by effective inmate management and sustained low recidivism rates.

SPS administers 15 institutions grouped under five Commands. They provide safe and secure custody for about 12,800 inmates and are staffed by 2,405 uniform and civilian officers. SPS's tagline – "Rehab, Renew, Restart" emphasizes – their commitment to rehabilitate inmates who desire to change, renew and restart their lives for the better, with the support of the community.

C. The Singapore Corporation of Rehabilitative Enterprises (SCORE)

SCORE's roots can be traced to Prison Industries, which was started in 1965 as a section within the SPS for inmates to learn market-relevant trades. However, Prison Industries faced several constraints such as inadequate manpower and a lack of operational flexibility to meet market demands due to the Government's administrative and financial regulations. Against this challenging operating environment, the establishment of a separate agency was recommended to replace Prison Industries.

On 1 April 1976, SCORE was established as a quasi-government agency under the Ministry of Home Affairs (MHA). Its status as a statutory board and separate entity from SPS enabled it to play a vital role in the Singapore correctional system by rebuilding lives and enhancing the employability potential of offenders. SCORE focuses on the domains of skills training, work programme, employment assistance and community partnerships

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[6] Gallup's Global Law and Order Report 2019 and Rule of Law Index 2019 by the World Justice Project.
[7] Singapore Police Force Statistics Release 2018.
[8] Singapore Prison Service Statistics Release 2018.
[9] Central Narcotics Bureau Statistics Release 2018.
[10] Central Narcotics Bureau Statistics Release 2018.

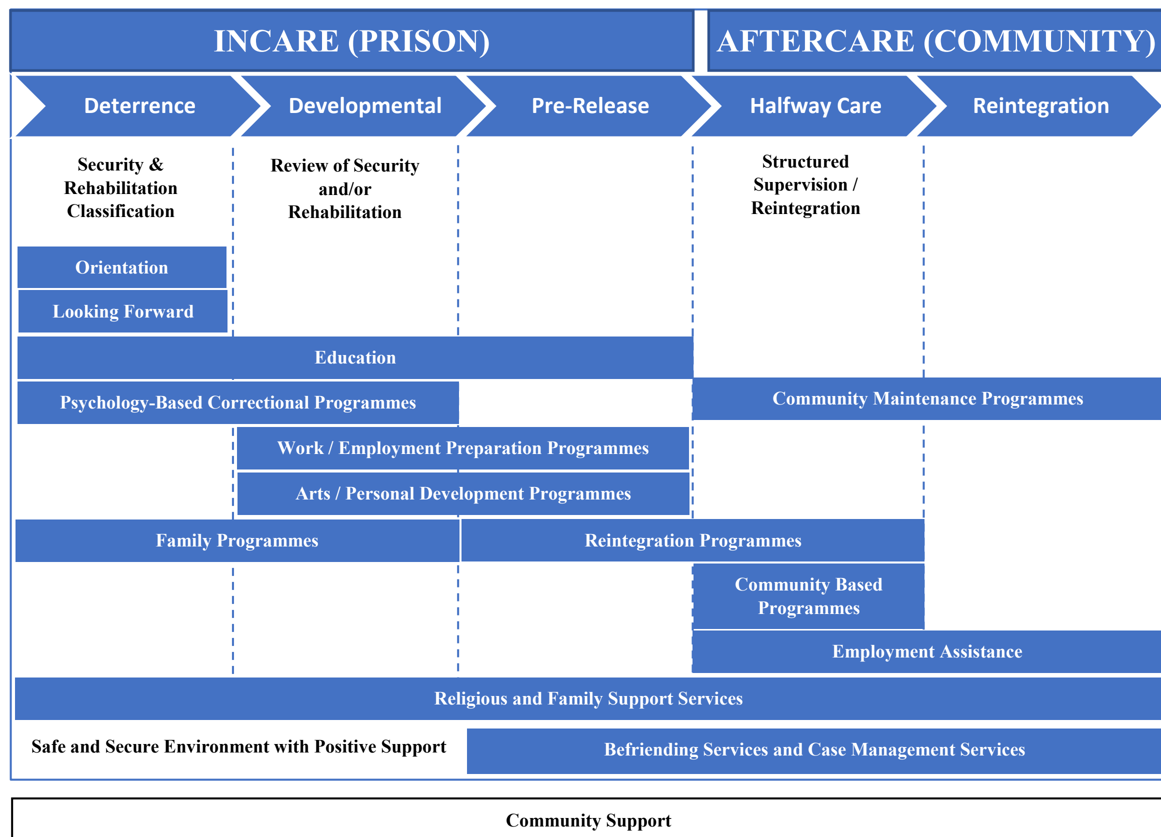
in preparing offenders for their eventual reintegration into the national workforce and the community.

As lead agencies in offender rehabilitation, SPS and SCORE form a symbiotic relationship in transforming the corrections landscape.

III. THE REHABILITATION JOURNEY

SPS and SCORE believe that prison sentences are not just meant to punish and deter. It is important that rehabilitation administered by SPS and SCORE provides ample opportunities for offenders to turn their lives around. However, it must be complemented with the offender's own desire to change for the better. Not every offender may be willing to reform, but the right kind of rehabilitative strategy can motivate offenders to rebuild their lives.

The rehabilitation journey of an offender is divided into two main phases: Incare and Aftercare. To achieve Throughcare, there should be seamless transition from Incare to Aftercare, which in turn facilitates reintegration. The following framework illustrates this "Throughcare" concept.



Singapore's approach is based on the Risk-Needs-and-Responsivity (RNR) Model, which is an internationally recognized model for treatment and assessment of offenders. The RNR principles for effective correctional intervention are divided into the domains of the Risk Principle, the Need Principle and the Responsivity Principle:

Risk Principle	The level of rehabilitation services would match the risk level of reoffending. Offenders with a higher risk of reoffending would be prioritized for intervention and treatment.
Need Principle	Offenders with major dynamic risk factors found to be associated with reoffending, i.e. anti-social associates and substance abuse would be presented with interventions to address their reintegration needs.
Responsivity Principle	Interventions would aid in offenders' learning and be tailored to the specific characteristics of offenders, such as their level of motivation for change.

Upon admission, offenders are assessed to determine their criminogenic risks and rehabilitation needs. Based on their identified risks and needs, appropriate programmes are charted for intervention. The programmes include psychology-based correctional programmes, family programmes, skills training and religious services. Prior to their release, offenders will also undergo programmes to prepare them for reintegration into the community.

A. Employment

In the domain of employment, SCORE is the lead agency in the provision of employment opportunities. It adopts a holistic approach in preparing offenders for employment through Employers Engagement, Employability Skills Training, Career Coaching and Job Placement Services.

SCORE works closely with trade associations, clans and corporations to provide employment opportunities for ex-offenders. As a result of its active outreach, the number of employers in SCORE's job bank had grown from 4,745 in 2015 to about 5,600[11] in 2019.

A key paradigm shift for SCORE in 2019 was to partner employers that can provide careers instead of jobs to deserving ex-offenders. Suitable ex-offenders can be given progression and skills upgrading opportunities as part of the employer's career development programme.

Employers are regularly invited into prisons to conduct job placements to interview and assess potential candidates before offering them a job. This model proved to be successful where 96 per cent[12] of ex-offenders assisted secured a job before their release.

Ex-offenders who secure jobs through Placement Exercises are assigned a Job Coach. To help ex-offenders remain on the job, SCORE Job Coaches regularly engage ex-offenders at their workplace to provide support and set behavioural goals. Job Coaches also work closely with the employers and supervisors to resolve work-related issues and understand the support that ex-offenders need.

B. Education and Employability Skills Training

Another priority is the provision of academic education and vocational skills training for the purpose of levelling up the inmates' educational status and skills. SPS facilitates the offender's academic education through professional teachers seconded from the Ministry of Education.

[11] Singapore Prison Service Statistics Release 2019.
[12] Singapore Prison Service Statistics Release 2019.

Aside from formal education, SCORE looks into the provision of vocational and generic skills training for offenders. Its training administration is aligned with the national training framework to prepare offenders for employment after their release. SCORE engages training providers to provide about 27,000[13] training places, and about 5,923[14] inmates are trained annually.

C. Art and Personal Development Programmes

Art programmes are conducted in prisons as a key component in the offenders' rehabilitation, where the focus on skills training and mind-set change plays an integral role in their eventual reintegration. These include Theatre Arts, Performing Arts and Visual Arts.

D. Religion

Religion is a source of moral support and guidance to many in prison. Faith-based programmes can be powerful tools in the rehabilitation process, as they give inmates a strong sense of purpose, direction and meaning in life. Inmates are therefore encouraged to develop their spiritual well-being by turning to their respective faiths. Those who wish to embrace any of the main religions, such as Buddhism, Islam, Hinduism or Christianity, are encouraged to do so. Volunteers from respective faiths conduct religious services and counselling sessions for them.

E. Family Services & Programmes

The impact of incarceration on families and children of inmates, the unintended victims of crime, is often significant and negative. Inmates' families are often in disarray when their family member is imprisoned. Hence, seeing families through this difficult phase can help foster stronger family bonds and networks upon the inmates' release. Since 2006, Family Resource Centres have been set up in SPS to provide social assistance and support to inmates' families to help them cope during inmates' incarceration, i.e. in the areas of financial difficulties, accommodation issues and emotional needs.

F. Community Volunteering

The work of rehabilitation cannot be done by SPS alone. It requires partnership with the community to further its mission. Volunteers have been at the forefront in meeting the potential reintegration needs of our inmates. The volunteer base has grown from 124 in 1999 to more than 1,900 volunteers over the last 20 years.

To enhance the capabilities of volunteers, the Development Framework for Offender Rehabilitation Personnel (DORP) was launched in 2014 to improve capacity-building through training. It was further enhanced in 2018 through a collaboration with the Social Service Institute (SSI) – a national human capital development institution for the social service workforce to offer a greater suite of training courses. Such training enables SPS to work closely with its volunteers to deliver more effective and strategic intervention plans to better help offenders and their families.

In a separate initiative, SPS had initiated the "Yellow Ribbon Community Project" in 2010. It is an upstream intervention programme, where volunteers are forward deployed in the residential areas of offenders. The volunteers will reach out to families of newly admitted inmates to help them cope with the impact of incarceration. This involves

[13] Singapore Prison Service Statistics Release 2019.
[14] Singapore Prison Service Statistics Release 2019.

helping them link up with relevant government entities and NGOs for social assistance and support. Annually, more than 400 volunteers are mobilized to assist over 8,000[15] youths, ex-offenders and families.

G. Community-Based Programmes

Offenders face a myriad of challenges in the community. Therefore, aftercare interventions seek to provide them with adequate support upon their release. Suitable and eligible offenders may be considered for the Community Based Programme (CBP), where they may serve the tail-end of their sentence in the community under supervision. It includes Home Detention, the Work Release Scheme and the Mandatory Aftercare Scheme.

H. The Halfway House Scheme

The Halfway House (HWH) Scheme was started in April 1995. It allows selected offenders without strong family support to spend the last stage of detention at the halfway houses. Currently, there are eight independent faith-based halfway houses participating in the HWH Scheme, and the programme comprises counselling, work therapy and moral/religious education. Under the scheme, HWHs are mandated to operate under a structured and more consistent programme to better meet offenders' reintegration needs.

In 2019, SPS and SCORE set up the Selarang Halfway House (SHWH). It is the first government-run HWH to strengthen aftercare support for selected higher-risk ex-offenders placed on the Mandatory Aftercare Scheme in the domains of employment and accommodation. It operates as a 24-hour residential facility with a capacity of 576[16] for residents of both genders.

The SHWH adopts a supervised step-down approach to facilitate their gradual reintegration into society. It replicates a normalized living environment for ex-offenders and applies the key learning points from the pre-release programme the ex-offenders had undergone in a real-life situation. Ex-offenders attend counselling sessions and are allowed to work or attend vocational training to enhance their employability. Suitable ex-offenders are also given time-off to return home and spend time with their families or participate in community activities.

IV. REHABILITATION AND THE COMMUNITY'S ROLE

Preparing the community and creating conditions that encourage sustained desistence from criminal behaviour is a difficult and complex task. It requires political support, multi-agency collaboration, grassroots activism and the active engagement of civil society as a whole.

SPS and SCORE actively reach out to involve the community for both Incare as well as the Aftercare phase of an inmate's journey. For more than two decades now, SPS and SCORE have invested considerable resources and energy into this area.

A. The CARE Network

In 2000, SPS and SCORE led the formation of the Community Action for the Rehabilitation of Ex-offenders Network (CARE Network). This network is an alliance of

[15] Singapore Anti-Narcotics Association's website.
[16] Singapore Corporation of Rehabilitative Enterprises Annual Report 2018.

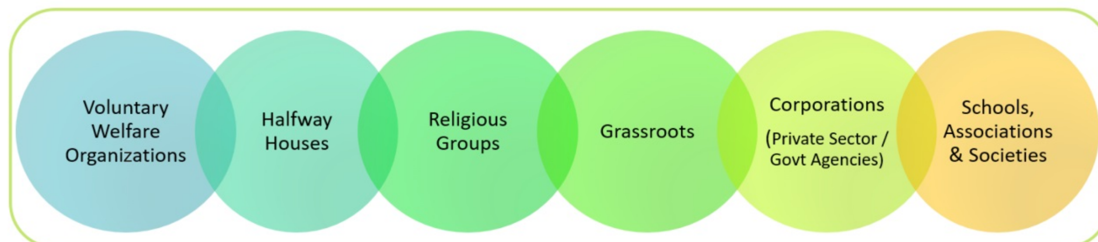
the main players in the area of offender reintegration in Singapore. The CARE Network aims to ease the reintegration journey for ex-offenders and their families through inter-agency collaborations and implementation of aftercare interventions.

The CARE Network comprises the MHA, the Ministry of Social and Family Development (MSF), SPS, SCORE, the National Council of Social Service (NCSS), Industrial & Services Co-Operative Society Ltd (ISCOS), the Singapore After-Care Association (SACA), the Singapore Anti-Narcotics Association (SANA) and the Yellow Ribbon Fund (YRF). These are all nationally accredited organizations, responsible for the delivery of programmes and services supported by the Government.

CARE Network Members [9 agencies]

Government	Non-Government
• Ministry of Home Affairs (MHA) • Ministry of Social & Family Development (MSF) • National Council of Social Service (NCSS) • Singapore Corporation of Rehabilitative Enterprises (SCORE) • Singapore Prison Service (SPS)	• Industrial & Services Corporative Services (ISCOS) • Singapore After Care Association (SACA) • Singapore Anti-Narcotics Association (SANA) • Yellow Ribbon Fund (YRF)

CARE Network Partners [More than 100 agencies]



As the fifth government agency in the network, NCSS was established in 1958 to provide leadership and direction in social services in Singapore. Today, it is an umbrella body for some 450-member social service agencies.

SANA was formed in 1972 as an NGO to complement the work done by the Central Narcotics Bureau in preventive drug education and to support former drug offenders. Today, SANA administers the Yellow Ribbon Community Project and runs a Step-Up Centre.

SACA was formed in 1956 as a key aftercare agency providing welfare and rehabilitation services for discharged offenders. Besides that, SACA plays an active role in the training of prison volunteers and aftercare professionals. SACA also conducts research as an initiative of the CARE Network to uplift the aftercare sector in Singapore.

ISCOS was formed in 1989 as a social cooperative for ex-offenders. It serves to connect ex-offenders with supportive employers and positive peers and mentors. A key focal area by ISCOS is the prevention of intergenerational offending through provision of academic assistance and life skills to children of the incarcerated.

YRF was set up in 2004 as the first national charitable fund devoted entirely to ex-offenders and their families. It is registered under SCORE and disbursed $1,161,910 in 2018, benefitting 3,816 ex-offenders, families and children of the incarcerated. Its key focal areas are in the provision of emergency financial assistance, funding residential support programmes, administering programmes in education and training, and family support programmes. The YRF has also been conferred Institute of Public Character status, which allows them to issue tax deductible receipts to donors who want to claim tax relief based on the amount of qualifying donations made. The status and position of the YRF are thus significantly different to similar organizations that operate in other countries, which are typically charities formed by advocacy groups, likeminded people or religious organizations.

B. 3Ps Partnership – People, Private and Public

As secretariat to the CARE Network, SCORE's partnership strategy is based on the premise of 3Ps; People, Private and Public sector. Through this segmentation, SCORE is able to ensure greater synergy and stay effective in its partnership efforts.

Within the People Sector, the CARE Network has seen tremendous growth in the support and attention to the work of offenders' rehabilitation and reintegration. It started with eight core member agencies in 2000 and admitted its ninth member, YRF, in 2015. Today, the network has harnessed the support of more than 100 other NGO aftercare agencies through the 250 key aftercare professionals it engages with regularly. Collectively, the corrections community in Singapore sees about 2,650 volunteers, whose unwavering support has made significant contributions to the lives of offenders and their families.

In the Private and Public Sectors, SCORE works with an extensive mix of partners annually. Comprising almost 6,700 partners, they include key government agencies, employers, trade associations, chambers of commerce and ethnic clan associations.

C. Yellow Ribbon Project – Reaching Out and Touching a Nation

This strong support is largely attributed to the success of the Yellow Ribbon Project (YRP). Launched in 2004 by the former President of the Republic of Singapore Mr S.R Nathan, the YRP is known globally as the only national second chance campaign for ex-offenders. Its purpose is to generate awareness of the difficulties ex-offenders face after release, encourage acceptance of their return to society and inspire public action to support their reintegration.

The inspiration behind YRP was taken from a 1970s song entitled, "Tie a Yellow Ribbon Round the Ole Oak Tree." The lyrics of this song aptly describe an ex-offender's desire for acceptance and forgiveness from his loved ones and awaiting the community to set him free:

"I'm really still in prison and my love she holds the key,
a simple yellow ribbon's what I need,
to set me free…"

The Yellow Ribbon Project was conceived with three main objectives: 1. to create awareness of the need to give second chances to ex-prisoners; 2. to generate acceptance of ex-prisoners and their families by the community; and 3. to inspire community action

to support the rehabilitation and reintegration of ex-prisoners. It is based on the rationale that every offender encounters two prisons: the first being the physical prison during incarceration, and the second is that the person is in a 'social and psychological prison' post-release. It is accepted that programmes delivered in custody are essential; however, it is equally important that community support and services are available for the reintegration of ex-offenders into mainstream society. This integrated approach was conceived as a basis to reduce recidivism and improve individual, family, community and societal outcomes.

The success of the YRP can be attributed to the media campaign and outreach strategies, and the strong community ownership of the Yellow Ribbon brand.

V. CONCLUSION

Serving time should never be a waste of time. The period of incarceration allows SPS and SCORE an opportunity to rebuild lives and help offenders to have another shot at life. The end in mind is to reduce the recidivism rate.

Today, Singapore is witnessing a sustained improvement in the two-year recidivism rate, which has fallen to record low levels. However, the five-year recidivism rate hovered around 40 per cent.[17] More can be done to help ex-offenders stay crime free, longer.

Rehabilitation and reintegration are the two key ingredients for successful offender reform. They cannot be confined to within the prison walls. However, the Yellow Ribbon moniker can be leveraged as a powerful unifying brand which the Singaporean community can rally behind as one.

The government will provide support to those who need assistance. However, the community can play an even more important role by providing support and encouragement. By working as one, Singapore can overcome challenges, regardless of their circumstances, and emerge ready to build a safer future.

[17] Speech by Minister K Shanmugam at the CARE Network Workplan Seminar 2019.

RE-ASSESSING THE ROLE OF COMMUNITY-BASED SENTENCES IN THE CONTEXT OF THE SUSTAINABLE DEVELOPMENT GOALS

Matti Joutsen[*]

I. APPLICATION OF COMMUNITY-BASED SENTENCES AROUND THE WORLD

Almost thirty years ago, the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)[1] were adopted by the General Assembly.

So far, no reliable global overview has been prepared of how community-based sentences[2] are being used in practice in the different jurisdictions.[3] No readily available source is available. As noted by the Secretary-General in his report to the Thirteenth United Nations Congress,

> Sentencing policies refer to the responses of the criminal justice system to the various offences as regards the types of sentences, including non-custodial measures. A comparative assessment of sentencing policies of criminal justice systems would require the analysis of the type of sentences, including the length of custodial sentences handed out to convicted persons, while taking account of the seriousness of the criminal offences committed. At the international level, there are no available data on the length and type of sentences that allow this type of comparative analysis.[4]

The situation is slowly changing. Comparative statistical data on community-based sentences are being collected in Europe by the Council of Europe. This is only partially good news, since it covers only the European region, the process of collection was begun fairly recently and it is too early to use this data set to assess patterns on other than a very general level. However, it does provide a point of departure for at least one region in the world.[5]

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[*] Special Advisor, Thailand Institute of Justice.

[1] General Assembly resolution 45/110, annex.

[2] Although the Tokyo Rules use the wider concept "non-custodial sanctions," the main focus in this paper is on sentences, which can be defined broadly as punishment imposed by a court (or other duly constituted authority) on an offender, following a formal procedure. It includes decisions made in restorative justice and mediation proceedings.

The terms "non-custodial" and "community-based" are synonyms. The term "alternatives to imprisonment" is widely used but will not be used here, as it implies that imprisonment is the standard and expected response, and other measures somehow exceptions from the norm.

[3] The present paper updates and supplements data contained in an unpublished paper, Joutsen 2015. This earlier paper also included data, not repeated here, on the use of restorative justice measures and monetary sanctions.

[4] State of crime and criminal justice worldwide. Report of the Secretary-General to the Thirteenth United Nations Crime Congress, A/CONF.222/4, para. 37.

[5] Council of Europe Annual Penal Statistics (SPACE II); available at http://wp.unil.ch/space/space-ii/. The most recent publication is from 2018: Aebi and Hashimoto 2018, and Aebi et al., 2019. The Council of Europe project uses the term "alternatives to imprisonment". The working definition does not include, for

In time, some data may become available also on a global basis. The American Probation and Parole Association, together with Community Supervision Solutions, has launched the "Supervision Around the World" (SAW) Project, which seeks to collect information on community supervision practices in every country around the world.[6] The SAW Project will identify countries offering supervision services, document current practices and create an interactive Internet repository for the information that it obtains on supervision programmes.

A second initiative launched recently, the Global Community Corrections Initiative, is similarly seeking to collect data on the use of community corrections.[7] During the initial stage, the initiative is seeking to identify experts in each of the fifty countries with the highest prison populations, and obtain through them information on the use of community corrections, both as sentencing options and as post-release measures.

There are several reasons why data on community-based sentences has been so difficult to collect, and have not been particularly usable for comparative purposes:

- community-based sentences are used primarily at the lower end of offence seriousness, and it is at this end that the scope of criminalized conduct (i.e. conduct that may lead to a response by the criminal justice system) varies considerably from one jurisdiction to the next;

- community-based sentences as a response to criminalized conduct may be imposed not only by the courts, but also by the police, the prosecutor and even other administrative authorities, and decisions may also be taken by community-based bodies (as with the case of mediation and restorative justice measures);

- community-based sentences, even if imposed by a court, are not necessarily entered into a centralized register nor recorded in the statistics; and

- the terminology varies from one jurisdiction to another, and thus even community-based sentences referred to with the same term (for example "probation") may not be comparable.

More generally, there are the considerable difficulties in making comparisons between how the criminal justice system operates in different countries.[8] Nonetheless, almost 30 years after the adoption of the Tokyo Rules, it is of interest to try to examine how community-based sentences are being used in different jurisdictions around the world. This paper is based on the available literature and statistical data, and seeks to bring together a number of different observations about patterns.

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example, measures imposed on the basis of juvenile criminal law, nor persons under the aftercare of probation agencies. Heiskanen et al., 2014, p. 27.

[6] http://communitysupervisionsolutions.com/saw-project/.

[7] GLOBCCI.ORG.

[8] See, for example, Nelken 2007.

A. The Benchmark: International Patterns in the Use of Imprisonment

The patterns in brief:

- *imprisonment (incarceration, custodial treatment) is without question the basic form of punishment in criminal justice systems around the world.*
- *although the global rate of prisoners per 100,000 in population has been stable over the past few years, the rate has been increasing rapidly in some individual countries, and decreasing in others.*
- *the prisoner rate varies considerably from one country to the next, and even from one neighbouring country to the next – even if these countries have somewhat similar legal systems and degree of development.*
- *clear regional and sub-regional patterns can be detected in the use of imprisonment, as measured by prisoner rates. In general, imprisonment is used least in Africa and Asia, and most in North America and Latin America.*
- *in several countries with a high prison population, a present trend is towards "decarceration", a deliberate policy of lessening the use of imprisonment.*

The best current source of data on prison populations around the world has been developed by Roy Walmsley: the *World Prison Population List.* The most recent version of this list, the twelfth edition, provides data as of September 2018.[9] The list provides information on the total prison population and the prisoner rate (the number of prisoners per 100,000 in population) in almost all countries in the world. The map below is based on this data.

One point of caution. Sentences, including sentences of imprisonment, are used in different ways by different countries. The use of only one indicator, such as the number of prisoners per 100,000 in population, can be misleading. The data on prisoner rates reflect only one dimension of the use of prisons: how many prisoners are being held at a certain time, as a proportion of the total population. Dünkel notes that prisoner rates are a function of the number of persons entering prison, and the length of stay. Consequently, similar prisoner rates may hide considerable differences in these two factors.[10]

Furthermore, overall prisoner rates do not show possible demographic differences within the population. Research has shown that the burden of imprisonment falls unequally on different ethnic, racial and other population groups, with the greatest burden tending to fall on vulnerable population groups.[11]

The 2018 edition of the *World Prison Population List* shows that the global prison population has continued to grow, exceeding 11 million in 2018. It also draws attention to regional trends, including an almost tripling in the total prison population of South America since the year 2000 (an increase of 175 per cent), a more than doubling of the

[9] Walmsley 2019.

[10] Dünkel 2015 provides data showing that Sweden, with a prison population rate of 57 per 100,000, and Germany, with a prison population rate of 76 per 100,000, have roughly the same rates. Even so, the average length in Sweden is only two months, while the average length in Germany is four times longer, eight months. Both are highly developed countries, with roughly the same level and structure of crime, and with roughly the same criminal justice processes and efficiency – and yet they use sentences of imprisonment in quite different ways.

[11] See, for example, Garland 2014, and in respect of the situation in the United States, Travis and Western (eds.) 2014.

total prison population of south-eastern Asia (an increase of 122%), and an almost doubling in Oceania (an increase of 86%).[12]

In just the three years since the previous edition of the *World Prison Population List* had been published, the total prison population had increased by around one half in such countries as Indonesia (45% increase in prisoners per 100,000 of general population), the Philippines (48%), Egypt (53%), Nicaragua (61%) and Cambodia (68%).[13]

As can be seen from the map, on the regional level, prisoner rates are highest in North and South America, and lowest in Africa and South-Central Asia.[14]

There are many differences within regions. For example, while Africa as a whole has the world's lowest prisoner rates, the median prison population rate for western African countries is 53, whereas for southern African countries it is 244.

There are even more distinctive differences within Europe. The map shows a relatively sharp divide between west and east, with prisoner rates in the former socialist countries in Eastern Europe considerably higher than in the west. A particularly marked divide can be found between the Nordic countries on one side, with prisoner rates ranging around 50 to 70, and the neighbouring Baltic countries (200 – 300) as well as the Russian Federation (467), on the other.

Although the sub-regional differences in Europe are relatively stable and have existed for a long time, there have been considerable shifts within countries. Dünkel 2015 notes that from 1984 to 2014, there has been a clear increase in the prisoner rate in, for example, England and Wales (from 84 per 100,000 to 149 per 100,000), France (31 to 98), Portugal (70 to 136) and Spain (38 to 140). In some other countries, there has been a decrease; for example, in Finland from 97 to 55. In the Russian Federation, there has been a significant decrease in just a fifteen-year period, from 730 per 100,000 in 1999, to 467 per 100,000 in 2014.

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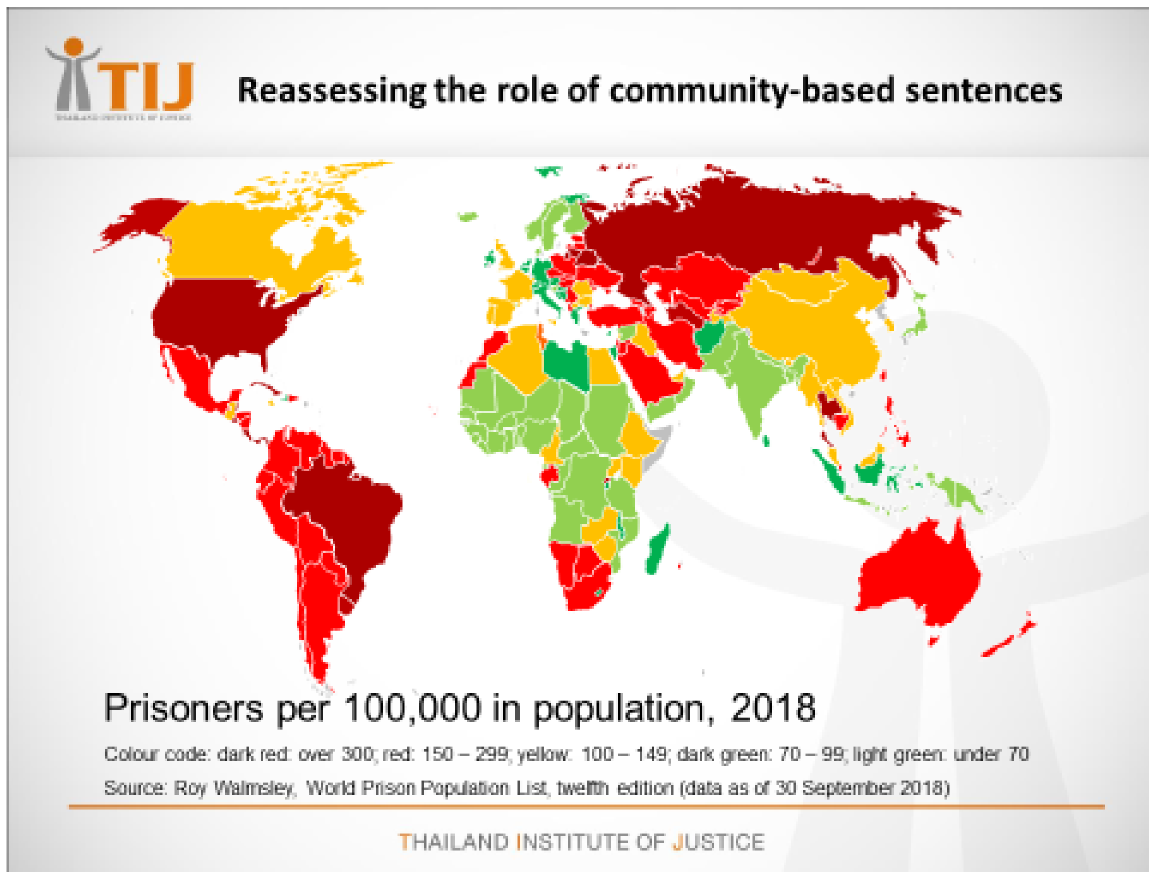
[12] Walmsley 2019.

[13] Walmsley 2019. The same source notes that during this same relatively brief three-year period, there has been a significant decrease in the Russian Federation (10%), Viet Nam (11%), Japan (15%), Ukraine (19%), Kazakhstan (21%), Romania (22%) and Mexico (23%).

[14] The seminal and in my view most perceptive analysis of national differences in prisoner rates is to be found in the third chapter of Christie 2000. He focuses on the European region. Lappi-Seppälä 2003 contains a global analysis.



To turn to Asia, Thailand had a prison population of 250,000 in 2002 (400 per 100,000 in population), but through greater use of pre-trial diversion and early release for drug addicts, the amount had been reduced to 160,000 by August 2005 (250 per 100,000). More recently, however, the trend has reversed, with an increase to 210,000 prisoners in 2010 and 364,000 in 2018 (320 and 526 per 100,000, respectively). Japan, in turn, has had a relatively stable rate, with gradual growth to a peak of 81,000 in 2006 (64 per 100,000), and a subsequent steady decrease to 52,000 in 2018 (41 per 100,000).[15]

B. International Patterns in the Use of Probation

The patterns in brief:

- *the quantitative data on the use of probation, either world-wide or within a region (such as Europe) is so poor that clear patterns cannot be detected. The reason is that probation exists in many forms, and is used for many purposes.*
- *the statistical data does suggest, however, that there are huge differences between countries in the use of probation. Probation is widely used around the world, but some countries use probation extensively, others use it rarely.*
- *qualitative data at least in Europe suggests that the use of probation is expanding, as is the range of functions that probation agencies fulfil.*

[15] International Centre for Prison Studies, available at http://www.prisonstudies.org/about-wpb.

Probation is generally understood as a sentence in which the offender continues to live in the community, under the supervision of a judicial authority, probation service or other similar body.[16] The element of “under supervision” is important, and distinguishes this sentence from, for example, simple conditional sentences where the offender is under no obligation to report to anyone. However, it should immediately be noted that the extent to which probation actually involves supervision varies considerably from jurisdiction to jurisdiction.

Probation agencies can be found throughout the world. For example, in Europe they can be found in almost every country, although with a wide variety in structure and in functions. Most of the original probation agencies were state-run, but some were non-governmental, and today some are privately run businesses. The work of many probation agencies covers the entire country, but some are regional or even local. As for functions, before the trial stage some probation agencies prepare social inquiry reports for the prosecutor, and may provide information also to other decision-makers in the criminal justice system. Some probation agencies provide assistance to victims of crime and organize restorative justice interventions. In respect of sentences, probation agencies may organize not only probation, but also community service orders. And in respect of prisoners, some probation agencies provide social support for relatives of inmates, and guidance and support to prisoners themselves (including debt regulation) in order to prepare their release, and assist with aftercare residential homes.[17]

Because of the considerable differences in organization and functions of probation around the world, there is little statistical data that can be compared. Even within Europe, where the Council of Europe SPACE II project has sought to collect data since the 1990s, a research team that has taken a close look at this European data warns that cross-national comparisons of the numbers and rates of persons under the supervision of probation agencies may be misleading.[18]

Table 2 in Appendix 1 provides European data on use of probation in 1999, 2007, 2013 and 2017. Despite the difficulties inherent in the data, it can be concluded at the very least that there are considerable differences between European countries in respect of how often probation is used. For example, England and Wales, France, Germany and especially Poland appear to use probation very often, in tens of thousands of cases each year, while in some other European countries, only a few hundred (or even fewer) offenders begin to serve probation during a year.

One source that provides some data on the use of “community corrections” in different countries around the world is the Global Community Corrections Initiative referred to in part A. On the website of the initiative, information is provided on the total number of prisoners and the total number of persons in “community corrections” in 2016.[19] This is provided below in Table 1. As a source, it must be treated cautiously, in particular as it does not give country-specific data on how “community corrections” is

[16] Handbook for Prison Leaders 2010, p. 120.
[17] Dünkel 2015. See also Heiskanen et al., 2014, pp. 15 – 16, and tables 1 and 2, on pp. 40 – 41 and 43 – 44.
[18] Aebi et al., 2014, p. 300.
[19] See http://www.globcci.org/prisonPopulationMap/prisonPop2Map.html. The project seeks to collect data from the fifty countries in the world that have the highest prison population (presumably on the assumption that these countries would also make extensive use of probation). However, data on probation is apparently available only from 38 of these 50 countries.

defined. However, the implication given is that this involves probation, i.e. supervision in the community.

Bearing in mind that the data in Table 1 should be treated with caution, an examination of the table raises some intriguing questions. Assuming that the data in the "community corrections" column refers to the number of persons on probation, and that how community corrections is defined in the different countries is at least broadly similar, it can be seen that some countries (Malaysia, Morocco, Myanmar, and Nigeria in respect of adults) do not use probation.

A second observation is that some countries use probation very rarely, in proportion to the number of persons kept in imprisonment. The outlier here is Argentina, with some 85,000 persons in prison, and only some 3,400 persons in community corrections. Other countries in which the number of persons in community corrections is dwarfed by the prison population are Australia, Indonesia, Japan, Pakistan, Peru and the Philippines.

Conversely, some countries have a community corrections population that is about three times the size of the prison population: Germany, the Republic of Korea and in particular Poland.

Table 1. Corrections population: total number and per 100,000 in population, by type of sentence, in 2016 (unless otherwise noted in respect of the year)[20]

country	prisoner population	prisoners per 100,000	community corrections population	community corrections population per 100,000	community corrections population as percentage of prisoner population
Argentina	85,283	198	3,433	8	4%
Australia	42,492	178	14,298	66	37
Canada	41,145	115	101,716	284	247
Chile	49,063	274	58,198	326	119
China	1,649,804	119	707,058	51	43
Colombia	118,925	239	57,099	115	48
France	70,710	110	174,510	272	247
Germany	62,194	70	180,000 (2010)	202	289**
Indonesia	248,389	98	55,000	22	22
Italy	59,135	97	59,554	97	100
Japan*	55,967	44	15,278	12	27
Kazakhstan	33,989	192	22,500	127	66
Kenya	54,000	118	7,861 (1995)	172	146**
Korea, Rep. of	55,198	110	165,818 (2007)	330	300**
Malaysia	55,413	182	no probation	-	-
Morocco	82,512	242	no probation	-	-
Myanmar	79,668	150	no probation	-	-
Nigeria	73,631	40	no probation for adults	-	-
Pakistan	83,718	45	23,396 (2015)	13	28**
Peru	82,023	263	16,110	53	20
Philippines	188,278	190	43,194 (2017)	44	23

[20] Source: http://www.globcci.org/prisonPopulationMap/prisonPop2Map.html. Note: the 2016 prisoner data provided here differ from that provided in the 2016 edition of the World Prisoner Population List compiled by Roy Walmsley. The calculation of prisoners and community corrections offenders per 100,000 are by the author.

Poland	73,524	193	290,000	760	394
Russian Federation	582,889	404	423,092	295	73
South Africa	158,111	292	70,356	128	44
Spain	59,087	128	55,342	120	94
Thailand	364,288	540	216,616 (2013)	319	598[**]
Turkey	232,886	297	292,406	374	126
Ukraine	56,246	154	63,944	176	114
United Kingdom	83,014	146	190,439	202	139
United States	2,121,600	699	4,650,900	1531	219
Uzbekistan	43,900	150	probation est. 2018	-	-
Viet Nam	130,002	140	47,000	50	36

[*]Data provided by Kitagawa Mika, UNAFEI
[**]Note different years

Finally, there are vast differences in the number of persons in community corrections (presumably referring by and large to the number of persons under supervision) per 100,000 in population. At one end, there were apparently only eight persons in community corrections per 100,000 in Argentina, twelve persons per 100,000 in Japan, and thirteen persons per 100,000 in Pakistan in community corrections. At the other end of the range there were 760 persons in community corrections per 100,000 in Poland, and over twice that number, 1,531 persons per 100,000, in the United States.[21]

Once again, caution needs to be exercised in interpreting this data, especially since no further particulars are provided on how the data was obtained, and more importantly on how each reporting country had defined the concept of "community corrections" in responding to the request for data.

To look at the *qualitative* data on probation, which are available only for Europe, one pattern that has been noted is the growth in the number of new probation agencies. According to the coordinator for the Council of Europe SPACE II project, these new probation agencies have often been detached from the national prison administration, or have expanded on the basis of local offices. A second pattern is the growth in probation workload, much as a result of the diversification of probation functions at different stages of intervention (e.g. pre-trial, enforcement, management of postponed sentences, conversions or post-release stages).[22] In commenting on the observation that the number of prisoners in Europe has not decreased despite the growth in probation, Delgrande notes:

The paradox of increasing patterns for prison and probation is a very complex phenomenon and many researchers try to explain this evolution from judicial, political, security or criminal policy perspectives. It can be concluded that for the period lasting from the early 2000s until now, the part of prisoners sentenced to short custodial terms (less than one-year custody) did not decrease at all. In fact it seemed that there was an overuse of CSM [community sanctions and measures] for the persons who were not supposed to go to prison.[23]

[21] Noting that there were 699 prisoners per 100,000 in population in the United States, it would seem that in 2016, over 2 per cent of the total population of the United States was under the control of the criminal justice system.
[22] Delgrande 2015.
[23] Ibid.

Delgrande's point refers to what is called the "net-widening" effect of new community-based sentences. Often, new sentences are developed specifically to replace short terms of imprisonment, but in practice they may replace *less* restrictive sentences.

C. International Patterns in the Use of Community Service Orders

The patterns in brief:

- *community service orders are a new sanction that is clearly increasing in use around the world, although so far, the main area of growth appears to be largely in Europe and North America (with a few notable exceptions in Asia and Africa).*
- *in Europe in particular, community service orders are in wide use.*
- *different forms of community service make comparison difficult.*

A community service order (CSO) requires the offender to perform a certain number of hours of unpaid work, usually for an agency or organization or the benefit of the community.

The community service order was first introduced in England and Wales during the early 1970s. Following a 1976 Council of Europe resolution[24] calling for member states to consider adopting community service orders, its use spread to a number of other European countries. In Asia and the Pacific region, CSOs have been introduced in at least Australia, Fiji, Hong Kong, Malaysia, New Zealand, Singapore, Sri Lanka and Thailand, and in the Republic of Korea as a supplement to other sentences.[25] In Latin America and the Caribbean, community service exists in at least Brazil, Colombia, Costa Rica and Mexico.[26] In Africa, it exists in at least Burkina Faso, Central African Republic, Kenya, Malawi, Mozambique, Namibia, Senegal, South Africa, Tanzania, Uganda, Zambia and Zimbabwe.[27]

There are considerable differences between countries as regards the total persons undergoing community service. Table 3 in Appendix 1 contains data from Council of Europe member states for 1999, 2007, 2013 and 2017 on the use of CSOs. Perhaps the clearest trend that can be seen is the growth in the number of countries using CSOs, and in the number of CSOs imposed. (Both developments can be seen in respect of Europe in the table.)

A second observation is the large differences in use from one country to another. Some European countries impose only a few thousand CSOs annually, others (in particular England and Wales, France, the Netherlands, Poland and especially Spain) impose it very often.

Examining the available data on the qualitative use of community service orders, McIvor et al. note that the stated and actual functions of CSOs "have always been very unclear and conflicting". According to them, while the various stated functions of a more humane alternative to prison, rehabilitation and reparation "are largely shared across jurisdictions, within different jurisdictions they are assigned varying degrees of

[24] Resolution (76)10 (1976), available at https://rm.coe.int/16804feb80.
[25] Sugihara et al, 1994, pp. 100, 104, 184 and 201; Challinger 1994, p. 263; Singh 2005, p. 90; Rujjanavet 2005, p. 108; Reddy, p. 224.
[26] Carranza et al, 1994, p. 407.
[27] Penal Reform International 2012, and Saleh-Hanna 2008, p. 387.

importance. Furthermore, the relative importance attached to different aims has changed over time in each jurisdiction."[28] Melvor et al. also say that rehabilitation continues to remain a stated function of CSOs, but it is becoming more narrowly defined as reduction of the risk of reoffending and retributive aspects of CSOs "are being stressed in an effort to garner public and judicial support".[29]

Dünkel, in turn, notes that the general experience with CSOs has been positive. By and large CSOs do appear to be replacing short-term imprisonment, and thus the "net-widening effect" may not be particularly strong.[30]

D. International Patterns in the Use of Electronic Monitoring

The patterns in brief:

- *electronic monitoring is a new measure that has been spreading in many industrialized countries.*
- *electronic monitoring is used not only as a sanction, but also as an alternative to pre-trial detention, and as a condition of parole.*
- *due to the expense of the measure, electronic monitoring is not in very wide use in developing countries.*

In electronic monitoring, the offender is ordered to remain at home or, at specified times, at his or her place of employment, educational institution or other accepted location. The offender has a monitor attached (usually to his or her wrist or ankle) to help in ensuring compliance with the order.

Electronic monitoring was first used in the United States in 1983.[31] Its purpose is to ensure that the offender remains where he or she is supposed to be, or alternatively that the offender does not enter proscribed areas or approach specific persons, such as potential victims. It can be used as a sentence in its own right, or as a condition of probation (or another community-based sentence). Before conviction, it can be used as an alternative to pre-trial detention (as, for example, in Belgium, France, the Netherlands, Northern Ireland and Portugal), and at a later stage, as a condition of a prison furlough or of parole from prison (as in Finland and Sweden).

Although electronic monitoring is a very recent innovation in corrections, it has spread relatively rapidly from the United States, first to the United Kingdom, and then to Canada, New Zealand, Australia and South Korea, and to a large number of countries in Europe. Table 4 in Appendix 1 provides data showing the rapid spread in Europe. While only five countries in Europe appeared to use electronic monitoring in 1999, in 2007 it was in use in at least ten European countries, in 2013 in at least fifteen, and in 2017 in at least twenty-one. According to Mombelli 2019, electronic monitoring is being used or is being experimented with in some forty countries around the world.[32]

Equally impressive is the growth in the use of electronic monitoring in individual countries. Poland, which did not have the sentence as recently as 2007, had almost 17,000

[28] McIvor et al., 2010, p. 87.
[29] Ibid.
[30] Dünkel 2015.
[31] Burrell and Gable 2008; Albrecht 2005.
[32] Mombelli 2019.

offenders starting to serve an electronic monitoring order in 2013 (Poland did not provide data for 2017). In France, almost 30,000 offenders began to serve such an order in 2017. For at least these two countries, electronic monitoring is not just a technological novelty, but something that is in very wide use.

The differences between countries in the use of electronic monitoring are also evident in comparison to population. Aebi et al. have calculated that the average total number of persons in Europe under electronic monitoring in 2010 was quite low (8 per 100,000 population), with the highest rate for England and Wales (42), and the lowest rate in Serbia (close to zero).[33]

From the qualitative point of view, Dünkel notes the controversial nature of electronic monitoring, and the evident danger of net-widening. The contribution of electronic monitoring to the easing of prison overcrowding appears to have been very limited, although positive results have been reported in Finland, the Netherlands and Sweden.[34]

II. ARE COMMUNITY-BASED SENTENCES MORE EFFECTIVE THAN IMPRISONMENT?

Conventional wisdom is that community-based sentences are suitable for only a distinct range of offences: petty offences (and, in some jurisdictions, medium-level offences), and that the response to more serious offences should be imprisonment. That statement needs to be unpacked.

What we deem a petty offence and, respectively, a medium-level and serious offence, varies from one jurisdiction to the next, and from one time to another.[35] For example, as noted by Yukhnenko et al. (2019), more or less the same drug trafficking offence can lead to a community-based sentence in one jurisdiction, and a sentence of five to ten years of imprisonment in another.

Furthermore, the *range* of offences covered by, respectively, community-based sentences and imprisonment varies from one jurisdiction to the next, and from one time to another. In some jurisdictions, community-based sentences are used more than imprisonment. In other jurisdictions, in turn, very few community-based sentences are used at all. It would be absurd to conclude that few petty offences (and perhaps even medium-level offences) are committed in the latter jurisdictions and come before the courts.

Both factors suggest that the dominant role of imprisonment in each of our jurisdictions can and should be reconsidered. If some jurisdictions can maintain social control, prevent crime and protect the victim and the community with a low level of imprisonment, we should try to learn from their experience. As noted by the UNODC,

[33] Aebi et al. 2014, p. 300.
[34] Dünkel 2015. Also, Graham and McIvor 2015 conclude that electronic monitoring alone does not decrease the risk of reoffending but should be combined with support and supervision.
[35] Nils Christie has explained the variation with the concept of the "penal value" of a certain sentence. He argues that in any given society, the "penal value" of, for example, a sentence of ten years of imprisonment can vary considerably over time, depending for example of the amount of conflict in society and the standard of living.

It can be argued that the position of imprisonment as the main punishment for medium-level, and even for more serious, offences is not and should not be self-evident. Other forms of punishment could just as well be used, as long as they can be regarded as credible and as fulfilling whatever the function of punishment is seen to be in society. Imprisonment is not the only type of punishment, nor necessarily the best type of punishment, especially (but not only) in the case of juveniles, and disadvantaged groups such as drug users and the mentally ill. Imprisonment should be reserved for the most serious offences and the most dangerous offenders. In other cases, deterrence, education, rehabilitation, just deserts and even incapacitation can be promoted by other types of punishment, at a significantly lower social, human and economic cost. It is for this reason that the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) were drafted.

It needs to be emphasized that this paper is not intended to suggest that imprisonment is not an appropriate response to crime. As noted above by the UNODC, imprisonment should be reserved for the most serious offences and the most dangerous offenders. It should not be used indiscriminately when the same functions can be achieved through community-based sentences.

In pursuit of this, the following section examines whether imprisonment does indeed fulfil different purposes of punishment, or is any more effective in fulfilling them than community-based sentences. After all, as noted by the UNODC above, imprisonment is widely believed to

- *deter* the person sentenced from repeating his or her offence;
- *rehabilitate* the offender (by increasing awareness and acceptance of norms, and thus by leading the offender to reject a criminal lifestyle);
- *incapacitate* the offender, by placing him or her behind locks and bars, thus presumably keeping the rest of the community safe; and
- *serve as a warning to other potential offenders* not to commit an offence.

As for the “just deserts” purpose of punishment, the question of whether or not imprisonment is “better” that community-based sentences rests essentially on the perception of the severity of each respective sentence.

This section will also consider the cost implications of both imprisonment and community-based sentences.

A. The Claim That Imprisonment Is Better Than Community-Based Sentences at Deterring the Offender from Committing New Offences

The “special prevention” function of a sentence, the impact that it has on the offender, is seen to operate through a combination of *deterrence* (warning), *rehabilitation* (education and seeking to ensure that the offender can be reintegrated into the community as a law-abiding member) and *incapacitation*. To the extent that punishment actually has this impact, it is difficult to distinguish between deterrence and rehabilitation. We cannot know for sure that, if an offender does not commit a new offence after being punished,

this is because the offender *fears* new punishment (the deterrence aspect) or is *better adjusted* (is better able to function as a lawful member of society).

A second difficulty lies in researching the impact of punishment. Much as criminologists would welcome the possibility, judges in most jurisdictions would not agree to a massive experiment, in which offenders guilty of more or less similar offences are randomly split into two groups, with one being sentenced to imprisonment and the other being sentenced to community-based sentences, and the researchers then seeing which group is less likely to commit new offences (and possibly even interviewing the offenders in an attempt to see whether deterrence or rehabilitation was the primary factor in such desistance).

A third difficulty lies in drawing conclusions from whatever results can be gleaned from research. Offenders are different, and have different life situations and motivations. Individual jurisdictions have different forms of imprisonment and community-based sentences, and their theoretical deterrent and rehabilitative impact may well be quite different. Finally, even in individual jurisdictions, different sentences may be implemented in different ways, and consequently could well have a different impact on the offenders serving the sentences.

Without seeking to generalize too far, one way to proceed is to examine the deterrence argument from the point of view of short-term imprisonment, as compared to community-based sentences. If the term of imprisonment is only a few weeks or months, the offender presumably could not receive the benefit of very extensive educational, health or social welfare services which would assist him or her in reintegration into the community.

Studies that can shed light on this have been carried out in a number of countries. An example is Wermink et al. (2010), which used the matched samples approach[36] in a comparison of reoffending after short sentences of imprisonment (up to six months), compared to reoffending after sentences of community service. The study concluded that the reoffending rate for those sentenced to community service was roughly one half of that of offenders sentenced to short-term imprisonment, a result which is in line with earlier studies carried out in the Netherlands.

Going beyond studies in just one country, a recent review brought together the results of a number of studies conducted around the world, similarly comparing the impact of community service with that of short sentences of imprisonment (Yukhnenko et al. 2019). Once again, the over-all conclusion was that offenders sentenced to community service had a *lower* rate of reoffending than did offenders sentenced to short terms of imprisonment.

From this, it would seem that the belief in imprisonment as a greater deterrent than community-based sentences can at least be questioned. At this stage, we need not try to draw more general conclusions. Imprisonment may well have a deterrent effect on at least some offenders and in some jurisdictions, but in some cases community-based sentences produce better results.

[36] The matched samples methodology is one way of seeking to make two samples being compared as similar to one another as possible (such as age, gender and length of sentence).

B. The Claim That Imprisonment Is Better Than Community-Based Sentences at Rehabilitating the Offender

One of the fundamental purposes of custodial corrections is to take the offender away from a possibly criminogenic environment and place him or her in a closed rehabilitative, therapeutic or educational institution for treatment. The treatment may be tailored for the special health and or mental health needs of individual offenders (counselling, anger management, psychiatric treatment, substance abuse), or may be designed to help a wider spectrum of offenders realize the need to abandon a criminal lifestyle (religious counselling, education, vocational training, cognitive skills etc.).

The rehabilitative effect of custodial corrections has been extensively researched.[37] Among the classics in the field is Robert Martinson's 1974 article, *What works? – Questions and answers about prison reform.* In it, he summarized a number of studies and concluded that "with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism".[38] David Farabee, in his 2005 book *Rethinking Rehabilitation: Why Can't We Reform Our Criminals?*, also concluded that, on a general level, correctional treatment is not working.

Many reasons have been identified for this failure in corrections. The mind-set that offenders can be forced to change their lifestyle (referred to as "coercive treatment" or "mandatory treatment") sets up a situation in which offenders may seem to adapt to the regime and change their behavioural patterns in a favourable manner, but on release immediately return to a criminal lifestyle. It has also been pointed out that custodial treatment in itself can do little about the situation in which the offender will find himself or herself on release. Indeed, as has often been noted, being sent to prison may in a variety of ways worsen the offender's ability to function as a member of society.

A major difficulty with custodial corrections in most jurisdictions is that it is under-resourced and overburdened. The availability and quality of counselling, treatment, education and vocational training (as well as other forms of support and assistance) may be severely limited. Due to the over-population of many prisons, the staff is unable to conduct a proper risk and needs assessment, much less provide an individualized treatment plan that addresses the needs of each and every prisoner. Treatment that is specifically tailored to individual offenders (or small groups of offenders with similar characteristics) in individual cultural contexts have been shown to work, but matching offenders and treatment programmes, and successfully implementing such programmes, is very resource intensive.

Without the supervision of the staff, many prisoners will be spending much of their time in a very criminogenic environment, one in which criminal values can be instilled,

[37] It should again be emphasized that the research has been conducted primarily in a few industrialized countries, and it is doubtful that the results can be generalized to all jurisdictions. Indeed, some jurisdictions report very low rates of reoffending for entire prison populations after offenders have been released from custodial treatment. However, generally the empirical research to verify these reports is missing.

[38] Martinson's conclusions have been summarized in the short phrase, "nothing works", but Martinson himself has disavowed this. He notes that there are successful forms of treatment, but these are tailored to specific groups, and must be well resourced and managed.

new and better ways to commit offences can be learned, new criminal partnerships can be formed, and in general the offenders can become more deeply committed to a criminal lifestyle.

Poorly resourced and overpopulated prisons may furthermore provide an unhealthy environment, with gang violence, contagious diseases, substance abuse and a variety of factors that result in mental health issues.

This criminogenic prison environment can be compared to community-based sentences, which allow the offender to remain in the community. He or she can continue with family responsibilities, education, vocational training and employment. In most jurisdictions, the quality of community-based health, social services and other services may be basic (the constraint on resources is certainly not limited to prisons), but they would tend to be better than what is available in a custodial environment. Community-based sentences may also reduce the social stigma of being an "ex-convict". Consequently, if *rehabilitation* is the goal, providing it in a community setting is more effective. As noted in a recent and rigorous meta-analysis of the available research, "Strong meta-analytic evidence indicates that community-based treatment programmes for at-risk or adjudicated individuals, especially juveniles, are more effective than those offered in secure settings."[39]

The belief that imprisonment is better than community-based sentences at rehabilitating offenders can thus be questioned. Once again, we need not try to draw more general conclusions. There are cases where offenders can and will benefit from being taken away from a criminal environment and provided with a variety of services. However, we should not be under the illusion that imprisonment in under-resourced and overburdened institutions in general is rehabilitative.

C. The Claim That Imprisonment Is Better Than Community-Based Sentences at Protecting the Community Through Incapacitation of the Offender

A widely held and understandable belief is that imprisonment has an *incapacitating* effect. By placing a criminally active offender who is dangerous to his or her environment behind bars, the community (or a specific victim) is made safer.

Let there be no doubt about it, serious offenders who are a threat to society or a threat to specific victims should be placed in prison: those guilty of deliberate offences involving for example serious danger to life, health and well-being, serious drug trafficking, serious theft, serious fraud, serious economic crime and serious crimes against the environment, and offences that endanger national security.

The research results on the incapacitating impact of imprisonment appear to be mixed, largely due to the methodological difficulties. Two of the main difficulties lie in predicting how many offences a prisoner would have committed (based on his or her criminal history) if he or she had *not* been sentenced to imprisonment, and the extent to which this individual would, in time, have desisted from crime.[40]

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[39] Weisburd et al., 2016, p. 77. See also pp. 94-95.
[40] See Travis and Western (eds.) 2014, pp. 140-145.

Furthermore, the belief in the incapacitating effect of imprisonment should not be exaggerated. There are at least three reasons for this. First, offenders may be able to continue to commit offences while in prison. This is true in the sense that offenders may commit, for example, violent or property offences against one another or staff members while in prison, and also because offenders may continue to plan and direct offences from behind prison walls.

A second reason has to do with the possibility (if not probability) in many cases that removal of one offender from the community may lead to him or her being replaced by another offender. This phenomenon has been noticed for example in organized criminal activity, in particular in drug trafficking.

A third reason is that most persons sentenced to imprisonment will in time be released. Although it may seem counterintuitive to say that greater use of *community-based* sentences increases the safety of the community, what is noted above of the inability of most prisons in general to rehabilitate offenders suggests that sending a person to prison may, in the long run, *decrease* community safety. While in prison, offenders in prison may learn new ways of committing crime and may form new criminal attachments. This leads to a cycle of release and imprisonment, which does nothing to build safer communities.

It can also be noted that allowing offenders to remain in the community provides them with greater opportunities to enter into community-based substance-abuse programmes, seek employment, find suitable housing and maintain their family responsibilities, all of which could further contribute to a decrease in the rate of reoffending.

Some recent studies that have examined data on how imprisonment increases the rate of reoffending have concluded that using community-based sentences instead of short-term sentences of imprisonment can indeed *reduce* the number of future offences, and in this way increase public safety.[41] It is clear that this effect depends on a number of variables, in particular the sentencing practice in the jurisdiction in question. In jurisdictions which already make extensive and effective use of community-based sentences, the effect of such a shift would presumably be less than in a jurisdiction which makes heavy use of imprisonment. However, the results of the study do at least draw attention to the periodic need to reassess the approach to sentencing.

D. The Claim That Imprisonment Is Better Than Community-Based Sentences in General Prevention, By Warning Others Not to Commit Offences

Aside from the *special preventive* argument that imprisonment can deter, rehabilitate and incapacitate the individual offender, imprisonment has also been argued to have a *general preventive* impact, by dissuading other members of the community from crime by

[41] For example, a major study in the United Kingdom published in 2019 concluded that replacing short sentences of imprisonment (less than six months) with community-based sanctions reduced reoffending by 13%. See https://www.gov.uk/government/news/justice-secretary-urges-evidence-led-approach-to-cut-crime
A study to be published in the Cambridge Journal of Evidence-Based Policing (Cowan 2019; in print) examined the use of police and court diversion in Victoria, Australia. The author calculates, on the basis of an examination of over one million cases, that for each 100 offenders diverted, eight crimes could be prevented per year. Thus, the author estimates that greater use of police diversion in Victoria could have prevented tens of thousands of offences.

example. This general preventive impact is seen to have three components: the severity, the certainty and the celerity (speed after commission of the offence) of the sentence.

Extensive research has been conducted on the correlation (and possible causal connection) between the use of imprisonment and the crime rate. Of the three components (severity, certainty and celerity), the severity of the sentence has been the easiest to change. *If* imprisonment had a clear general preventive impact, then an increase in the use of imprisonment – stipulating imprisonment as the mandatory sentence for a greater range of offences, and using longer sentences (for example through "three strikes" laws) – should result in a decrease in crime. The preponderance of evidence suggests that there may be a slight decrease, but in general this decrease is so modest that it is offset by the social, human and financial costs of the increase in imprisonment.[42] It could also be argued on the basis of the statistical evidence that increasing the severity of sentences has the opposite effect from what was intended: placing more people into imprisonment tends to be correlated with an increase in the crime rate.[43] There are, furthermore, examples of countries, such as Finland, where a deliberate and considerable decrease in the use of imprisonment did not increase crime rates (as one would have assumed on the basis of a purported general preventive impact).

It has been pointed out that persons planning to commit an offence (to the extent that rational planning is at all involved) tend to discount the likelihood of detection, apprehension and conviction. Overall, in many countries the likelihood that an offender will be arrested and brought to justice for such offences as theft, burglary, drug trafficking and trafficking in persons is quite small.

The conclusion is that also the general preventive impact of imprisonment, as compared to community-based sentences, can be questioned.

E. The "Just Deserts" (Retributive) Argument: The Claim That Imprisonment Is Demanded by the Public Sense of Justice

In debates on public policy, an often-repeated argument is that the public "demands" imprisonment as a response to crime. Imprisonment has become such an entrenched institution in our society that it becomes almost a visceral response to offences. Populist politics have, moreover, encouraged such a visceral response by emphasizing individual features of particularly horrific offences, and then generalizing them to cover broader categories of offenders and offences.

Research, however, has repeatedly shown that although simple opinion polls (asking loaded questions along the line of "do you support harsher punishment for rapists and murderers?") tend to produce predictable responses ("yes, the public does demand longer sentences"), there is considerable variety in the attitudes of different members of the public, and not one general "sense of justice". More importantly, when respondents are provided with more detailed information regarding the background of individual defendants (criminal record, ethnic background, gender, substance abuse, social history)

[42] See, for example, Travis and Western (ed.) 2014, pp. 134 – 140.

[43] This conclusion has been contested. Much depends on what time period is considered; for example, in the case of the United States, it has been observed that the increase in the use of imprisonment from the 1970s to the 1990s ultimately was followed by a fall in reported crime (beginning during the 1990s) (see, e.g. Travis and Western (ed.) 2014, pp. 33 – 69). However, if imprisonment does have a general preventive effect, this effect should have been seen in a much shorter time span.

and the circumstances of the case, the responses tend to fall more in line with current sentencing practice by the courts.[44]

Along the same lines, Jan van Dijk has used the international data produced from victimization surveys to examine possible correlations between general public opinion (punitiveness) and the rate of imprisonment. He concludes that, worldwide, there is no relationship between public attitudes towards sentencing and actual imprisonment rates.[45]

Indeed, van Dijk has noted that

> Public opinion survey research supports the broad proposition that the public, when considering whether hypothetical cases should result in a sentence to prison, is more likely to favor a noncustodial sentence when that option is fully developed. Information at the country level has shown that public attitudes are influenced by available sentencing options. If alternative, noncustodial sentences are introduced in a country, the proportion of respondents favoring this option usually goes up sharply in the aftermath. … In this regard, it is worth pointing out that noncustodial sentences are not widely available in developing countries. Reliance on prison sentences in developing countries seems partly determined by the lack of viable alternatives for which new institutional arrangements would have to be put in place.[46]

The conclusion is that, when the public sense of justice is assessed, community-based sentences do find wide support as a response to a broad range of offences. The ability of the public to understand and accept such sentences should not be underestimated.

F. The Cost-Effectiveness of Community-Based Sentences

The implementation of any sentence brings with it a variety of costs: human, social and financial. These costs are generally factored into public policy decisions on the administration of justice, and are deemed to be offset by the benefits that are seen to result from bringing an offender to justice.

This raises the question of whether the benefits believed to come from sentences of imprisonment can be achieved through community-based sentences, but at a lower overall cost.

The *human* costs of a sentence extend primarily to the offender, but they also affect his or her family. In the case of imprisonment, the human costs to the offender include of course the loss of liberty, but separate reference could be made to the disruption of contacts with family members,[47] interruption of education, vocational training or employment, the resulting poorer likelihood of being able to return to the job market at the same level of income and financial stability,[48] and the possible worsening of health and mental health.

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[44] See, for example, Kääriäinen 2018 and the literature cited.
[45] van Dijk 2008, p. 264.
[46] van Dijk 2008, p. 265.
[47] It should be noted that especially in the case of violent offenders, members of his or her family may welcome the offender being placed in prison. However, the offender will in time be released.
[48] Research and experience in many countries indicate that potential employers are reluctant to hire persons with a criminal record, and in particular persons who have been in prison.

The impact of imprisonment on family members can take many forms. Offenders who have served time in prison may have difficulties in forming relationships, and thus partnerships would tend to be unstable, leading perhaps to broken families even after the offender has been released from prison. The offender may be the main caretaker of the family, and placing him or her in prison may deprive the family of necessary parental and financial support. Imprisonment tends to weaken family bonds, and affect the well-being of children, to the extent that the children have behavioural problems, such as aggression and delinquency, as well as to drop-out from school.

These same human costs are less likely as a consequence of community-based sentences, since the offender is able to remain at home, at school and at work.

In assessing the *social* costs of sentences, it should be kept in mind that any state-imposed sanction – whether imprisonment or a community-based sentence – is part of a process of state control, a process which also includes policing, arrest of a suspect, the criminal procedure, and conviction. Policing in any society tends to have a focus on vulnerable communities, which are regarded as high-crime areas. When we consider that a sizeable proportion of prisoners come from vulnerable communities, this should raise questions about the impact of multi-layered and concentrated forms of disadvantage in these communities: high crime, but also poverty, poor health, unemployment and intrusive state control. For this reason, it is difficult, if not impossible, to try to assess the social impact resulting from sending an offender to prison instead of applying a community-based sentence.

That said, the fact that the prisons in many countries have an overrepresentation of vulnerable groups such as racial and ethnic minorities strongly suggests that imprisonment increases social, economic and political inequality in society. Those in prison tend to be poor, undereducated, unemployed, in poor health and (in some jurisdictions) disenfranchised. The experience is that the impact of imprisonment will not improve, but in practice worsen their prospects for full integration into society as law-abiding members. Although they have been guilty of offences, and should be brought to justice, the question is whether a sentence of imprisonment is the most appropriate and effective response to their offences.[49]

As for the *financial* costs, and without entering into the accounting and budgetary details of prison management as opposed to the management of community-based sentences (which vary considerably for example in accordance with the level of economic development and the administrative structure in different jurisdictions), these costs include investment in construction and maintenance of prison facilities, capital costs, staff costs, the cost of various health, mental health, educational and other support services for convicted offenders, and technology (whether for example for security in prison, or for electronic monitoring devices in community-based sentencing). There are also hidden costs, such as those associated with taking an offender away from his or her employment (to the extent that offenders sentenced to imprisonment are gainfully employed).

[49] Travis and Western (eds.) 2014.

Reference should also be made to the financial benefits of correctional administration, including the economic benefit of providing employment for correctional (and affiliated) personnel, and the income from prison industries.

When looking at the bottom line, however, the financial cost per offender of implementing imprisonment as opposed to implementing a community-based sentence is many times higher.

The conclusion is that, from a costs-benefits perspective, community-based sentences can be implemented at lower costs-per-sentence than imprisonment.

G. What Do We Know About the Relative Effectiveness of Different Community-Based Sentences?

The previous section considered whether community-based sentences are more effective than imprisonment according to various criteria. A separate issue is what types of community-based sentences "work", and why: do they deter, do they rehabilitate, do they serve as a warning to others in the community, do they protect the victim and the other members of the community, does the public regard them as appropriate and are they cost-effective?

This is a large and complicated issue, and it is made more complex by the diversity of types of sentences, the diversity of jurisdictions and the diversity of offenders who are sentenced. What is more, there is perhaps surprisingly little rigorous research on the effectiveness of community-based sentences, and caution has to be used regarding the extent to which research results in one jurisdiction can be generalized to apply elsewhere.

When speaking about community-based sentences, however, the discussion can and should be largely limited to those sentences that are intended to have a *special preventive* impact on the offender.[50] We can leave aside, for example, monetary fines, which are primarily intended to have a *general preventive* effect.[51]

It should first be noted that most offenders will not necessarily commit new offences. The criminological literature on the prediction of reoffending refers to the concepts of "false positives" and "false negatives". In this context, a "false positive" refers to an individual who, according to risk assessment, is presumed to be likely to reoffend, but in fact would not commit a new offence. A "false negative" in turn, is an individual who is presumed to become law-abiding, but would in fact commit a new offence (an occurrence which may largely be due to situational circumstances). Although in general, risk assessment tools have had poor success in predicting future behaviour, what we do know is that it is easiest to predict correctly who would *not* offend than it is to predict who *would* commit a new offence. Out of a cohort of, for example, one thousand persons who have committed an offence, it is easier for us to predict with relative assurance the several hundred who will not commit a new offence, than it is for us to predict the perhaps one hundred who will commit a new offence.[52]

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[50] It should be recalled that some sentences or measures, such as restorative justice processes, are designed to have an impact also on other persons affected by the offence.

[51] Fines, however, cannot be totally ignored when discussing the appropriateness of different sanctions. If an offender is unable to pay the fine, he or she may be sentenced to prison for non-payment.

[52] Longitudinal studies have generally suggested that a small percentage of a population cohort are "hard-core offenders", who commit the majority of offences, both petty and serious.

Many offenders come from a community that is beset with multiple social problems: poverty, unemployment, lack of economic opportunities, lack of basic services, family breakdown, marginalized populations and poor social cohesion. If the goal is the prevention of reoffending, and thus also the protection of the community, also community-based sentences should seek to come to grips with these problems.

A recent meta-analysis of the available research on "what works" in community-based sentences can be summarized for the present purposes as follows. Those sentences that seek to strengthen informal and supportive social controls and reintegration, and to maintain or repair social bonds (such as restorative justice programmes), have a favourable and statistically significant effect. The authors suggest that this is because such sentences are highly specific and targeted, and they involve one-on-one interactions and the building of personal relationships. On the other hand, sentences that simply place the offender in the community without seeking to provide him or her with a way to internalize or restore conventional values and relationships do not have an appreciable special preventive impact on the offender. The authors conclude by saying that this suggests "that interventions should be implemented at a high level of focus – whether at small places or with high-risk individuals – and incorporate specific risk factors."[53]

Along the same lines, the authors conclude that diversion with services is distinctly more effective than simple diversion.[54]

The authors further conclude that electronic monitoring, when compared with traditional or intensive probation, or even with incarceration, was *ineffective* in preventing reoffending. They argue that this is due to the fact that electronic monitoring is based on formal social control and surveillance.[55] This is echoed by Graham and McIvor, who review international experiences with electronic monitoring, and conclude that

> Overall, the electronic monitoring programmes and approaches which are shown to reduce reoffending during and/or after the monitored period are mostly those which include other supervision and supportive factors (e.g., employment and education, social capital) associated with desistance. The effective approaches discussed here have developed on the basis of high levels of integration with supervision and support from Probation Officers and other staff and services. In other words, the more effective programmes and approaches, in Europe in particular, are those where EM is not a stand-alone measure.[56]

Overall, Weisburd et al. conclude,

[53] Weisburd et al. 2016, pp. 97-98. The approach used by Weisburd et al. is based on a rigorous assessment of the available research, and, using the same method developed in Sherman et al. 1997, divides measures into what works, what doesn't work, what is promising and what requires more research.
[54] Weisburd et al. 2016, p. 99.
[55] Weisburd et al. 2016, p. 100. Also, Dünkel 2015 concludes that the research results on the contribution of electronic monitoring to the prevention of reoffending is not evident, and promising only in combination with social support by the probation and aftercare services.
[56] Graham and McIvor 2018.

> …the potential crime-supressing elements of the community, such as positive social controls, are not necessarily leveraged by simply placing an offender in the community and assuming that the desire to remain there will act as a sufficient deterrent to recidivism. The more successful community programs suggest that a targeted and focused approach may be required. [57]

This targeting and focusing revolves around the nature of the offence and the offender. For example, substance abusers, offenders with mental health problems, offenders guilty of domestic violence, and sex offenders may respond well to community-based sentences that contain a treatment and support component.

III. PROMOTING WIDER USE OF COMMUNITY-BASED SENTENCES[58]

There is a strong interest throughout the world in replacing imprisonment with community-based sentences. The repeated resolutions and declarations of the United Nations Congresses on this subject, adopted by consensus, show that all member states are agreed – at least in principle – on the need to reduce imprisonment and to expand the use of effective community-based sentences. Even so, when the United Nations adopted the Tokyo Rules in 1990, and asked member states to provide data on the status of community-based sentences, many replied that appropriate community-based sentences are simply not available, or that the available community-based sentences are used far less than they might be or, when used, are used as substitutes for other community-based sentences and not for imprisonment (the so-called net-widening effect).

The available data presented in this paper on the use of community-based sentences around the world suggests that member states continue to meet with these same challenges.

The main reasons for the inconsistency between stated goals and actual practice are to be found in law, sentencing constraints, policy, resources and attitudes. These problems cannot be dealt with in isolation from one another. The use of community-based sentences can be expanded effectively only if all the problems are recognized and dealt with. The steps that should be taken on different levels and by the different stakeholders involved are outlined in the following.

STEP 1 Ensure that the law clearly provides an adequate range of community-based sentences

In most jurisdictions, the courts can impose only those sentences that are expressly provided in statutory law. In these systems, the first step must be to ensure that statutory law provides for an adequate range of community-based sentences, and outlines the procedures and conditions for their imposition and implementation. The legislation should specify the purposes of the sentence and the expectations of the legislator as to the range of offences for which the sentence may or should be used. This would help judges in determining the proper place of the measure in the scale of penal values.

[57] Weisburd et al. 2016, p. 100.
[58] This section of the paper is an updated and abridged version of Joutsen 1990.

Another statutory measure would be a requirement that the court justify why it imposes a sentence of imprisonment rather than a community-based sentence. Such a measure would compel the court to consider why none of the available community-based sentences are appropriate in the case at hand. England and Wales has established a Sentencing Council, which has issued mandatory guidelines for courts on the imposition of community-based sentences.[59] These provide, inter alia, that:

> A custodial sentence must not be imposed unless the offence or the combination of the offence and one or more offences associated with it was so serious that neither a fine alone nor a community sentence can be justified for the offence.
> There is no general definition of where the custody threshold lies. The circumstances of the individual offence and the factors assessed by offence-specific guidelines will determine whether an offence is so serious that neither a fine alone nor a community sentence can be justified. Where no offence specific guideline is available to determine seriousness, the harm caused by the offence, the culpability of the offender and any previous convictions will be relevant to the assessment.
> The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.[60]

When a new community-based sentence is introduced, it may be difficult for the legislator and/or the court to assign its appropriate place in the scale of punishment.[61] Is 40 hours of community service the equivalent of one month of imprisonment, for example? Is it more or less severe than a suspended sentence of a certain length? In sentencing, the court must make a choice among a number of sentences using multiple criteria which relate the seriousness of the offence to what are deemed to be the relevant characteristics of the offender and the penal value of the community-based sentences available, either singly or in combination.[62]

The introduction of community-based sentences is therefore not enough. The courts should be given clear guidance on how the new custodial sentences fit in with present sentencing policy. This guidance may be provided not only by the legislator, but also by judicial practice (court precedents), and by sentencing guidelines adopted, for example, by the Supreme Court, judicial conferences or professional associations.

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[59] https://www.sentencingcouncil.org.uk/about-us/ .

[60] Ibid.

[61] Although in theory the legislature could provide specific sentencing guidelines, the currently existing guidelines primarily deal with the length of sentences of imprisonment, and at most with the borderline between imprisonment and suspended sentences (probation). The most widely known guidelines are the Minnesota Sentencing Guidelines, which stipulate a "presumptive sentence" for offences. These have been applied since 1980. The most recent version was adopted in August 2019; Minnesota Sentencing Guidelines 2019. The basic grid can be found on p. 79.

[62] The Sentencing Council for England and Wales has issued very detailed and mandatory guidelines on a broad range of offences. The Sentencing Council's guidelines for the imposition of community and custodial sentences (Sentencing Council 2016) provides clear guidance for example on the imposition and length of community service orders, the imposition of electronic monitoring orders, the imposition and amount of fines, as well as the imposition of custodial sentences.

Where this would not be deemed a violation of the principle of the separation of the executive and the judiciary, the executive branch could consider the possibility of providing the court with annotated information on current court practice. This can be done in the form of a publication giving the "normal" sentencing range for the basic types of offences, with indications of how, in court practice, aggravating and mitigating circumstances have affected the sentence. Such information would simply be provided to the courts as a tool, showing the judges what other courts have done in similar cases.

Since the selection of the sentence is often determined by the motion of the prosecutor, or by the way in which the case is presented, also prosecutorial guidelines could be developed to identify cases which would seem suitable for the imposition of community-based sentences.

STEP 2 Review substantive criminal law to ensure that it is in line with the fundamental values of society

Changes in society are often reflected in changed attitudes towards certain behaviour. A review of criminal law may show that existing penal provisions on certain offences were passed at a time when these offences were deemed particularly reprehensible; in the light of present attitudes, a community-based sentence may well be deemed more acceptable and appropriate than imprisonment. The public attitude towards the use of imprisonment may have changed; in many countries, its "penal value" has increased. Where imprisonment at one time was imposed in decades, it may now be imposed in years; where it was once imposed in years, it may now be imposed in months or even in weeks.

At the lower end of the scale of offence seriousness, the possibility of imprisonment could be eliminated entirely through decriminalization and depenalization. Such "offences" as vagrancy and public drunkenness have been decriminalized in many countries. Although these offences are rarely imprisonable offences in themselves, the persons who are fined are usually unable to pay any fines imposed, or because of their circumstances would often be in violation of conditions imposed on, for example, community service. Such non-payment or technical violation often leads to imprisonment. In this way, decriminalization of petty offences reduces the use of custodial measures.

STEP 3 Key stakeholder groups should be provided with information and training on the functions and use of community-based sentences.

Even if the law provides for a wide range of community-based sentences, and even if the courts have clear guidelines on how these sentences should be imposed, community-based sentences will not be used as long as the courts – and other influential groups of stakeholders – do not consider them effective and appropriate in dealing with offenders. The preamble to the Tokyo Rules lists as such key groups law enforcement officials, prosecutors, judges, probation officers, lawyers, victims, offenders, social services and non-governmental organizations involved in the application of community-based measures.

Ensuring that judges and other key stakeholders understand the purpose and rationale of community-based sentences and that they are favourably disposed towards using them requires providing them with information and training. The key groups should be made aware of the general benefits of community-based sentences and the general drawbacks of wide use of custodial sentences. They should be made familiar with the existing community-based sentences and their specific purposes; they should be made familiar with sentencing and enforcement. They should be trained in the basic principles of law, criminology and psychology (as well as other disciplines) required in their respective roles. Finally, they should be made familiar with the rules, procedures and practices of the various other services involved, in order to make it easier for them to understand the problems involved in community-based measures, and the possibilities of working together to solve these problems.

The credibility of community-based sentences can also be enhanced if they are not seen to be excessively lenient. Visibly punitive measures (such as electronic monitoring) might therefore be an attractive option in some jurisdictions. Even terminology might be used to enhance the perception of community-based sentences as punitive. Instead of speaking of the “waiving of measures” or “absolute discharge”, for example (both terms may imply to the general public that “nothing happened”), one might speak of “punitive warnings” or “penal warnings”.

STEP 4 Criminal justice decision-makers and representatives of community-based service agencies should work in closer cooperation in order to identify and respond to the needs of offenders, in particular members of vulnerable populations, such as racial and ethnic minorities, alcohol and drug users, the homeless and foreigners

One theme that has been repeated again and again in the debate over the greater efficacy of community-based sentences over imprisonment is that many offenders have a large range of challenges, ranging from health and mental health issues, lack of education and vocational training, lack of a permanent home, to difficulties in forming stable relationships.

Merely sentencing an offender to a community-based sentence (unless the sentence itself addresses underlying needs, such as with a community-based substance treatment order) will do little to help the offender in responding to these challenges. For this reason, the various agencies as well as appropriate non-governmental organizations (including peer-support groups) and even the private sector, should find ways of working in closer cooperation with criminal justice agencies, and of doing outreach work towards offenders.

Criminal justice practitioners (the police, prosecutors and judges) will be among the first to point out that they are not “social workers”, and that they do not have the training, resources or time needed to provide offenders with various forms of assistance. That said, methods of referrals (with due respect to issues of consent and privacy) can be developed, ranging from simply mentioning to appropriate offenders what services are available and how to use them, through provision of brochures, to the establishment of community liaison offices in connection with police stations or courts to serve as a “one-stop shop” for offenders.

A more direct way of promoting cooperation is to stipulate conditions on police, prosecutorial and court dispositions requiring that the offender be in contact with specific community-based services.

STEP 5 Secure a steady resource base for personnel, training and facilities

The success of community-based sentences in practice depends on the availability of resources for their implementation. Just as imprisonment requires the prison facilities, personnel and a prison programme, for example, probation requires a suitable infrastructure for the arrangement of supervision, and community service requires not only a suitable organization but also designated places of work.

The most efficient route to increase the credibility of community-based sentences and thus promote their use is that the state and local community provide the necessary resources and financial support for the development, enforcement and monitoring of such sentences. Particular attention should also be paid to the training of the practitioners responsible for the implementation of the sentences and for the coordination between criminal justice agencies and other agencies involved in the implementation of these sentences in the community.

STEP 6 Ensure a continuous research component in planning

One area of concern relates to the possible dysfunction of wider use of community-based sentences, in particular the so-called net-widening effect. Statistical evidence from various countries clearly suggest that community-based sentences are either used far less than they might be or, when used, are used as substitutes for other community-based sentences and not for imprisonment. In addition, when suspended sentences are pronounced, the period of imprisonment imposed may be longer than if an unconditional sentence to imprisonment were to be used. In the event of activation of the original sentence, the offender can therefore go to prison for longer than would otherwise have been the case.

Such dysfunctions of the greater use of community-based sentences may detract from the benefits, or even prove to be so serious that rational criminal policy is endangered. Research has an important role in identifying and suggesting ways to overcome these challenges.

In regard to sentencing, research is needed on the factors considered by the sentencing judge or tribunal. Unexpected factors may have a decisive influence on the sentencing process. The little research that is available has suggested, for example, that some judges will not consider community-based sentences that require a social enquiry report. Further in regard to sentencing, it is possible that the imposition of community-based sentences can be made on discriminatory grounds, as has been argued to be the case with sentencing to imprisonment.

One area that is related to research on sentencing concerns attitudes. Certainly, the attitudes of the sentencing judge affect his or her decisions on what available options to use. As important as the attitudes of the sentencing judge are the attitudes of other persons

involved in the implementation of community-based sentences. In particular, the degree to which a community-based sentence is accepted by professionals as well as by the community influences the probability that this sentence will actually be applied.

Research on changes in attitudes (showing the causes and extent of such changes) might be of assistance in the planning of the introduction or expansion of community-based sentences. A key factor in the success achieved with the use of any community-based sentence is the extent to which the policymakers, courts, other practitioners and agencies, and the community are provided with evidence-based data on the effectiveness of this sentence.

IV. CONCLUSIONS

The assumption that imprisonment fulfils the various functions of punishment and thus is suitable for medium level and more serious offences has resulted in a general growth in the number of prisoners. However, societies around the world are becoming increasingly aware that the use of imprisonment has significant human, social and economic costs. With the increase in the number of prisoners, prisons are becoming overcrowded. Since the prisons themselves are often outdated, under-staffed and under-resourced, hundreds of thousands of prisoners around the world are being “warehoused” in poor conditions that impair their physical and mental health, and make rehabilitation programmes difficult.

In adopting the Tokyo Rules almost thirty years ago, the member states of the United Nations agreed that the use of imprisonment should be lessened, and the use of community-based sentences should be expanded.

This review has questioned the basis underlying the predominant role of imprisonment in our criminal justice system. When assessed in the light of the different functions of sentencing (deterrence of the offender, rehabilitation, general prevention, “just deserts”, even incapacitation), we can conclude that imprisonment on a whole has not been able to deliver in accordance with what policymakers and the public have been expecting. In many cases, community-based sentences can fulfil the same functions at less human, social and financial cost. We need to reassess the respective role of imprisonment, and of community-based sentences.

In 2015, the General Assembly of the United Nations adopted a resolution that should cause us to seriously rethink our dependence on imprisonment, and in turn look for a greater role for community-based sentences: the 2030 Agenda for Sustainable Development.

A fair, rational, humane and effective criminal justice system is important in its own right. It protects societies against crime. It brings offenders to justice. It ensures that the rights of the victim are respected and protected. When it fulfils its function fairly, it plays an important role also in ensuring that the conditions are in place to allow for sustainable development.

Our criminal justice system is therefore quite properly seen in the light of Goal 16 of the Sustainable Development Goals, which deals with the promotion of a just, peaceful and inclusive society through peace, justice and strong institutions. It has been said many times that a strong legal system, including the criminal justice system, is a critical enabling factor in reaching the other Goals. When the rule of law is lacking, the Sustainable Development Goals that we are seeking are undermined. At the same time, equitable and predictable forms of justice are fundamental to building societies that have a strong foundation in the rule of law, and that facilitate growth and development.

All the Goals, however, are cross-cutting. We should see Goal 16, and the operation of the criminal justice system in the wide sense, in the broader context of the 2030 Agenda. This means in practice that we should take into consideration how the decisions that criminal justice practitioners make could have an impact on the different aspects of the life of the victim, the offender and the community – on physical and mental health, on education, on employment and economic survival, on the rural or urban environment, and so on. For example, when a police officer decides to arrest a suspect (instead of letting him or her go with a caution), this may affect the suspect's employment or education. If a judge decides to impose a sentence of imprisonment, this decision may remove the only provider from a family, thus leading to the break-up of the family, with a knock-down effect on the education and future development of the children.

This should not be understood as criticism of the decision to arrest, or of the imposition of the sentence of imprisonment. These decisions may be justified in themselves, and may even, under the circumstances in the case, be mandatory under the law. Imprisonment has a definite and important role in protecting victims and society, and in responding to offenders who have committed serious offences, and who continue to pose a great threat of harm.

However, it is important to realize that decisions in the criminal justice system do have consequences in different sectors of life and society, and that the decision-maker could and should consider whether the decisions could be made differently, in a way that promotes sustainable development more broadly, while still ensuring that the purposes of criminal justice are met. Moreover, judges and decision-makers often have discretion in making their decision, and in weighing whether or not to opt for a custodial or a community-based sentence.

When we look at who are in our prisons, we find that they tend to be members of vulnerable populations, such as racial and ethnic minorities, substance abusers and migrants. Because of our over-reliance on prison, in many communities a considerable number in particular of young men belonging to such vulnerable groups are in prison, or have been in prison and have to deal with the stigma of being ex-prisoners (a particular difficulty in seeking employment) and possibly also the deprivation of certain rights, such as the right to use public housing.

Having served time in prison deepens their problems and contributes to their marginalization. This in turn, breeds poverty (hampering progress on Goal 1 of the SDGs), which is one of the major root causes of crime and violence. Marginalization also often results in poor nutrition (Goal 2), ill health (Goal 3), illiteracy (Goal 4) and other challenges to sustainable development.

Because non-custodial sentences and measures do not restrict the liberty of offenders as much as imprisonment, they allow offenders to continue their responsibilities as a family member and a member of the community, and to continue their education (Goal 4) or employment (Goal 8) without interruption. Moreover, offenders can continue to utilize the various social welfare and health services (including substance abuse programmes) which are easier to provide in the community than in custodial environments (Goals 1 and 2).

Further reasons for the promotion of non-custodial sentences and measures are that they help to reduce inequality (Goal 10) and strengthen the inclusiveness, safety, resilience and sustainability of the community (Goal 11).

The strong interest throughout the world in replacing imprisonment with community-based sentences, noted at the outset of this paper, can be seen in various trends. The strength of these trends varies from one jurisdiction to the next:

- a diversification of community-based sentences through, for example, adoption of new community-based sentences, increased possibilities for adding conditions to existing community-based sentences, and increased possibilities for combining different community-based sentences;

- the diversification of community-based sentences has been paralleled in some countries by an extension of community-based sentences to a greater range of offences and offenders;

- a greater use of the classical community-based sentences such as the fine and probation;

- development of community-based sentences that include one or a combination of such components as work (as in community service), compensation/restitution, and treatment;

- a renewed interest in traditional indigenous measures (such as restorative justice processes), and on sentences that rely on traditional infrastructures.

Despite these developments, a gap remains between policy and practice regarding community-based sentences. This gap is reflected on several levels:

- On the statutory level, many states report that they do not have an appropriate range of community-based sentences, or that the legislation does not provide clear guidance on the purposes, imposition or implementation of these sentences;

- On the level of sentencing practice, the gap is reflected in the continuing predominance of imprisonment as the "norm", as the main measuring stick in sentencing. Community-based sentences are either used far less than the law would allow, or they are used as alternatives for other community-based sentences;

- On the level of resources, the implementation of some community-based sentences remains hindered in many areas because of the absence of the necessary personnel, support structures and funds.

The gap can be diminished only through a change in attitudes. The legislator should be made aware of the need for legislation that supports the goals of community-based sentences. The judge and prosecutor (as well as the other practitioners involved) should be made aware of the need to seek the appropriate community-based sentences and to apply them whenever possible. Those who decide on resources should be made aware of the benefits to be derived through expanded use of community-based sentences, and the importance of well-staffed, well-trained and well-resourced community-based support services working in close cooperation with the criminal justice system. Where an offender does have a need for treatment, criminal justice practitioners should seek to ensure that he or she is referred to the proper agencies for help. Finally, the community should be made aware of the importance of the reintegration of the offender into the community for the benefit of the offender, the victim and the community as a whole.

Promoting a greater role for community-based sentences is part of sustainable development.

Appendix 1
Statistical data on the use of selected community-based sentences in Europe

The following three tables have been prepared on the basis of the Annual Penal Statistics of the Council of Europe (SPACE II). Each table contains data for 1999 (the first year for which this data is available), 2007, 2013 and 2017 for selected European countries.

There is a structural difference between 1999 on one hand and the other three years on the other: the data for 1999 refer to the number of community-based sentences given, while the data for 2007, 2013 and 2017 refer to the number of persons starting to serve such a sentence.

Please note that the number of persons starting to serve a sentence during a year – referred to in SPACE II as the "flow" – is a different indicator from the number of persons serving a sentence on a given day – referred to as the "stock". Thus, these figures cannot be compared with the "stock" figures provided by the Global Community Corrections Initiative that are given in Table 1 in the preceding text.

These data should be used with caution. It can be seen that data is often missing. For example, in Table 2, only Denmark and Ireland have provided data for all four years.

A second observation is that there appear to be large differences in the data from year to year coming from some of the individual countries. For example, the data for the Netherlands in the Table 3 appears to show that almost 37,000 persons began to serve a community service order in 2007, and over 32,000 did so in 2017, but in 2013 this was the case with only 200 persons. Such huge swings can be the result of major changes in legislation or in the organization of community service in the country in question, but they can also be because the person(s) responding from these countries used different interpretations of community-based sentences from year to year, or that there was a simple error in filling out the questionnaire or in complying the resulting table.

Table 2. Annual number of probation orders ordered (1999), number of persons that have started to serve probation (2007, 2013 and 2017)[63]

country	1999	2007	2013	2017
Austria	-	14,974	1,705	1,984
Denmark	1,702	1,289	1,822	1,290
England & Wales	58,368	-	43,134	42,520
Finland	1,297	-	-	575
France	62,111	-	69,642	67,385
Germany	-	-	94,300	80,111
Hungary	-	1,891	2,653	-
Ireland	1,500	163	732	615
Italy	-	2,779	6,171	8,691
The Netherlands	***	13,073	7,930	8,398
Norway	-	528	589	610
Poland	128,561	263,761	255,055	-
Portugal	-	1,595	8,739	9,387
Scotland	6,028	-	-	-
Spain	***	-	28,225	13,503
Sweden	5,258	-	***	***
Switzerland	2,096	175	396	563

Table 3. Annual number of community orders ordered (1999), annual number of persons who have started to serve community service (2007, 2013 and 2017)[64]

country	1999	2007	2013	2017
Austria	***	3,187	4,249	3,784
Denmark	970	3,259	3,617	4,396
England & Wales	49,597	-	30,278	22,177
Finland	3,630	2,960	2,106	1,465
France	23,368	-	30,809	32,116
Germany	-	-	-	-
Hungary	-	5,178	13,537	-
Ireland	1,342	1,516	2,257	2,215
Italy	***	38	8,903	9,335
The Netherlands	17,290	36,928	200	32,306
Norway	-	2	2,228	1,980
Poland	-	103,406	-	-
Portugal	-	2,724	14,318	10,057
Scotland	6,200	-	7,800	9,888
Spain	-	-	151,354	84,073
Sweden	3,066	4,939	5,814	4,341
Switzerland	2,096	5,354	2,065	33,055

[63] (source: SPACE II; selected countries that have provided data for some years) (- = data not provided; *** = sentence does not exist / not applicable).

[64] Source: SPACE II; selected countries that have provided data for some years (**-** **=** data not provided; *** = sentence does not exist / not applicable).

Table 4. Annual number of electronic monitoring orders (1999), annual number of persons who have started to serve an electronic monitoring order (2007, 2013 and 2017)[65]

country	1999	2007	2013	2017
Austria	***	***	724	891
Denmark	***	1,103	2,512	2,163
England & Wales	661	-	5,058	7,994
Finland	***	***	223	241
France	***	7,900	27,105	29,569
Germany	***	-	42	28
Hungary	-	***	***	-
Ireland	***	-	-	***
Italy	***	***	***	-
The Netherlands	47	916	***	***
Norway	***	0	1,889	3,265
Poland	***	***	16,927	-
Portugal	-	585	185	294
Scotland	206	-	1,500	2,900
Spain	0	2,904	2,344	2,343
Sweden	3,529	3,364	1,987	1,642
Switzerland	***	463	196	235

[65] Source: SPACE II; selected countries that have provided data for some years (**-** = data not provided; *** = sentence does not exist / not applicable).

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PARTICIPANTS' PAPERS

PREVENTION OF REOFFENDING AND ENSURING SOCIAL INTEGRATION – LEGAL AIMS VERSUS REALITY IN BRAZIL

*Ana Cristina Bandeira Lins**

I. INTRODUCTION

Since 1984, Brazil has, no doubt, one of the most modern laws on penal execution, which aims primarily at reintegration of the condemned person into society, rather than punishing. The laws give more value to non-custodial measures rather than imprisonment, a prison progression system and various modalities of assisting the condemned persons. International rules and norms that followed the reform of the General Part of the Penal Code[1] and of the Law on Penal Execution[2] provided little innovation on this legislation that already foresaw, as its explicit objective and goal, the creation of conditions allowing the social integration of the offenders. In practice, however, the Brazilian State appears to disrespect the law since its enactment: the reality of Brazilian prison life is quite different from what national and international rules impose. Despite various legislation enlarging the hypothesis of alternative non-custodial penalties and measures, the prison population is increasing. Meanwhile, the creation of more humane modes of serving a penalty of imprisonment, favouring the reduction of penal reoffending in the country, cannot be ignored, featuring a widening of alternative penalties or pre-trial measures as well as the creation of public policies that help effective social reintegration.

II. LEGAL FRAMEWORK VS. PRISON REALITY

The reform of the general section of the Penal Code (Law nº 7.209/84) and the Penal Execution Code (N° 7.210/84), recognizing the uselessness of imprisonment as a method to prevent reoffending, allows social reintegration. Thus, non-custodial measures were foreseen besides furlough and parole, such as rendering of community service, temporary limitation of rights and restrictions on weekends, and monetary penalties. A differentiation and progression of prison regimes was provided, allowing that a large part of penalties were initiated in the so-called semi-open regime (allowing the prisoner to leave prison to work) and the open regime (returning to a halfway house at night), considering the size of the penalty, characteristics of the individual and the nature of the crime committed. Furthermore, the rules on the prescription periods of crimes were enlarged. Imprisonment should be the exception.[3]

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[1] Law Nº 7.209/84.

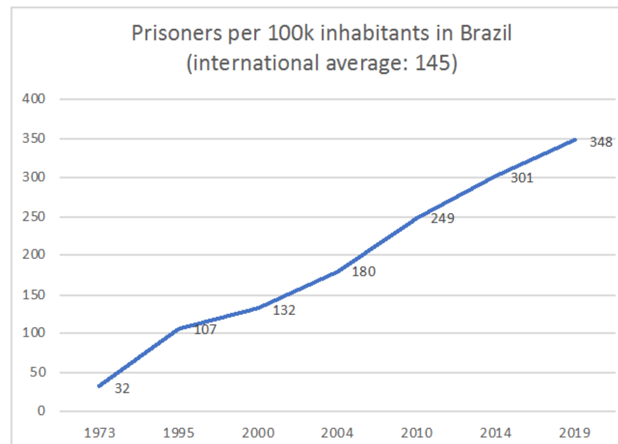
[2] Law N° 7.210/84.

[3] In: Statement of motives (*Exposição de Motivos*) Nº 211 (of 9 May 1983), of the Law 7.209/84. Available at: https://www2.camara.leg.br/legin/fed/lei/1980-1987/lei-7209-11-julho-1984-356852-exposicaodemotivos-148879-pl.html.

The presentation of the motives for reform of the Penal Code already clearly indicated the need to increase, in the future, possible further alternative solutions to imprisonment. Later, Law n° 9099/95 introduced the possibility of negotiating non-custodial measures prior to a penal process, and the conditional suspension of the process (prior to judgment) for crimes with a minor offensive potential. In 1998, Law n° 9.714 widened the modalities of alternative penalties and authorized the substitution of imprisonment for non-custodial measures in cases of intermediate gravity,[4] committed without violence or serious threats, provided the individual conditions so permitted.

Despite these various legal reforms, the prison population of the country continued to increase dramatically. Brazil has the world's third largest prison population (746,532 persons actually in prison), of which more than one-third are pre-trial detainees.[5] The legal objective to make incarceration the exception and give preference to non-custodial measures has not yet been achieved. In 2018, 63.9 per cent of all penal sentences executed (219.3 thousand) were imprisonment.[6]

This resulted in a continuous increase in the absolute number of prisoners and of the prison population rate. If, prior to the legal reform, in 1973, the prison population rate (prisoners per 100,000 inhabitants) was 32, it showed a significantly increasing scale, passing 107 in 1995, 132 in 2000, 180 in 2004, 249 in 2010 and 301 in 2014, culminating at 348 in 2019. These numbers should be compared to the worldwide average, which is 145.[7] See the following chart:



Prisons are overcrowded, with an occupancy level of 167.8 per cent. If one were to take into account the cases where imprisonment had been ordered and not yet executed (a total of 586,000), this would almost double the number of incarcerated persons. In 2018, 74 per cent of all imprisoned persons were in the “closed” regime (i.e. full-time imprisonment). The facilities allowing the semi-open regime (24.13% of all imprisoned persons) are insufficient, and there are virtually no halfway houses (1.7%) allowing the

[4] For convictions of up to four years of imprisonment.
[5] In August 2019, at https://www.prisonstudies.org/, accessed on 09/10/2019.
[6] In *Sumário Executivo. Justiça em números.* 2018, at https://www.cnj.jus.br/wp-content/uploads/2011/02/da64a36ddee693ddf735b9ec03319e84.pdf, accessed on 10/10/2019.
[7] Idem.

"open" regime; thus, that measure has been substituted by nightly recoil,[8] which is, in fact, not controlled in the overwhelming majority of cases.

Among those incarcerated, only 15 per cent have access to work and 12 per cent to studying.[9] The sanitary conditions in the prisons are extremely precarious, leading to health issues. In a study on the prison population in Rio de Janeiro, it was found that the level of tuberculosis incidents among prisoners is 35 times higher than in the overall population.[10]

These problems are aggravated by the effective loss of control of the State over most of the prisons to criminal organizations, and this leads to the truly precarious state of the Brazilian prison system currently. Whereas in the Southeast (São Paulo, Rio de Janeiro), criminal organizations are already hegemonic in prisons, the North and Northeast are marked by disputes for new markets and routes for drug trafficking, and the conflict among the criminal organizations leads to assassinations inside the prisons, in numbers not to be neglected. Only this year, there have been two large cases of "slaughtering" of imprisoned people for this reason. On 26 and 27 May 2019, 55 people were killed in prisons in Manaus. On 29 July 2019, 57 imprisoned people were assassinated in Altamira.

It is notorious that organized crime is recruiting its new members inside the prisons, be it voluntarily or by force.[11] Using the words of one of the leaders of the largest criminal organization in Brazil, the Primeiro Comando da Capital ("PCC"), Prison is the "machine to make the PCC".[12]

III. CRIMINAL RECIDIVISM IN BRAZIL

There is no reliable databank yet that would allow to provide effective numbers on criminal recidivism in Brazil. Few surveys have been carried out, with partial data only, and there is no clear concept on how to define recidivism; thus, data are not comparable. In the study on criminal recidivism of the Instituto de Pesquisa Econômica Aplicada – IPEA[13], the following data were gathered in the survey:

[8] Data from August 2018, in *CNJ*, *Banco Nacional de Monitoramento de Prisões*, at www.cnj.jus.br, accessed on 09/10/2019.
[9] In *DEPEN*, *Levantamento Nacional de Informações Penitenciárias,* 2016, available at http://depen.gov.br/DEPEN/noticias-1/noticias/infopen-levantamento-nacional-de-informacoes-penitenciarias-2016/relatorio_2016_22111.pdf, accessed on 10/102019.
[10] *DIUANA et Alii*, *Saúde em prisões: representações e práticas dos agente de segurança penitenciária no Rio de Janeiro, Brazil,* available at http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0102-311X2008000800017, accessed on 10/10/2019.
[11] Camila Caldeira Nunes Dias, *Da pulverização ao monopólio da violência: expansão e consolidação do Primeiro Comando da Capital no sistema carcerário paulista,* 2011, available at http://pct.capes.gov.br/teses/2011/33002010028P1/TES.PDF, accessed on 03/10/2019
[12] https://noticias.uol.com.br/cotidiano/ultimas-noticias/2018/08/01/criminoso-que-atuou-nos-ataques-de-2006-diz-que-prisao-e-maquina-de-fazer-pcc.htm, accessed on 03/10/2019
[13] Institute of Applied Economic Research, cf. *IPEA. Reincidência criminal no Brasil,* available at http://www.ipea.gov.br/portal/images/stories/PDFs/relatoriopesquisa/150611_relatorio_reincidencia_criminal.pdf, accessed on 03/10/2015.

- Rate of generic reoffending (commitment of a crime – including people detained provisionally and the accused – following a prior conviction for a crime): 70 per cent[14].

- Rate of penitentiary recidivism (new imprisonment of a person previously imprisoned): between 45 and 50 per cent.[15]

- Rate of legal recidivism (a second crime – with conviction – was committed following a final and unappealable sentence of a first conviction, within 5 years following the end of the execution of the penalty): between 24.4[16] and 34 per cent[17].

In a study of the Grupo Candango of Criminology of the law faculty of the UNB, relating to a sample for the period 1997 to 1999, the recidivism index in non-custodial penalties was said to be 24.2 per cent, whereas the rate for those condemned to serving an actual prison sentence was said to be 53.1 per cent.[18]

The reoffending rates are fairly high, showing that a penalty of imprisonment continues to be inefficient for the prevention of further crimes.

IV. POSITIVE INITIATIVES

In view of the failing of the system of imprisonment, various initiatives have been launched to seek solutions for a more effective response to criminality, aiming at diminishing the reoffending rates. Instead of waiting for national law initiatives, the National Councils of Justice and of the Public Ministry innovated the criminal processes, regulating the Agreement not to criminally prosecute (Acordo de Não Persecução Penal), a Custody hearing (Audiência de Custódia), and stimulating measures of Restorative Justice. Within the prison system, differentiated methods, such as the "Respect module" (módulo de respeito) and the Association for the Protection of and Assistance to the Condemned (associação de proteção e assistência aos condenados – "APAC") base themselves on the valuing of the human being and discipline, offering better conditions to allow social reintegration. Following the release from prison, government projects and non-governmental initiatives join forces to allow reintegrating the released person into the labour market. Alternative penalties, procedural suspensions and penal settlements have been a rather effective means to achieve social reintegration.

[14] Data based on the report on the management of DEPEN, dated 2001, in the parliamentary investigative committee on the prison system (*CPI do sistema carcerário*), in 2008, and is frequently repeated in speeches of Judicial authorities.
[15] According to samples collected by Adorno and Bordini between 1974 and 1976 and by Kahn between 1994 and 1996. These indices are also corroborated with the research carried out by Luis Flávio Sapori, in the *Centro de Estudos e Pesquisas em Segurança Pública*, which arrives, based on the analysis of samples in Minas Gerais, at a rate of 51.4 per cent.
[16] Survey of IPEA on the basis of data in five Brazilian States, dated 2013.
[17] According to the survey *Censo Penitenciário Nacional* of 1994.
[18] https://www.unbciencia.unb.br/humanidades/57-direito/301-penas-alternativas-reduzem-reincidencia.

A. The Agreement Not to Prosecute ("ANPP")

The National Council of the Public Ministry[19] (Conselho Nacional do Ministério Público), the official external control body of that institution, mitigated the principle of compulsory criminal prosecution, seeking acceleration of the process and a solution that would avoid the prejudicial social effects of a criminal penalty. Based directly on the principles of the Tokyo Rules, it created the possibility of a settlement ("plea agreement") in case of crimes of small or medium gravity[20] that did not involve violence or serious threats. The plea agreement, to be concluded prior to official accusation, must foresee, cumulatively or in isolation, the repair of any harm done, the voluntary handing over of any instruments used and of any result or benefit from the crime, as well as the rendering of community service, financial compensation and/or other measures.[21]

Even though the constitutionality of this form of plea agreement was quite disputed in legal doctrine, and sometimes even rejected by judges due to lack of a proper legal provision in Brazilian law on which they could be based, such plea agreements were de facto concluded by the organs of the Federal Public Ministry before the advent of the new law n. 13.964, of 24 December 2019, that will enter in to force on 24 January 2020. Between May 2018 and September 2019, more than 1,700 plea agreements have been concluded by the Federal Public Ministry, primarily in the areas of smuggling, false import declarations and other types of falsifications.[22] As they impose alternative measures to incarceration, the plea agreements are considered to contribute to the rehabilitation and social reintegration of the offender and the reduction of reoffending.

B. Custody Hearing (*Audiência de Custódia*)

Based directly on the International Covenant on Civil and Political Rights and on the American Convention on Human Rights (both integrated into the Brazilian legal system in 1992), the National Justice Council approved Resolution n° 213/2005, following an interim injunction of the Federal Supreme Court in an action on non-compliance with the fundamental norm n° 347 that imposes on judges the realization of custody hearings, determining the duty to present any arrested person to a judicial authority within 24 hours. In that hearing, the legality of the arrest, the integrity of the arrested person and the possibility of an immediate release are being verified.

Even though almost 70 per cent of all cases analysed relate to non-violent crimes (mostly drug trafficking, theft, dealing in stolen goods etc.), it is noted that still 57 per cent of all arrests are converted into provisional arrests. A mere one per cent are released without any restrictions. The remaining arrested persons are being released with precautionary measures such as having to report to the judge, nightly house arrest, electronic monitoring (anklet) or other forms of precaution.[23] In any case, these measures have contributed to a reduction of the provisional arrests.

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[19] The Federal Public Ministry – Ministério Público Federal – is the body of prosecutors (*procuradores*) with competence for all crimes at the federal level. Each State has Public Ministries with prosecutors (*Promotores da justiça*) competent for all other crimes (unless special jurisdictions apply). The National Council embraces all public ministries.

[20] In case of crimes where the law foresees a penalty of less than four years, and where a settlement is not suitable (foreseen for cases of crimes with a maximum penalty of two years, or three years in case of environmental crimes). With these parameters, such a settlement would be possible in the majority of penalty types foreseen in Brazilian legislation.

[21] Resolution CNMP nº 183/2018, at http://www.cnmp.mp.br/portal/images/Resolucoes/Resoluo-183.pdf.

[22] Data supplied by the 2nd Chamber for the Coordination and Revision of the Federal Public Ministry.

[23] *IDDD*, *O fim da liberdade*, 2019, available at https://www.cnj.jus.br/wp-content/uploads/conteudo/arquivo/

C. Restorative Justice

The Brazilian justice system and the UNDP, driven by Resolution 2002/12, initiated more than 15 years ago pilot projects on the application of the method of restorative justice that, in the context of criminal law, privileges the dialogue between the victim, the offender and possibly other members of society as well as the repair of any damage caused by the crime over retributive justice. Since then, various efforts have been made to extend the application of this concept, via specific projects and training courses, promoted by the international agency.

The National Justice Council ("CNJ") issued Resolution n° 225/2016, determining the implementation of programmes of restorative justice through the courts and the constitution of programme managing committees. A mapping by the CNJ found that various courts created some form of exclusive structure for that purpose, and various confirmed using its principles in the criminal context, especially in penal processes on crimes of minor offensive potential and domestic violence.[24]

Applying such initiatives still depends very much on the personal initiative of the prosecutor or judge assigned to the case, as there does not yet exist an institutional framework within the courts for such purpose, and not even an express legal provision that would oblige them to use the proper instruments of restorative justice. The potential, however, of such mechanisms to contribute in fact to strengthen the social relations and the rehabilitation of the offenders is being recognized, and it may develop in the future.

D. Respect Module

Inspired by the Spanish model, the State of Goiás introduced this model of differentiated incarceration in Brazil, creating separate wings inside the prisons. With a more humanized treatment of the condemned person, jointly with strict rules on conduct and coexistence, the right to work in prison is guaranteed in those modules, and there are educational and cultural activities (just as foreseen in the Brazilian penal execution legislation). The incarcerated persons are subject to a continued evaluation of their behaviour. Stealing, aggression and the use of drugs are not tolerated in these wings. In case of bad behaviour, the condemned returns to the "normal" prison.

The respect model is recognized by the incarcerated as a means to achieve a change ("who wishes to change his life"), and in order to volunteer for such respect modules, they will have to have shown good behaviour. Many incarcerated persons desist from applying for access to this regime because it would mean waiving any access to drugs (that are illegally offered in the "normal" system).

Fewer fugitives are reported from the respect modules than from the common system of incarceration.[25] There are no studies available, however, on the rate of reoffending.

2019/09/bf7efcc53341636f610e1cb2d3194d2c.pdf, accessed on 10/10/2019.

[24] CNJ, *Mapeamento dos Programas de Justiça Restaurativa,* 2019, available at https://www.cnj.jus.br/wp-content/uploads/conteudo/arquivo/2019/06/8e6cf55c06c5593974bfb8803a8697f3.pdf, accessed on 10/10/2019.

[25] IPEA, *Reincidência criminal no Brasil*, available at: http://www.ipea.gov.br/portal/images/stories/PDFs/relatoriopesquisa/150611_relatorio_reincidencia_criminal.pdf, accessed on 03/10/2019.

E. APAC – The Association of Protection and Assistance of the Convicted

In 1974, the first APAC was formed, based on the idea of a group of Christian volunteers, with the motto "to kill the criminal and save the man". It is based on 12 elements: participation of the community; "recoverees" (as they call the prisoners) help non-recoverees; work; spirituality; legal aid; health; dignity of the human being; family; voluntariness; infrastructure as a social centre; merit; and social activities with externs.

These associations are of a religious imprint, are non-profit organizations that conclude an accord with the State to participate in the management of prison life, from the construction of the infrastructure (or adaptation of a public building) to the actual execution of the activities of the system.

The units are small (mostly under 100 interns) and no overcrowding is allowed. The structure and furniture are much more differentiated compared to ordinary prisons. The treatment of the incarcerated is very humanized. All interns have the possibility to work or to study, have access to health care, legal aid, as well as religious (non-denominational) activities and recreation, assisted by a group of volunteers.

The incarcerated and their families participate in the managing council of the prison, jointly with the volunteers of the association. Admission is restricted to only those incarcerated who lived in the location of the establishment, so as to guarantee the effective participation of their families, thus avoiding the rupture of the affectionate links to them, which is a common problem in normal models of incarceration.

The incarcerated persons themselves carry out the tasks that would be carried out by the personnel or third parties in the common prison system. It is the inmates themselves who conduct the activities like opening and locking of doors, receiving visitors, inspecting the cells, and controlling to keep the timetable.

Just like in the Respect Modules, discipline and merit are quite highly valued, but in the case of APAC, it is the internal council of the incarcerated itself that controls the behaviour of the others, on a rotating basis. There are sanctions for non-compliance with the rules or lack of discipline. Delays in carrying out duties lead to a loss of recreation time. It is prohibited to speak about crimes. Acts of violence are not tolerated. The incarcerated are responsible for the order and cleanliness of their cells and must keep the nightly silence. A repeated disrespect of the rules may lead to returning the incarcerated person to a common prison unit.

Based mostly on voluntary work and the work of the "recoverees", the cost of maintenance of APAC-managed facilities is much less than of the normal prison. In the State of Minas Gerais, the yearly cost for each intern is around R$ 12,655.00,[26] compared to R$ 23,000 per year for a normal prison, according to the Federal Tribunal of Accounts.

This model is quite appreciated by the incarcerated people, especially for its direct participation in the management of the establishment and the absence of prison agents

[26] *Estudo preliminar: a metodologia APAC e a criação de vagas no sistema prisional a partir da implantação de centros de reintegração social,* available at: http://depen.gov.br/DEPEN/depen/ouvidoria/EstudoPreliminarAMetodologiaAPACeaCriacaodevagasnoSistemaPrisionalapartirdaImplantacaodeCentrosdeReintegracaoSocialSITE.pdf, accessed on 03/10/2019.

(employees of the State) that would control them.[27] No escapes from this model of prison have been reported.

Currently, there are about 100 of these APAC models in Brazil,[28] out of a total of 2,600 prisons overall. Therefore, it is very difficult for an incarcerated person to manage a transfer to such a unit. The rate of reoffending in the APAC model is only around 15 per cent, much below the estimated 70 per cent for prisons in general.[29]

F. Alternative Penalties and Measures

Alternative measures – whether prior to the penal process (in the form of plea agreements or settlements), during the process (conditional suspension of the process) or after conviction (substituting a penalty of imprisonment) – have generally resulted in a much lower rate of reoffending than those of offenders that were condemned to serve time in prison; furthermore, these measures prove to be an effective tool of social reintegration and are infinitely cheaper for the public.

In the State of São Paulo, 192,292 alternative measures were imposed and registered in the monitoring centres between 2002 and June 2019. The recidivism index was a mere 3.5 per cent. The costs of these measures were a mere R$ 26.40 per month[30] (or R$ 317.88 per year), which is really minimal, compared to the cost of maintaining an incarcerated person, which bears a cost of R$ 23,000 per year, according to the Federal Tribunal of Accounts (Tribunal de Contas da União).

1. Data of the Federal Justice System in the Subsection of São Paulo

When analysing the data of the Centre of Penalties and Alternative Measures of the Federal Justice in São Paulo (Central de Penas e Medidas Alternativas da Justiça Federal – CEPEMA,)[31] one will note that the substitution of incarceration penalties by alternative measures and alternative penalties is very positive for social integration, provided it is well-structured and directed, in particular if in the form of the convicted providing community service or paying pecuniary penalties.

CEPEMA, which counts in its ranks professionals in the field of psychology and social assistance, entertains accords with public and private bodies for those offenders that shall render public services as an alternative measure to imprisonment. The selected entities allow the absorption of various professional profiles, either in terms of the level of school or academic education or in terms of the area of activity (there are agreements with more than a hundred entities, public and non-governmental, in the areas of health services, child education up to university levels, public libraries, cultural entities, organizations providing assistance – be it to persons leaving the prison, persons with physical deficiencies, homeless people, elderly people, sheltered children and teenagers

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[27] IPEA, *Reincidência Criminal no Brazil,* 2015, available at https://www.ipea.gov.br/portal/images/stories/PDFs/relatoriopesquisa/150611_relatorio_reincidencia_criminal.pdf.

[28] http://www.fbac.org.br/, accessed on 03/10/2019.

[29] Tribunal de Justiça do Estado de Minas Gerais, *Programa novos rumos,* 2018, available at www.tjmg.jus.br › lumis › portal › file › fileDownload, accessed on 03/10/2019.

[30] Data of the State of São Paulo at http://www.reintegracaosocial.sp.gov.br/db/crsc-kyu/archives/59d698315987a3c6bcdb3bab0e56b5fe.pdf, accessed on 09/10/2019.

[31] Justiça Federal, Central de Penas e Medidas Alternativas da Justiça Federal – *CEPEMA*, Report on the Activity (*Relatório de atividades*), 2018, available at: http://www.jfsp.jus.br/documentos/administrativo/NUAL/Relatorio_de_atividades_5anos_CEPEMA.pdf, accessed on 11/10/2019.

and even organs of the Judiciary). This way, the "collaborator" (term used for the sentenced as well as the offender who concluded a plea agreement or settlement prior to conviction) is steered, following an initial interview, to the type of service that is most adequate to his/her professional and social profile, taking into account also criteria like closeness to home and the compatibility of the timetable of the rendering of services with the exercising of normal work duties of the collaborator.

The entities that are entrusted with receiving such services confirm that the rendering of qualified services, related to the education and professional experience of the collaborator, break the stigma of the "convicted" felon, leaving behind all forms of prejudice or discrimination. Furthermore, the sense of responsibility of the collaborator is being enforced, his/her impact on the entity is positive and one perceives a true reparation to society.[32]

Should there be a violation in the performance of the service (delays, absences, failure of commitment), estimated to amount to less than 5 per cent, a new hearing will be set to give a formal warning, and the obligations (such as having to appear before the judge to report on and justify the activities actually performed) may be made more intense.[33]

Interviews carried out when the person is being released upon completing the service prove that the collaborators changed their own perception of themselves as criminals, realizing how their activities were valued by the employees and users of the entities. Furthermore, a major social engagement of the collaborator can be observed, it being common that he/she wishes to continue the activity as a volunteer of the entity.

Matching the collaborator to the social service rendered, jointly with the adequate monitoring of the process by the judge responsible for the penal execution, is what guarantees the success of the measure, according to the coordinating Federal Judge of the CEPEMA in São Paulo, Dr. Alessandro Diaferia, both in relation to the social reintegration of the offender and the low level of reoffending.[34] He even mentioned the case of the recruitment of the (former) offender as an employee by the benefiting entity.

In the five-year-period from October 2013 to October 2018, of a total of 2,651 offenders registered in this system, 1,408 were arising from alternative penalties. The remaining included those with plea agreements, settlements, suspension of the process or interim measures. From all archived files, a mere 1 per cent related to cases where a collaborator was sent to jail, which would mean a serious non-compliance with the service obligations or a reoffence during the time when the measure was applied, whereas a total of 62 per cent related to full completion of the service. The remaining cases that were archived (37%) relate to prescription, pardon, personal conditions that prevented the fulfilment of the measure (such as illness) or a transfer of residence of the offender (in which case the process was transferred to the new jurisdiction, and the case closed in Sao Paulo).[35] These numbers indicate, indeed, that the alternative measures to incarceration,

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[32] Ibid.
[33] Interview conducted by the author with the Federal Judge and Coordinator of CEPEMA in São Paulo, Dr. Alessandro Diaféria, on 11/10/2019.
[34] Ibid.
[35] Justiça Federal, Central de Penas e Medidas Alternativas da Justiça Federal – CEPEMA, *Relatório de atividades,* 2018, available at:
http://www.jfsp.jus.br/documentos/administrativo/NUAL/Relatorio_de_atividades_5anos_CEPEMA.pdf,

when well administered and accompanied, are quite satisfactory for the prevention of reoffending.

With regard to pecuniary settlements, following the norms of the CNJ and the Council of the Federal Justice, payments are collected in an account at the disposal of the judge responsible for the execution of penalties, to be used after public selection processes on social projects. CEPEMA selected projects of non-governmental organizations for the professional training of persons released from prison; the donation of mattresses and clothing for homeless people; professional empowerment of fugitive immigrants; construction of shelters for fugitives; cultural workshops for socially vulnerable children, etc. Again, according to the coordinating judge of CEPEMA, who participates directly in the selection of the contemplated projects, the pecuniary penalties do not only serve to reintegrate the offender into society, but also to "reintegrate excluded persons into society", the major part of victims of crimes falling into the competence of the Federal Justice.

G. Specific Initiatives of Reintegrating Incarcerated Persons and Persons Released from Prison into the Labour Market

A major obstacle to successful social rehabilitation of an ex-offender is the reintegration into the labour market. Not only will the normal work activity have been interrupted for years, as there are few opportunities to actually work while incarcerated, but there is also a prejudice (or at least great reluctance) against recruiting an incarcerated person or person released from prison. In order to overcome such hurdles, various programmes have been developed by the Executive and Judiciary organs.

The National Policy of Work within the Prison System (Política Nacional de Trabalho no âmbito do Sistema Prisional[36]) seeks to increase the absorption of prisoners and persons released from prison into the labour market. It determines that all public contracting of the Federal Government (direct and indirect administration) in excess of a value of R$ 330,000 must offer between 3 per cent and 6 per cent of the selected workers to incarcerated people or persons released from prison.

In the State of São Paulo, the Programme for Social Reintegration for Prison Leavers (Programa de Reinserção Social para Egressos do Sistema Prisonal)[37] provides for the intermediation of workforce (register of professionals and of available positions), professional qualification (in-prison training on tasks for which there is employment available in the region) and treatment seeking the social reintegration (providing social or psychological assistance to persons released from prison or their family members). The programme allows the State organs to demand, in public tender processes for construction works or services, the contracting of at least 5 per cent of persons released from prison. Since 2003, more than one million attendances were provided to ex-offenders and their families. Since 2010, more than 60,000 convicted persons sentenced to the half-open regime were provided a job opportunity through the programme. [38]

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accessed on 10/10/2019.

[36] Federal Decree n° 9.450/2018.

[37] State Decree (*Decreto Estadual*) nº 55.125/2009, available at: https://www.al.sp.gov.br/repositorio/legislacao/decreto/2009/decreto-55125-07.12.2009.html.

[38] Report, available at http://www.reintegracaosocial.sp.gov.br/db/crsc-kyu/archives/59d698315987a3c6bcdb3bab0e56b5fe.pdf.

In the judicial ambit, the CNJ created a project in 2009 called "Start again", aiming at promoting actions of social reintegration of incarcerated persons and persons released from prison. It is composed of educative actions, professional capacitation, and having a data bank of available professional positions at the disposal of persons released from prison.[39] That project stimulates partnerships between the different organs of the Judiciary with public and private entities for the offering of courses and created a gateway to workplace opportunities. Of the 18,882 job offers registered, 14,042 were actually filled.[40] Various initiatives have been formed throughout the country in the form of accords between the Judiciary and non-governmental organizations, mainly for the professional capacitation and absorption of the work force of persons released from prison.

V. CONCLUSION

The goals already enshrined in the 1984 legislation in Brazil are, unfortunately, still far from being achieved: imprisonment should be the exception, but it still is the rule; and the prison should be a place respecting the dignity of the human being, aiming toward reintegration into society, whereas in practice most of the minimal rights of the prisoners are not guaranteed and the recruitment of the offenders by organized crime is intense.

Despite the different legal and regulatory initiatives to avoid a conviction and incarceration, the number of incarcerated people in Brazil is still increasing in absolute and relative terms. The most humanized models of imprisonment are the exception, a true minority, and the common prisons, in reality quite remote from what is foreseen by the legal framework, have contributed little to the prevention or reduction of reoffending.

Even though reliable data are missing that would allow a correct assessment of the actual reoffending rate on a national level, the studies and partial data available clearly prove that the non-custodial measures – whether before or during the process or at the stage of the execution of the penalty – are much more effective for the social reintegration of the offender, as well as to prevent reoffending. Those measures are also much cheaper for society and contribute directly to the promotion of social inclusion of marginalized sectors of the society. It is urgent that decision-makers face those facts and promote a radical breakthrough in the practice of criminal justice and the penal system.

[39] Resolution CNJ nº 96/2009, available at https://atos.cnj.jus.br/atos/detalhar/atos-normativos?documento=65.

[40] Data of CNJ, available at https://www.cnj.jus.br/portal-de-oportunidades-comecar-de-novo/projetocomecardenovo/index.wsp, accessed on 03/10/2019

EFFECTIVE TREATMENT AND SUPPORT FOR REHABILITATION OF DELINQUENT JUVENILES IN JAPAN

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I. INTRODUCTION

Considering that many delinquent juveniles are immature, have disadvantaged family backgrounds and have been abused or badly treated at home, it is important to ensure that each juvenile and his or her needs receives adequate intervention, treatment and support. Although non-custodial measures should be chosen for low-risk juveniles, custodial measures are appropriate for some at-risk and delinquent juveniles. This paper discusses the effective treatment and support for rehabilitation of delinquent juveniles in custody in Japan, mainly focusing on the functions of the institutions where they reside.

II. OVERVIEW OF JUVENILE DELINQUENCY IN JAPAN

A. Definition of "Delinquent Juveniles"

The Juvenile Act[1] classifies juveniles whose cases are heard by the family court into the following three types[2]:

- A juvenile offender (a juvenile from 14 to 20 who committed a Penal Code offence);
- A juvenile engaged in "illegal behaviour" (a juvenile under 14 who has violated criminal laws and regulations);
- A pre-delinquent juvenile (a juvenile who is likely to commit an offence or violate criminal laws and regulations in the future in light of his/her personality or living environment and his/her tendency not to submit to the legitimate supervision of the custodian).

In Japan, the police and the prosecutors refer all cases of juvenile offenders to the family court. The prefectural governor or the directors of child guidance centres can also refer juveniles who engage in illegal behaviour and pre-delinquent juveniles to the family court.

B. Delinquency Trends in Japan

The number of delinquent juveniles whose cases were cleared for Penal Code offences in 2017 was 35,108, which indicates a significant decrease compared to 178,950 in 1997, decreasing almost 80 per cent in two decades. Of those 35,108 juveniles, larceny makes up the largest percentage of delinquency, which is about 60 per cent (21,340). 10.7

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[1] Act No.168 of 15 July 1948.

[2] In this paper, "delinquent juvenile" refers to all three types of juveniles unless otherwise specified.

per cent (3,810) of those juveniles had cases that were cleared for embezzlement, 7.2 per cent (2,553) for bodily injury, and 4.3 per cent (1,546) for assault. The number of pre-delinquent juveniles and the number of juveniles who are referred by the police for prosecution for using or possessing stimulants also decreased.[3] The decrease may partly be explained by the decrease of about 30 per cent in the total population of juveniles from 10 to 19 over the past two decades.[4] Although there might be other explanations related to changes accounting for the decrease of delinquent juveniles, such as the development of social welfare and social media, this paper will not discuss them further.

C. Assessment for Protective Measures

The family court may order a family court investigating officer to conduct an investigation of a delinquent juvenile's social environment. In addition to the investigation, when it is necessary to conduct a hearing, the family court determines whether protective detention is necessary. The decision commits the delinquent juvenile to a Juvenile Classification Home (JCH), and the family court may require comprehensive assessment by psychologists at the JCH. There is a unified assessment tool called the Ministry of Justice Case Assessment tool (MJCA) developed by the Correction Bureau of the Ministry of Justice and implemented in 2013. MJCA is based on Risk-Needs-Responsivity principles and estimates the juvenile's risk of reoffending. The JCH conducts classification based on the result of the assessment and submits a report to the family court.

D. Overview of Protective Measures

In light of the result of the investigation and the classification, the family court can place the juvenile under one of following three protective measures:

- Probationary supervision;
- Commitment to a child welfare institution;
- Commitment to a Juvenile Training School (JTS).

In addition, juveniles who commit particularly heinous crimes can be charged and prosecuted as adults.

The JTS is an institution under the jurisdiction of the Ministry of Justice to which delinquent juveniles are committed upon the order of the family court. JTSs have the following characteristics:

- They accommodate delinquent juveniles from approximately 12 to 20[5];
- They are single-sex facilities which accommodate either boys or girls;
- There are 51 JTSs in Japan and 9 of them, including branches, are for girls

[3] Refer to the "White Paper on Crime 2018" published by the Research and Training Institute of the Ministry of Justice for detailed numbers.
[4] Refer to the "Japan Statistical Yearbook 2019" published by the Statistical Bureau of Japan for detailed numbers.
[5] Strictly speaking, a young adult aged under 26 can be accommodated in a JTS. Refer to article 4 of the Juvenile Training School Act for the age limit for residence.

including;

- They operate under the Juvenile Act and the Juvenile Training School Act[6];
- They are headed by a governor and divided into mainly two sections: the Education and Support Section (also divided into the Education Unit and the Support Unit) and the General Affairs Section.

The following sections summarize the system of the JTS and analyse how the system works effectively to support delinquent juveniles' reintegration into society.

III. FUNCTIONS OF CUSTODIAL MEASURES

A. Assessment for Effective Treatment

Correctional education for each juvenile is carried out based on an Individual Treatment Plan (ITP), which provides the most effective treatment for each juvenile. The process of planning the ITP is described below.

There are 15 classifications of delinquent juveniles in JTSs. Each JTS develops its Correctional Education Curriculum (CEC), the standard courses, including the contents and the standard duration of education, for each classification. For example, the Okinawa JTS for girls has 11 CECs. Every JTS is required to review its curricula at least once a year to revise them if necessary.

When a juvenile is admitted to a JTS (hereinafter referred to as a "resident"), instructors formulate the ITP for each resident based on the designated CEC. In order to formulate an effective ITP, instructors refer to the results of the classification by the JCH and the report of the social environment investigation by the family court to identify the resident's risk, needs and responsivity. The ITP includes the expected duration of custody, goals of correctional education from the viewpoint of relapse prevention and the contents of education and treatment, including methods of the training to achieve the goals. The goals are closely related to the step-by-step process toward release, which will be discussed in the next section.

B. Step-by-Step Process for Social Reintegration

1. Introduction of the Step-by-Step Process

The ITP includes the *expected* duration of custody, of which a resident and his/her parent or a guardian will be informed. However, unlike an adult prisoner whose term of imprisonment is stated by the sentence, the duration of incarceration can vary depending upon the development of the resident. The duration of custody is divided into three stages, the goals of which are clearly stated in the ITP.

Stage 3, the Orientation Stage, is the first stage starting from admission to the JTS. During this period, a resident makes a mental and physical adjustment and prepares for rehabilitation. Instructors build relationships with the juvenile to motivate him/her to cultivate a positive approach to life in the JTS.

[6] Act No. 58 of 11 June 2014.

Stage 2, the Intermediate Stage, is the second and normally the longest one. At this stage, a resident is expected to actively participate in education and treatment programmes for the purpose of improvement by understanding his/her problems. The resident also needs to consider a career path after release, such as completing school or finding a job.

Stage 1, the Pre-release Stage, is the final stage during which the juvenile is encouraged to carefully consider life after release and prepare for the transition to society. During this period, the juvenile undergoes a series of programmes to prepare for social reintegration. The juvenile needs to find a guardian (if a parent is not suitable) and a place to live since it is necessary to be released on parole.[7] As the time for release from the JTS approaches, the juvenile is transferred to a separate dormitory to prepare for release.

2. How to Get Promoted?

JTS residents need to achieve the goals of their ITPs in order to get promoted to the next stage; thus, the duration of incarceration will be longer than stated in the ITP if the juvenile fails to be promoted.[8] Performance assessment shall be conducted aiming at confirming how individual goals are achieved, and an elaborate procedure is required for conducting fair assessments; Instructors assess the degree of achievement of the goals at each stage, how the resident associates with instructors and other residents and how hard he/she works on education and treatment programmes. Finally, the assessment is completed at the Treatment Review Board headed by the governor of the JTS.

Once the performance assessment is conducted, the resident is notified of the results immediately.[9] Along with informing the resident of the degree of the achievement of his/her goals, instructors clearly explain the next assignments to each resident to help the residents work on them. A promotion ceremony is held to celebrate the promotion of residents to the next stage. These ceremonies are normally held twice a month and, at the ceremony, a resident who gets promoted to the next stage is given a new badge by the governor in front of the instructors and other residents, which motivates the other residents.

C. Education and Treatment Tailored to Individual Needs

As stated above, the education and treatment for each juvenile is carried out based on each ITP. Practically, the content of the education and treatment is composed of programmes provided by each JTS. These programmes are divided into the following five areas:

1. Basic Skills Training

Basic skills training is the core educational programme at JTSs. Broadly speaking, it aims to help residents develop basic knowledge, attitudes and skills to live as responsible members of society. The training is administered in groups and through interviews with instructors. JTSs also provide therapeutic treatment programmes targeting each resident’s problems. For example, anger-management and mindfulness programmes are considered effective for helping resident’s control their feelings and manage anger.

[7] In Japan, more than 99 per cent of JTS residents are released on parole.
[8] One failure generally causes two weeks’ extension of release.
[9] A resident’s parent or a guardian is also notified of the results of the performance assessment.

Problems such as violent tendencies and drug addiction are regarded as high-risk factors of reoffending. Therefore, there are special programmes for offenders who committed offences involving murder, physical injury or sexual assault. It is compulsory for most sex offenders (only male) to complete 12-unit-group-based sessions based on cognitive behavioural therapy. There is also a programme for residents who committed murder or physical injury. This programme also consists of 12-unit-group-based sessions, as well as 21 individual sessions. Family members or relatives of the victims occasionally visit the facility to talk to the residents since it is meaningful for the offenders to hear stories of their grief.

Basic skills training also includes facilitating a resident's relationship with his or her family, which is important, especially for those who hope to live with their families after release. JTSs regularly inform the parents or guardians of the progress of rehabilitation. Furthermore, JTSs invite the parents or guardians to participate in events and classes to enhance their understanding of education at the JTS.

2. Vocational Training

Literature and statistics demonstrate that employment greatly supports a resident's reintegration after release. Therefore, JTSs are enthusiastic about enhancing residents' motivation to work and ensuring that they obtain useful knowledge, skills and qualifications for employment. It is compulsory for most residents to complete 108 units of the Basic Job Skills Training, which consists of an elementary course in personal computers, communication skills training, career counselling sessions and so forth.

3. Guidance in School Courses

Residents may take the national examination to obtain qualifications equivalent to a high school diploma. At some JTSs, there are courses available for residents planning to take the examination. As for residents who have not completed compulsory education (normally under 15), the JTS must provide education through the junior high school level.

4. Physical Activities

JTSs provide a broad range of physical activities to foster a healthy body. Under Article 49 of the Juvenile Training School Act, JTSs are required to give residents an opportunity for exercise or physical training at least one hour a day. For example, at the Okinawa JTS for Girls, physical activities include jumping rope, volleyball, badminton, running, dancing (*Eisa*[10]) and swimming.

5. Special Activities

Special activities aim to raise a moderately cultured person. It consists of club activities (flower arrangement, music, pottery, calligraphy, kendo[11] and so forth), outdoor activities and social contribution activities. Annual events based on Japanese tradition such as the coming of age ceremony, the Doll Festival, the Star Festival and Christmas gathering are also held.

[10] *Eisa* is a traditional Ryukyu dance which is played with big and small drums.
[11] Kendo is traditional Japanese martial art of swordsmanship.

IV. REHABITLITATIVE ENVIRONMENTS OF JUVENILE TRAINING SCHOOLS

In order to provide effective interventions, ensuring rehabilitative environments of correctional facilities is vital. Issues such as overcrowding, bullying among residents, abuse by staff and corruption can occur in any correctional system, causing human rights violations and unjust and unfair treatment of residents inside the facility. Therefore, the Correction Bureau has been keen to address these problems in various ways.

As for overcrowding, as a result of the decrease of the number of delinquent juveniles discussed above, the number of delinquent juveniles committed to JTSs decreased by more than half in two decades: from 4,989 in 1997 to 2,147[12] in 2017.[13] Other problems related to the rehabilitative environments are discussed below.

A. Protection of Human Rights

In 2009, four instructors at the Hiroshima JTS were arrested over allegations that they abused the residents of the facility, and they were dismissed due to misconduct. This incident revealed that the human rights of residents in JTSs had not been fully protected, leading to amendments of the Juvenile Training School Act, which was finally enacted in 2014. For the purpose of prevention of abuse by staff, the revised act aims to increase transparency by the measures discussed below.

1. <u>JTS Visiting Committee</u>

For each JTS, the revised act established a "Juvenile Training School Visiting Committee", whose members include doctors and attorneys. The committee studies the circumstances of the administration of the JTS by visiting JTSs, holding interviews with juveniles reading letters from juveniles, and receiving explanations from the JTS. The Visiting Committee gives its findings and recommendations to the governor.[14]

2. <u>Resident Complaint Procedure</u>

Unlike prison, a process for handling residents' complaints had not been implemented in JTSs until recently. That is why, when the violation of human rights took place in Hiroshima, the victims could not reveal the incident to anyone. In order to prevent such incidents, the act established a process for seeking relief. A resident may file a complaint with the Minister of Justice if the resident has a complaint with regard to the measure taken by the governor of the JTS. The Minister of Justice then conducts an inquiry into the matter and is required to notify the resident of the results. Upon the inquiry, if the Minister of Justice finds that the measure taken was illegal or unjust, the measure can be rescinded or modified.

JTS residents may also file complaints with the inspector who conducts the inspection at least once a year and the governor of the JTS. The inspector or the governor must also notify the resident of the results. The protection of confidentiality of complaints is required, and no staff member of the JTS may treat residents adversely for having filed a

[12] Of the total number, the ratio of larceny offenders is 34.6 per cent (743) and that of bodily injury is 15.3 per cent (330). Except for penal code offences, 48 juveniles were committed to JTSs for using or possessing stimulants.
[13] White Paper on Crime 2018.
[14] "Connecting Tomorrow: Pamphlet of Juvenile Training School", Correction Bureau, Ministry of Justice, Japan.

complaint.

3. Proper Procedure Regarding Human Rights

Increasing transparency requires proper procedures regarding the restriction of a resident's rights. Until the implementation of the revised act, most restrictions were left to the discretion of the governor of the JTS, along with regulations of each JTS. In 2014, the procedures on restriction of a resident's rights were clearly stated in the revised act, such as correspondence, visiting, use of retained articles and so forth.

One of the significant improvements is the procedure for disciplinary punishment. In cases where a resident breaks the rules of the JTS, an investigation by instructors shall be conducted. When the investigation is completed, the Treatment Review Board is held to decide whether it is necessary to punish the resident and, if so, what punishment is appropriate. There are two kinds of punishment: admonition by the governor and suspension for up to 20 days.[15] The procedure is clearly stipulated in the revised act, and every punishment is formally recorded in each resident's file. The revised act guarantees that a resident shall have the opportunity to convey his or her opinion to the Board, which was not the case before.

B. Supportiveness and Safety

The rehabilitative environment of the JTS also includes a supportive and safe atmosphere. Bullying, fighting or violence shall never be allowed in a correctional facility, especially in one for juveniles. In JTSs, formulating a support group is effective to maintain the rehabilitative environment.

The daily life of residents of a JTS is basically group based. The group-based lifestyle helps residents develop interpersonal relationships, communication skills and other social skills. For example, sharing a room and equipment inevitably means that the residents need to cooperate with each other to keep the dormitory clean and comfortable, which is a good opportunity for the residents to learn social skills.

Another function of group living is to motivate residents to work on their education and training in earnest. For example, since only residents of the first stage are assigned important roles in their dormitories, such as being selected as a monthly leader, other residents respect them, learn how to contribute to the group and are determined to work hard to get promoted. Rewards are also effective to cultivate motivation. The Juvenile Training School Act contains articles about rewards, and every reward is formally recorded in each residents' file. Residents are normally rewarded when they pass an examination, obtain good grades on performance assessment or perform well in classes. By being commended at the promotion ceremony in front of instructors and other residents, this motivates and improves the self-esteem of the residents.

Although residents live in a group, it should be noted that the residents are prohibited from discussing their personal lives with each other for their own safety. In general, they are prohibited from revealing their age, hometown and the crime they committed. These concerns often distract their attention from rehabilitation and lead to the formation of informal groups among the residents, which often results in bullying. In addition to safety,

[15] According to the facts of or reasons for disciplinary offences or the degree of reflection, admonition by managerial staff may be taken in lieu of disciplinary punishment.

the restriction prevents them from contacting each other once they are released from the facility because socializing with ex-residents could drag the juvenile back into a delinquent life.

C. Medical Care

Since proper health management of JTS residents is required, medical care is provided for free by medical staff who work for the facility, and drugs are prescribed if necessary. Based on a doctor's decision, a resident can see a doctor or a dentist outside the facility when escorted by staff. If constant medical care is necessary for a sick or injured resident, the resident will be referred to a medical JTS.

V. JTS RESOURCES

There is no doubt that the lack of adequate capacity and resources deteriorates the rehabilitative environments of correctional facilities. Thus, every JTS should be well staffed, and living conditions should be reasonably comfortable. The following part of this section discusses the resources of JTSs, such as budget and staff, and also mentions resources outside the facility.

A. Budget

1. Materials Supply

In order to make the life of residents comfortable, proper management of the facility is essential. JTSs supply all the materials for the residents for free. Examples of supplied materials are as follows:

- clothes (school uniforms, training wear, pyjamas, underwear, socks, caps, shoes, sandals);
- stationary and school supplies (bags, notebooks, pencil cases, pencils, pens, textbooks, dictionaries);
- toiletries (towels, soap, shampoo, toothpaste, toothbrushes, sanitary items).

All the materials for the residents should be reasonably clean and supplied fairly. At the same time, it is possible for the residents to buy additional items if they can afford them. They are given an opportunity to order goods at least once a month.

2. Meals

JTS staff cook and serve meals to residents three times a day, and they also serve snacks occasionally. The meals need to be not only nourishing but also moderately tasty so that the meals delight the residents, which is very important at a custodial facility.[16] Vegetables grown at a farm in the facility by the residents as a part of the vocational training curriculum are sometimes cooked and consumed there.

A Menu Meeting is held at least once a month with managerial staff of the facility to discuss the menu, budget and food allergies of the residents. It is also required to conduct

[16] An example of three meals at the Okinawa Juvenile Training School for Girls in November 2019: white rice, miso soup, *natto* (fermented soybeans), and seasoned laver (seaweed) for breakfast; boiled pumpkin, meat-stuffed cabbage roll and milk for lunch; vegetable curry, salad, pickles and yogurt for dinner.

a survey by asking residents to complete a questionnaire about the menu. On the other hand, the residents are strictly prohibited from bringing food or beverage into the facility.

3. Facility

JTS residents usually live in a furnished shared room in a dormitory, and they also share a living room, bathroom, toilet and appliances such as a washing machine and a television. At daytime on weekdays, training and programmes are held in classrooms in separate buildings or outside for farming and gardening. For exercise and physical activities, a playground, a gymnasium and a pool (only available at some JTSs) are provided.

B. Staff

Most correctional officials who work for JTSs are officials called "instructors". In order to be employed, one needs to pass a specialized examination to become an instructor. Once employed by a JTS, a broad range of training programmes is provided according to their experiences and aptitudes. As explained above, JTS instructors work closely with residents on a personal basis to help them through the rehabilitation process and re-join society. Their work may be different from that of other countries because an instructor's duties can be described as a combination of multiple occupations such as a counsellor, a teacher and a guard.

It is also noteworthy that most of staff members[17] of JTSs are instructors, including the governor and staff of the General Affairs Section. Consequently, even if an instructor is not directly involved in education or treatment of residents, he/she contributes to the rehabilitation from the viewpoint of an instructor. Some descriptions of their daily work are as follows:

1. Dormitory Staff

Dormitory staff members are instructors assigned to a dormitory, and the staff members work together as a team of each dormitory. It is assumed that most delinquent juveniles have not been well cared for or educated at home or school. Therefore, in that context, instructors play multiple roles as an older sibling, parent or teacher in order to mentor the residents. They advise the residents about healthy eating, teach them how to clean the dormitory and do laundry, exercise together, help them with reading and writing, and encourage them to read books.

The dormitory staff not only provides daytime guidance in the form of educational classes and treatment programmes but also works the night shift to provide evening guidance from 5 to 9 pm and to patrol the facility at night. The patrol is necessary to prevent escape from the facility, violation of regulations, fights among residents or bullying. In order to work in close cooperation, the dormitory staff members share information about all the residents in the dormitory on a daily basis.

2. Individual Assigned Instructor

Individual assigned instructors are key players in the treatment of residents. Every resident is allocated an individual assigned instructor, an instructor who takes charge of the resident, among the dormitory staff. The individual assigned instructor advises the

[17] Exceptions are medical staff and a psychologist who was originally employed at a JCH and temporarily works for JTSs.

resident on overall life in the facility by interviews and exchange of notes. Although it is difficult for the instructor to build a relationship with the resident because many of them have serious trust issues influenced by abusive experiences, building a close relationship with the resident is critical.

3. General Affairs Section Staff

An instructor not only works for the education and support section but also for the General Affairs Section. Instructors assigned to the General Affairs Section are in charge of administration, budget management, planning menus and preparing meals, maintaining the facility including simple repairs, and supplying materials as explained above. They also work on the night shift when necessary and even work as guards in emergencies.

C. Multi-Stakeholder Partnerships

The above section discussed the resources provided by the JTS. However, it is evident that the JTS alone is not able to provide all required support for residents. This section introduces private and public sector support for corrections and also an example of a partnership with the Okinawa JTS for Girls and existing community resources.

1. Close and Cooperative Relationships with the Public and Private Sectors

Since building bridges from a correctional facility to the community is required for smooth reintegration into society, cooperation and coordination between institutional and community corrections are essential. For this reason, conferences and meetings are regularly held several times a year, and a case conference is held to strengthen support after release. If a resident is planning to go back to school, cooperation with the school is also necessary. JTSs regularly send reports about the progress of residents' education to the school.

In order to support residents' employment, the local public employment agency works closely with the JTS. A career counsellor of the agency visits the JTS to interview residents or lecture about their courses after release. As a part of the private sector, registered employers are cooperative resources that help residents find jobs. They sometimes visit the facility to conduct job interviews so that the resident can obtain a job before release. In some cases, they even provide a residence if the resident cannot live with his/her family.

2. An Example of a Multi-Stakeholder Partnership

The last part of this section introduces an example of a multi-stakeholder partnership of the Okinawa Juvenile Training School for Girls. JTSs work closely with existing community resources and build robust partnerships with them.

In 2019, the Okinawa Juvenile Training School for Girls launched a new project named "3Re-Smile",[18] collaborating with multiple sectors of society. The Okinawa Prefectural Government is aiming to cull (euthanize) fewer stray dogs and cats by encouraging their adoption. For that reason, it has begun outsourcing the training and management of the adoption process to the Centre of Protection and Management of Animals of Okinawa. The centre keeps abandoned dogs and cats and tries to find new

[18] "3Re-Smile" means "Rehabilitation", "Reward" and "Return", and also refers to the three smiles of a resident, a dog and people in the community.

owners for them before they are culled. Training the dogs is important to finding an owner in a short time.

The “3Re-Smile” project involves training dogs inside the JTS and finding an owner for the dog in collaboration with the centre. A resident of the Okinawa Juvenile Training School for Girls spent nearly four months training a dog supported by a professional dog trainer sent by the centre. At the same time, all the residents worked together to create a poster to find an owner for the dog. In order to publicize the project, the centre updated its social networking site (Facebook) with photos of the training. Finally, a couple applied for and became the owner of the dog.

Upon the closing ceremony of the project, the resident handed the lead of the dog to the owner in tears, which showed the emotional development of the resident. Throughout the project, including preparation beforehand, the Okinawa Juvenile Training School for Girls succeeded in promoting partnerships with multiple sectors and public understanding about rehabilitation in the facility.

VI. CONCLUSION

Although less restrictive sanctions or dispositions should be considered prior to custodial measures, a correctional institution is responsible for effective rehabilitation as the “last resort”. This paper introduced and discussed the system and functions of custodial measures for delinquent juveniles in Japan mainly from three perspectives: first, JTSs run a broad range of educational curricula and treatment programmes based on an elaborate plan formulated for each of them; second, JTSs establish rehabilitative environments for residents; third, JTSs make effective use of resources such as budget, staff and multi-stakeholder agencies. Instructors support residents’ rehabilitation through a holistic approach. Through these key measures, the JTS system effectively supports residents’ reintegration into society.

INTERVENTION, TREATMENT AND SUPPORT TAILORED TO OFFENDERS' INDIVIDUAL NEEDS IN KENYA

*Lilian Akinyi Otieno**

The United Nations posits that no crime prevention strategy is complete without effective measures to address the problem of recidivism. For that reason, effective social integration or reintegration programmes are essential means of preventing reoffending and increasing public safety, two very important social policy objectives in all countries. Reoffending is defined as a person's continued criminal behaviour after receiving some sanctions or undergoing intervention for a previous crime. Reoffending is one of the serious problems faced by developing countries all over the world. Social inclusion refers to provisions of qualities (requirements) and opportunities of life in the mainstream (normal) life.

I. EFFECTIVE ASSESSMENT OF OFFENDERS IN COMMUNITY-BASED TREATEMENT

According to Probation and Aftercare Service Kenya, assessment of offenders is the process where a probation officer evaluates a person to inform decision-making. It involves taking into account myriad factors that surround a person and weighing them to determine their risks or needs. Probation officers carry out assessment when preparing Bail Information Reports, Probation Officer's Reports, Community Service Orders Report, Power of Mercy Pre-release Reports, Victim Impact Assessment Reports and Environmental Adjustments Reports. They also conduct assessment to guide in supervision, rehabilitation and resettlement processes. Probation officers evaluate accused persons, offenders and ex-offenders.

Effective assessment of offenders is fundamental to achieving prevention of reoffending and fostering social inclusion. It is a prerequisite to community-based treatment of offenders with a view to preventing reoffending, promoting social acceptance and incorporation of offenders under supervision in social engagements with support for perceiving a sense of value and importance among community members. It helps in identification of the offender's individual risks and needs and the social environment presenting their risks and protective factors for their social reintegration. Assessment should be conducted carefully with regard to male, female, youth and juvenile offenders. Consequently, appropriate tools should be designed and applied to the relevant offender. Risk factors are those characteristics that increase the likelihood that a person will engage in offending behaviour. On the contrary, protective factors are those that decrease the likelihood of engaging in offending behaviour.

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A. Current Situation and Practical Challenges in Community-based Treatment of Offenders in Kenya

1. Current Situation

Information gathering done by probation officers for pre-sentence, resentencing and pre-release reports for courts, penal institutions and the Power of Mercy Committee is to guide decision-making and the suitability of the offender to be considered for community-based treatment and supervision. These reports are compiled from interviewing the offender and victims (primary and secondary victims), and a detailed social inquiry involving the offender's family, community members and significant others is conducted. Also, penal institution authorities for adults in prisons and juveniles in Borstal Institutions are interviewed to establish the inmate's conduct, skills acquired for reintegration and level of risk reduction based on the custodial rehabilitation programmes administered. For juveniles and youth offenders, the risk and needs assessment tool utilized was disseminated during the Swedish Prison and Probation training conducted in the year 2016. It is administered separately, and information gathering is done with the content of the tool in mind since it informs the probation officer's report in which the intervention strategies must be indicated. For male and female adult offenders, a different tool is used and filled upon placement of an offender on a non-custodial sentence using the information in the report to determine the level of risk and needs for supervision purposes and designing the offender's Individual Treatment Plan (ITP) and Individual Supervision Plan (ISP). Nevertheless, assessment is noted sometimes to be challenged since, during quality assurance caseload inspection, some ITPs do not adequately address the criminogenic needs of the offender. Also, the notes recorded during appointment sessions at times do not significantly reflect the implementation of the ITP, thus posing a concern over the knowledge, skills and attitudes of probation officers in conducting effective assessment. Nevertheless, in practice, some probation officers diligently journey with the offenders and do commendable work which might not be comprehensively and systematically recorded as concerns intervention, treatment and support to each offender as per the risks and needs. This is attributed to the many functions probation officers undertake, as stated above, about generation of advisory reports for dispensation of justice and decision-making by courts and penal institutions in addition to supervision of probation orders, Community Service Orders (CSO), aftercare supervisees, effecting victim support and welfare programmes, conducting family conferencing, offenders' home visits, CSO work centre visits, initiating projects and monitoring progress, reporting offenders' progress in review of case conferences and case committees, review of ITPs and ISPs, monthly and quarterly returns submission and many more. In reality despite the challenges of offender assessment tool utilization, probation officers do much in administering treatment programmes to offenders based on strengths, weaknesses, opportunities and threats (SWOT) analysis they conduct from the initial face-to-face interview with the offender, community and home visit social inquiry and upon placement of the offender on a non-custodial supervised sentence, probation or community service orders and aftercare supervision for rehabilitation, resettlement and reintegration.

While working with the offenders based on risk and needs orientation, intervention, treatment and support tailored to prevent reoffending include but are not limited to the following: offering counselling and guidance (a basic counselling course is mandatory for probation officers in this regard) though not all have been trained due to limited funds. Helping juvenile offenders get back to school for formal education, vocational training of interest like hair dressing and beauty, tailoring and dressmaking, mechanics, welding,

carpentry, masonry, cooking among others through regular training or encouraging the offenders to seek apprenticeships based on whichever is convenient. The Probation and Aftercare Department has hostels for temporary accommodation of offenders and offers some of such skills empowerment. They are Nakuru Girls and Siaya Female Probation Hostel, Shanzu and Kimumu Junior for young juveniles and the Nairobi Probation Hostel for the youths. As field stations, we utilize the hostels by sending clients there for formal education and skills empowerment as the hostile home environment gets harmonized. Day care centres are as well in place to address needs for skills acquisition by the offenders. In the month of June 2019, the AthiRiver Station obtained information on Kenya Youth Employment Opportunities (KYEOP), a programme funded by the World Bank to empower the youths aged between eighteen to twenty-nine years with skill and support for entrepreneurship. Application was online and on very short notice. Nine youth offenders were supported at the office by a probation officer to access the Internet using office resources and applied for the course. Probation open day is an event we hold at least once in a year and provide free atmosphere for our clients on community-based treatment including willing victims and relatives to interact and share experience on their rehabilitation, resettlement and reintegration process. As a measure for youth empowerment with ideas, during the open day held on 29 May 2019 AthiRiver Sub County Youth Officer was invited and he sensitized the youth on the available support programmes for the youth in his department including the latest one (KYEOP). In one case, an offender who lacked basic literacy and wished to know how to read was assisted and referred to the AthiRiver Adult Education Department for help. One of our case committee members, Bishop Doctor Nicholas Muli, accepted a male offender who had been involved in bhang smoking in his church. He identified the offender’s ability to play the keyboard; hence, he allowed him to play the church keyboard as he continued helping him reform and stop reoffending. The bishop informed the probation office about the offender’s progress. After some time, he reformed, shaped up and announced his wedding after meeting a woman he fell in love with. He completed his probation sentence as a success story of preventing reoffending and fostering social inclusion. These are some examples of the ways of fostering social inclusion; enabling offenders to participate in social or group activities to feel accepted, valued and important as any other person in the community, thereby preventing reoffending.

A challenging case involved a female offender, aged thirty-four years, who was a repeat offender and was tagged as a notorious dealer in illicit liquor. She was proud and defied authority. She could not comply with non-custodial orders due to her lust for quick money. She had been arrested twice, and she paid a fine in 2016. In 2018, she was arrested again for a similar offence and was placed on CSO. She repeated the offence, and due to community outcry against her conduct, the CSO was revoked and she was imprisoned. After five months, she was considered for a pre-release report due to a prison decongestion exercise. Her family members were involved in the family conference with her in prison, and she promised to change her behaviour and venture into the hotel business after release, which her father was ready to support, instead of illicit liquor. The court placed her on three months for the period that had remained. She served a CSO for five days and reoffended again. She was arrested with illicit liquor and arraigned in court with a fresh charge. Consideration made based on the Bangkok Rules[1] could not save her this time as the community was tired of her and had no more interest in her case. Due to

[1] United Nation Rules for Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules).

her pride and disrespect, she was left to face the law, the community withdrew from participating in her issues leading to incarceration for one year without the option of paying a fine. In the course of time, her son dropped out from class eight as a candidate and disappeared from home. Her alcoholic husband could not maintain the home. It was a lesson that community participation and social inclusion in prevention of reoffending depends on the character of the offender.

2. Practical Challenges

Practical challenges are immense, starting from the point of recruitment. Probation officers are drawn from the faculty of social sciences with diverse backgrounds. The induction course that provides a platform for building a uniform base for probation work is usually done within a short period of one week (five days) for newly employed probation officers. This is barely sufficient for them to understand and apply comprehensively all aspects of rehabilitation. Hence, there is great reliance on on-the-job training after posting to various stations. This requires that the experienced officer training them should be adequately knowledgeable and skilled and have a positive perspective on sharing knowledge and skill. Inadequate funding by the Government for trainings is a hindrance to properly equipping the officers with the needed knowledge and skills.

The Probation and Aftercare Service has not developed a standardized psychosocial offender assessment tool for use by all probation officers. The process is still underway, and in the recent past, some stations, especially within Nairobi capital city and its environs, have benefited from the Swedish Prison and Probation Service training on offender assessment and classification tool, but the same has not been rolled out. Hence, a majority of probation officers countrywide are still handling offenders on the basis of the previously introduced tool which has gaps, hence trial and error in offender assessment. Few probation officers had been trained on a different tool for assessment of juvenile and youth offenders aged twenty-five years and below. The few shared the skills and trained their fellows within the selected pilot stations on the tool and are applying the same, like the AthiRiver Station. Many probation officers are not aware about the existence of such a tool. The emerging issue of juvenile and youth radicalization is a serious concern in Kenya that requires careful assessment and relevant treatment of those entrapped in the criminal justice system. As concerns the assessment of women offenders, there is no separate assessment tool in place relevant to their unique issues, but the one used for adult male offenders is applied for women. Therefore, a gap exists in matching the criminogenic needs with the right interventions and treatment. Hence sometimes like the medical analogy our situation is like a wrong diagnosis, wrong prescription leading to failed treatment.

Relapse and reoffending by Alcohol and Drug Abuse (ADA) offenders are serious problems all over the country. For referral, there is only one Government facility for institutionalized treatment of such offenders at a subsidized cost, that is, Mathari Mental Hospital Drug Rehabilitation Unit, but a majority of the offenders cannot afford treatment there due to poverty. The Probation and Aftercare Department lacks its own facilities for non-custodial offenders. Another challenge is the lack of skills in handling psychiatric offenders released under Presidential Pardon and referred for supervision by probation officers. This special category requires adequate psychosocial assessment knowledge and skills.

Commercial sex workers on community-based treatment present challenges since most of them do not want their nature of work to be disclosed to their family members for fear of shame and rejection. In the recent cases handled at AthiRiver Station, some of them are married and pleaded with the probation officer to keep secret and not even disclose to their husbands that they are a serving probation sentence; one refused to carry her probation order home so that her husband would not see it, but she promised to comply with attending appointments with her supervising officer.

During information gathering through social inquiry and conducting the initial assessment, the finding of risk and needs level and the identified intervention strategies are given in the report. However, probation officers encounter a number of challenges. These include the following: false information given by some offenders, the offender's relatives hiding vital information, at times community members decline to give information fearing that they may be called upon as a witness in court since they do not understand the difference between a probation officer and a prosecutor. Also, some fear that the offender may know that they gave negative information about him, and he may harm them when released. Corruption is a serious problem that influences some probation officers to deal dishonestly by submitting either favourable or unfavourable reports for the offender's release back to the community. Limited resources, inadequate funding and transport challenges for conducting home visits and community social inquiry coupled with vast distance from the probation office to some of the homes and, in some instances, the court gives a short period for submission of the report leading to shoddy desk work reports generated through phone calls. Due to bitterness, some victims refuse to be interviewed, yet some may have relationships with the offender, a factor that contributes in the treatment plan. In some areas due to lack of awareness about community-based correctional services, community members recognize imprisonment as the genuine punishment; hence, they display resistance to non-custodial sentences for community-based treatment, thinking that it is just a way of setting criminals free, especially when the offence is habitual or serious in nature. Community hostility and insecurity caused by some high-risk cases have led to probation officers being attacked and injured in the course of social inquiry. All these are impacting negatively on the initial assessment of the concerned offenders, thus resulting in less effective offender individual treatment plans that do not meticulously address the risk and criminogenic needs of the offender. A poor-quality report may result in inappropriate decision-making and a superficial treatment plan for community-based treatment that does not address the underlying risk and needs factors; hence, there is little chance of preventing reoffending. As described earlier, probation officers are few and must handle a very big caseload

Offender assessment is vital. Research from the American Heart Association shows that a risk-and-protective-factors approach is consistent with a public health model of disease and prevention and gave an example that children of parents who have heart disease are more likely to develop it themselves; however, exercise can buffer the correlation between family history and heart disease as well as decrease the likelihood of heart disease without considering the family history. Also, researchers illustrate the importance of assessment as not only limited to making judgment on reoffending but also useful for guiding treatment. They explain that, from the assessment of multiple domains of criminal conduct, dynamic (criminogenic) and static risk factors, offender assessment can guide the intensity of treatment. Therefore, the risk principle tells us who to treat and helps in matching the level of service to the level of risk such that it is the higher risk offender rather than the lower risk offender who receives most of the treatment services.

Then the need principle tells us what to treat (criminogenic needs). Further, they state that offender assessment can guide on how we provide treatment, that is the responsivity principle (tells us how to treat) based on the individual's learning ability, which is dependent upon a number of personal, cognitive and emotional factors. Hence, it is important to use cognitive-behavioural interventions with attention to the personal needs of the offender.

Advancement in research has led to the development of the Fourth Generation Risk Assessment: The integration of case management with risk/needs assessment. The assessment is explained as quoted below:

> Fourth generation instruments emphasize the link between assessment and case management. This means more than adhering to the risk principle and targeting criminogenic needs. It acknowledges the role of personal strengths in building a prosocial orientation, the assessment of special responsivity factor to maximize the benefits from treatment and the structured monitoring of the case from the beginning of supervision to the end. Fourth-generation instruments include the COMPAS, used in parts of the United States and the most researched fourth generation instrument, the Level of Service/Case management Inventory (LS/CMI: Because of the wealth of research and the instrument's well-developed theoretical base, the LS/CMI is used to illustrate the features of the fourth-generation assessment.[2]

3. Identified Underlying Problem

In view of the current situation in Kenya as explained earlier, probation officers – save probably the few who have been trained through Swedish Prison and Probation Service – are not tuned to effective utilization of the offender assessment tool to recount its benefits on prevention of reoffending and fostering social inclusion for offender rehabilitation. Probation officers are few in number, yet they do a lot of work due to lack of specialization. Limited funds for training is another problem. Reaching out to the villages far from the station is a problem due to transport problems.

4. Possible Solutions to the Underlying Problem

The Probation and Aftercare Service Department needs to train all probation officers on fourth generation offender risk and needs assessment for utilization for better results in offender treatment and prevention of reoffending. Conducting benchmarking and exchange programmes with other countries which prosper in reducing reoffending for sharing experiences and good practice is motivating and eye opening as regards offender assessment and the goal of preventing recidivism. Enhancing resources and funding for prevention of reoffending is necessary. To keep constant supervision of offenders in far places has been eased through recruitment of volunteer probation officers in AthiRiver in the month of September 2019. The recruitment process involved holding open public meetings in the villages and sensitizing people about probation and the CSO non-custodial option for community-based treatment of offenders and social inclusion for reintegration and resettlement. More efforts are needed to strengthen and work with community-based structures for effective offender rehabilitation and compliance with court orders, for example, faith-based organizations, community-based organizations,

[2] Bonta J. & Andrew D.A: *The Psychology of Criminal Conduct* (New York, 2017: Routledge).

non-governmental organizations, "Ten household managers (*Nyumba kumi*)" for keeping watch over one's neighbours, social welfare groups, merry-go-rounds, among others.

When a strong social support network is present and the offender is able to fit in well, then with proper assessment, addressing offenders' criminogenic needs would be easy and there would be no labelling or discrimination. Issues such as drug and alcohol abuse, family and marital problems, poverty, unemployment, enrolling in school, living in a crime prone area, peer influence, among others would be addressed with social support and translate into to prevention of reoffending.

Reference

http://www.probation.go.ke/2015-11-07-10-14-45/2015-12-01-12-56-44.html Copyright © 2019 Probation and Aftercare Service.

COMMUNITY SERVICE SENTENCES IN MALAWI: MANAGEMENT CHALLENGES AND POSSIBLE SOLUTIONS

Justus Asante Kishindo[*]

I. INTRODUCTION

Rule 8 of the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) states in part that a judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in its decision the rehabilitative needs of the offender; the protection of society; and the interests of the victim. The victim should be consulted whenever appropriate. The rule lists a number of alternatives to custodial sentences which include community service, admonition, suspended or deferred sentence, conditional discharge, and restitution or a compensation order to the victim.

Malawi has in its section 25 of the Penal Code[1] a number of punishments that can be inflicted by a court. There are several non-custodial punishments, including fine; compensation; finding security to keep the peace and be of good behaviour, or to come up for sentence; liability to police supervision; forfeiture; suspended sentence; public work; community service; probation; weekend or public holiday; and attendance centre orders. Among the various non-custodial measures in Malawi, I am of the opinion that community service is the one that has elaborate rules and structures to ensure its smooth implementation.[2]

It is worth noting that in Malawi, community service is not completely a new form of punishment. Prior to the introduction of community service in 1999, there was in effect a form of community sentence called public work. Section 3(1) of the Convicted Persons (Employment on Public Work) Act[3] states that when a person is convicted of any offence by a court and such court is of the opinion that the offence would be adequately punished by a sentence of imprisonment not exceeding six months, the court may, instead of imposing a sentence of imprisonment, order such person to perform public work for a period not exceeding six months. Over the years, however, presiding magistrates and judges have neglected meting out this form of punishment to offenders for reasons I cannot readily outline since I may need to actually talk to some of them to find out if they are aware of this provision and, if they are, why they do not make use of it. No matter what the reason is for abandoning public work, the punishment is still in the statutes and it can still be imposed as a valid sentence.

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[1] Chapter 7:01 of the Laws of Malawi.

[2] Community Service (General) Rules made under section 364A of the Criminal Procedure and Evidence Code, Chapter 8:01 of the Laws of Malawi.

[3] Chapter 9:03 of the Laws of Malawi (enacted on 28th May 1958).

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II. IMPLEMENTATION OF COMMUNITY SERVICE

A sentencing court will have to take into account three major factors when deciding whether to impose a community service sentence or not. The factors are: the maximum term of the applicable sentence; the nature of the offence committed; and the eligibility of the offender for such sentence. Other factors to consider include: personal attributes and antecedents of the offender; whether the offender has a fixed place of abode; whether the offender has a family, dependants or other responsibilities in the community; whether the accused is employed; whether the offender is engaged in academic or other educational pursuits; distance to the placement institution; and age and capacity of the offender.

Before a community sentence is imposed, it is important that the offender should consent to that sentence. The court is obliged to explain to the offender what community service entails and should also point out other alternatives available to the offender. Where the offender withholds consent, community service may not be imposed,[4] but other non-custodial sentences would apply.

An offender is expected to perform forty hours of community service in a month.[5] Therefore, the maximum number of hours that can be imposed in a community service sentence is four hundred and eighty hours.

It is important to place an offender at a public institution (a placement institution) that is appropriate for the offender's skills, talents and other attributes for the benefit of both the community and the offender.

A placement institution must confirm that it is willing to receive and supervise an offender on community service. Where there is no placement institution close to the offender's home, or where no placement institution is willing to receive an offender, the offender may be placed at a courthouse or at a police formation. Even though courts and the police are public institutions, it is usually discouraged to place offenders on community service at these institutions.

III. MANAGEMENT CHALLENGES OF COMMUNITY SERVICE IN MALAWI

The main purpose for introducing community service in Malawi was to assist in reducing congestion in prisons and rehabilitate offenders who had committed minor offences. However, opponents and sceptics argued that, at a time when serious offences such as robbery and burglary were on the increase and the public was crying out for even stiffer custodial sentences against offenders, community service would be seen as offering a soft option for offenders.[6] It is very likely that there is still a significant number of persons, including judicial officers, who still hold the opinion that community service is no punishment at all.

There seems to be a misconception among magistrates that community service has replaced all other non-custodial sentences. During the opening ceremony for a series of

[4] Malawi Government, *Community Service Revised Handbook* (2017).
[5] Form CS/6 under the Community Service (General) Rules.
[6] Malawi Government, *Community Service Revised Handbook* (2017).

workshops[7] in the month of March 2003, Chief Justice Leonard Unyolo[8] lamented that with the advent of community service as an alternative to custody the courts were tending to overlook the application of other forms of suspended sentences even where they might be appropriate. It was the Chief Justice's advice that just because an offender fails to meet the criteria for community service it should not follow automatically that he or she must, therefore, be imprisoned. Under section 25 of the Penal Code (the so-called basket of penalties) there are many non-custodial options that can be used if community service is not appropriate.[9] Once a court entertains the idea of sentencing an offender to community service, it should be safely assumed that the court never intended to send the offender to prison in any event.

Community service stands out from the other forms of punishment due to the fact that offenders on community service are made to repay the community that they have offended, and the community directly benefits from the unpaid work done by the offenders. Even though public work is similar to community service, section 5(b) of the Convicted Persons (Employment on Public Work) Act provides that offenders can reside in labour camps and the District Commissioner is obliged to feed them while offenders on community service fend for themselves and their families. It is assumed that this arrangement allows for offenders who are employed to keep their jobs.[10] There is, however, no guarantee that an offender cannot be dismissed from his or her employment on the basis that he or she was not sent to prison. Certain offences that involve dishonesty, like theft, might warrant instant dismissal or other disciplinary measures in some workplaces.

Section 364A of the Criminal Procedure and Evidence Code empowers the Chief Justice to make rules relating to the imposition of and performance of community service. Community Service (General) Rules 2000 govern, among other things, the procedure before, during and after the imposition of a community service order and the appointment of national coordinators and regional coordinators of community service. The coordinators and community service officers are responsible for investigating the suitability of offenders for community service. They are also responsible for monitoring offenders when they are placed on community service. Supervision of offenders is done by heads of institutions where community service is being performed. The supervisors are expected to file a report to the court when the sentence is completed or when the offender defaults.

Community service supervisors already have several other responsibilities as public officers. Therefore, they may not consider it their responsibility to monitor offenders on community service, especially when they do not get any monetary compensation for their extra responsibilities.

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[7] The theme for the workshops was "Alternatives to Custodial Penalties: Judicial Role in Promoting Rights of Offenders".

[8] Chief Justice Leonard Unyolo retired in or around 2006.

[9] The Chief Justice's speech was reported in a magazine called *The Reformer.* Malawi National Committee on Community Service, *The Reformer* (Lilongwe, 2004).

[10] Malawi. Malawi National Committee on Community Service, *A Hand-book on Community Service in Malawi.* (Undated).

IV. RECOMMENDATIONS

Community service is aimed at rehabilitating the offender. By continuing to stay in the community, the understanding is that the offender will be treated by the community as a person who just made a mistake and not as a criminal. There is need for a massive awareness campaign by organs of State to sensitize the general public on the importance of accepting and supporting community service. We do not want a situation where an offender completes a community service sentence but he or she is still labelled by his or her community as a criminal.

According to the Malawi Magistrates' Handbook,[11] rehabilitation is a sentence imposed for purposes of aiding an offender to reform so that he or she does not offend again. What does not come out clearly is whether an offender can reform by simply being outside of prison. I believe that there is need for extra interventions like counselling and skills training for the rehabilitation to succeed.

In my view, it is an anomaly for the Malawi judiciary to set up a department to specifically monitor one form of punishment when all the other punishments are administered by the executive arm of government. It is very likely that, in areas where there are no court-appointed community service officers, community service orders will seldom be imposed. In my view, therefore, under the current decentralized form of local government, offenders who receive community service sentences should be supervised by the district social welfare officer or any other officer appointed by the District Commissioner.

The recent statistics[12] released by the Judiciary's Directorate of Community Service show that, despite the sentence's good intentions, there is a high rate of defaulters. Out of 843 offenders placed on community service, 174 offenders defaulted on their sentences. A majority of the defaulters are in urban areas. They live on rented premises and do not hold permanent jobs. It is recommended that there should be specific officers assigned to individual offenders who can monitor the offenders' movements even when the offenders are not at the placement institution. There is also need to revise the way community service officers conduct background checks on offenders before sentencing. It is very likely that community service sentences are being imposed without due regard to the suitability of the offender for community service.

According to the recent Malawi Inspectorate of Prisons report,[13] Malawi prisons are holding 14,788 inmates against an occupancy of 5,000. The Malawi Human Rights Commission recommended that some prisoners be released and community service be introduced for petty offenders. The report acknowledges that the current capacity of prisons does not match the country's population. While waiting for the construction of more prisons, courts keep sending offenders to the already congested prisons. There is a limit as to how far community service can go in reducing congestion in prisons. The danger of concentrating too much on congestion in prisons is that the courts and other key

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[11] Malawi. Judiciary. (2005). *Handbook for Magistrates* (revised edition) at page 5.
[12] Accessed on 11 September 2019 through monthly and quarterly reports.
[13] As reported in the *The Nation* newspaper on 29 September 2019, available at https://mwnation.com/malawi-prisons-not-fit-for-occupancy-inspectorate/.

stakeholders in the criminal justice system might lose focus on rehabilitation of offenders, the major aim of community service and other non-custodial sentences.

The success of community service in Malawi is measured by the number of completed orders against those registered regardless of the circumstances under which they were completed. The fact that an offender has completed a community service sentence might not in itself be an effective tool for measuring whether an offender has been rehabilitated or not. Whichever department will take over the administration of community service must come up with tools for measuring the extent to which an offender placed on community service is reformed.

V. CONCLUSION

Section 339 and section 340 of the Criminal Evidence and Procedure Code implore a sentencing court to always consider a non-custodial sentence when dealing with first-time offenders. The framers of this provision must have had very good intentions towards the people they represent. First-time offenders should be given a second chance in life. There is no doubt that cases will arise that deserve tough penalties, but each case must be dealt with based on its unique facts. Well established sentencing principles must be followed.

While it is generally accepted that community service is a very useful tool in rehabilitating offenders, there is no concrete evidence to show that offenders placed on community service really get rehabilitated. There is no way of measuring the extent of the rehabilitation.

Major players in the criminal justice sector should look at ways of reforming the practice and procedure in criminal proceedings so that rehabilitation of offenders comes out clearly as a major consideration when dealing with offenders at any stage of the criminal proceedings. Consideration of alternatives to imprisonment should start even at the pre-trial stage. Alternatives like diversion, mediation and reconciliation can be introduced to cater for adult offenders in deserving cases.

Apart from pre-sentencing reports from the judiciary’s Community Service Officers, other reports can be received from the victims of the offence, community leaders and non-governmental organizations, among others, to determine the best way of dealing with an offender without causing public outrage.

Since most of the criminal cases are heard in the subordinate (magistrates’) courts, superior courts of record like the Supreme Court of Appeal and the High Court must endeavour to regularly issue sentencing guidelines to ensure a uniformity of approach in cases of a similar nature.

During the process of reviewing sentences imposed by subordinate courts, the High Court should be able to impose a community service sentence or any other non-custodial sentence even on offenders who have served part of their sentences in prison.

Community service should be managed by a specialized department (preferably a department of correctional services) that will be charged with supervising or designing

rehabilitative programmes for offenders. This development would take the burden of monitoring sentences after they have been imposed by the courts.

There should be a deliberate effort by the state to sensitize the general public and key stakeholders in the criminal justice system on the importance of rehabilitating and accepting back into the community persons who for some reason or the other have broken the law. This is particularly important now that mob justice has become common place.

JUVENILE CRIME PREVENTION IN THAILAND

Chotima Surarittidham[*]

I. INTRODUCTION

Many social problems arouse public concern. One of them is juvenile delinquency, which has been a concern for a long time. This paper presents a brief scope and the duties for juvenile crime prevention of the Department of Juvenile Observation and Protection (DJOP), which is an organization in the Thai juvenile justice system. The paper shows statistical data of juvenile delinquency and important processes leading to crime prevention, particularly assessments before adjudication hearing and interventions in juvenile training centres, which are secure confinements for youth. Challenges and solutions are combined in each topic as well.

The DJOP was established to serve juvenile and family courts before adjudication hearings and after dispositional hearings for juvenile delinquents. It has duties as established by the Juvenile Court and the Juvenile Procedure Act (B.E. 2553) and the Administration of Juvenile Delinquent Rehabilitation Act (B.E. 2561). The goal of the DJOP is to reduce recidivism of juveniles who are adjudicated as delinquent. Minors who are charged and enter the juvenile and family court system are under the age of 18 years and not less than the age of 10 years. The DJOP supervises Juvenile Observation and Protection Centres (JOP) located in all 77 provinces of Thailand and 19 Juvenile Training Centres (JTCs) in main provinces such as Bangkok, Chiang-mai, Rayong, and Song-kha. The JOP centres serve juveniles before adjudication, while the JTCs serve the juvenile after the family court has entered an official disposition order to commit the juvenile. The DJOP's responsibilities, thus, are related to the processes before the adjudicational and after the dispositional phases.

A JOP centre works as an intake unit. At the initial phase of a juvenile court process, all juvenile offenders are referred immediately to the JOP centre. Some of them can be taken into custody by court order. They will be placed in juvenile detention at the JOP centre. The detention provides services for the welfare, health and safety of the detained juveniles. Furthermore, probation officers of the JOP centre conduct pre-disposition reports of all referred juveniles to a juvenile and family court to determine an appropriate disposition.

The pre-disposition report provides essential information for a judge to decide the best disposition and sanctions based on each case and suitable to the youth's needs. It outlines the juvenile's background (i.e. the current offence, the juvenile's past offences, a summary of information concerning family relationships, home environment, the juvenile's educational and employment progress, and results of psychological assessment), a level of a likelihood of future reoffending, a summary of the availability of

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alternative dispositions, and a treatment plan including recommendations for services which are expected to reduce the likelihood of recidivism for a juvenile offender.

After the disposition phase, juvenile delinquents whom a judge decides to place in a confinement facility will be incarcerated in a JTC for periods generally ranging from a few months to a few years. The JTC is commonly known as a juvenile correctional institution. It not only serves incarcerated youths for basic needs, but it also provides rehabilitative treatment programmes, academic and vocational education. If youths have a duration of incarceration for four months, they will be transferred to a reintegration phase and participate in a reintegration programme to prepare to return home, such as planning for their futures. The programme is offered by a social worker and other professional staff. After completing this phase, youths will be released from the JTC and will receive assistance for resettling for one year after release. In addition, the DJOP tracks the recidivism of these youth for three years by checking their re-arrest history from the Criminal Records Division, Royal Thai Police Headquarters.

II. JUVENILE CRIME STATISTICS

According to the DJOP's statistics of juvenile crime from the fiscal years 2016 to 2019,[1] the numbers of juvenile offenders have continually decreased each year. The number of juveniles arrested and referred to JOP centres were 30,361 in 2016 and 20,934 in 2019. The percentage decrease is 31. Male offenders consistently accounted for more than 90 per cent of arrests of those under age 18. The number of offenders who are 17 years of age is the highest every year. The most common juvenile crimes in Thailand are drug law violations (51% of arrests in 2019), property crimes (14% of arrests in 2019), and offences affecting life and body (10% of arrests in 2019), respectively. These top three crimes are the same each year. However, the percentage of property crimes and offences affecting life and body has gradually decreased since 2015, whereas the percentage of drug law violations has increased. Of every 1,000 youths in 2018, three juveniles were arrested and referred to the JOP centres. The highest arrest rate is seven, which is in the Northeast of Thailand.

For the level of youths' future reoffending, approximately 77 per cent of youth who are assessed have moderate risk of future reoffending, 16 per cent have low risk and 7 per cent have high risk. Three-fifths of all youths held in JTCs had a moderate risk of recidivism. As a result, the JTCs have to provide treatments and rehabilitation programmes affecting the reduction of the likelihood of recidivism of incarcerated youths.

Drawing on DJOP data on 4,167 juveniles who were released from JTCs in 2015, the report found almost half (45 per cent) had been arrested again within three years after release. Also, 41 per cent of the 4,263 juveniles released in 2016 were rearrested. The report showed that the highest rate of rearrest was in the first year after release. Most released juveniles committed drug and property offences. Nevertheless, the number of juveniles who reoffended and who have been diverted from the juvenile justice system is obviously small, which is less than 10 per cent. Most juveniles recommit drug offences.

[1] Department of Juvenile Observation and Protection (2019). Juvenile crime statistics.

Therefore, emphasis is placed on important processes leading to the reduction of the recidivism rate of incarcerated juveniles in JTCs.

III. JUVENILE CRIME PREVENTION

A. Classification in Juvenile Observation and Protection Centres

For JOP centres, most tasks relating to crime prevention are completed before dispositional hearing. These tasks are investigation, assessment and making a pre-disposition report. There is an important intake interview by a probation officer. Youths arrested for an offence eligible for juvenile court will be referred to JOP centres by the police. The probation officers use the Risk and Needs Assessment Instrument (RNI) as a guideline for interviewing these youths. The RNI has an objective to assist the probation officers to collect relevant information which can identify a likelihood (or risk) of future reoffending and also youths' needs for treatments and interventions. This instrument contains many items reflecting personal characteristics and life circumstances. The probation officers use this information to make recommendations about dispositions and services matching the youth's needs (i.e. a plan for rehabilitation). The intake process takes about 1.30 hours. Also, the RNI needs the probation officers to gather further relevant information by interviewing the youth's parents and visiting the youth's home, community and school.

The RNI was developed by DJOP's multidisciplinary team including psychologists, probation officers, nurses and social workers, as well as professionals from universities. The theory behind the RNI is the Risk-Need-Responsivity Model (RNR). It is used for guiding offender assessments and treatments. The RNI includes eight domains of criminogenic risks and needs which are family, education and vocation, history of offending, delinquent peers, environment, conduct behaviours, drug use and physical and mental health problems. Each domain has items. Most items are scored, and a total score identifies a likelihood of recidivism, which includes low, moderate and high risk. As the RNI has to be scored for calculating the level of risk which is more complicated, it has changed from paper and pencil to a computer-based programme, which automatically calculates individuals' level of risk of recidivism after entering the data into the RNI programme.

The RNI is functional because its result is more objective and accurate than only professional judgment; however, there are challenges. First of all, probation officers need additional interviewing skills training and related knowledge (e.g. forensic psychology and criminology) to help them establish a good relationship and also gain more relevant and reliable information from youths and their parents. Second, errors of information and missing values in the RNI database need to be improved as statistics provided by data which are full of errors have limitations for analysis and interpretation. Finally, the RNI needs to be reconsidered and amended. There is new empirical evidence and knowledge of criminogenic risks and needs, methods of assessment and other significant models associated with crime prevention (i.e. the Good Lives Model). That information can be developed and applied to the RNI. Additionally, some items in each domain of the RNI should be re-examined for receiving more statistical significance. The DJOP is aware of an opportunity for development, so the RNI is being revised and improved.

B. Reassessment and Interventions in Juvenile Training Centres

JTCs offer secure confinement. Practitioners in the JTCs are composed of two psychologists, two social workers, two nurses, academic instructors and vocational

instructors. They work as a multidisciplinary team to provide interventions for incarcerated juveniles. First of all, the multidisciplinary team reassesses and further interviews youths for assigning youth to housing, identifying a level of supervision and making an individual rehabilitation plan. The objectives of the plan are to make sure that the JTCs provide specific services meeting each youth's basic needs, to define each youth's criminogenic needs and match them to interventions and treatment programmes, and to keep youths occupied with productive activities. As there are a limited number of professionals for running the interventions and treatment programmes for juveniles, the DJOP trains the instructors to get more knowledge and essential skills for being juveniles' counsellors. Each counsellor is assigned a group of youths to supervise until they are released. The counsellors have two main duties, which include advising youths and ensuring that the youths receive interventions and attend activities as planned.

For implementation of an individual rehabilitation plan, after the multidisciplinary team gathers complete information, a conference is set for discussing and making a decision on the youth's rehabilitation plan. Even though all incarcerated youths have rehabilitation plans tailored to their needs, there is an important challenge existing. These plans are sometimes difficult to completely implement. As juveniles can be categorized in many groups depending on their needs, the JTC needs good management to schedule enough practitioners to run several interventions and activities at the same time. In fact, some JTCs do not have enough practitioners to conduct treatment programmes for youths having serious problems, as well as some basic activities such as programmes assisting youths to adapt themselves for living in the JTC. Psychologists and social workers are available for youths with serious needs, especially mental health problems and mental disorders, and also they have to look after all youths in the JTC to assure that the youths do not have a high level of negative emotions (e.g. anxiety and depression), and staff provide mental health services when they are necessary.

For interventions, most programmes are designed to solve criminogenic needs and strengthen life skills for living in harmony with the community even though there are no specific treatment programmes made only for serious types of offenders. Psychologists use Forensic Cognitive Behavioural Therapy (FCBT), which focuses on cognition, to adjust antisocial attitudes and inappropriate values and beliefs. Anger management and communication programmes are examples of utilizing FCBT. FCBT programmes will be assigned to youths who have a high risk of recidivism with having criminal thoughts, which are identified by psychologists' assessments. Although JTCs do not have specific treatment programmes for serious types of offenders, the JTCs design a system and interventions for responding to these groups of offenders. For serious and high-risk offenders, the JTCs have the system of Individual Routing Counselor (IRC). It is an intensive intervention that provides monitoring, supervising and support for youths. Each youth of this group is assigned an IRC. The IRC provides assistance and supervision since youths arrive at a facility until one year after they are released. One IRC receives 10 - 12 youths to supervise. At first, the DJOP's research on the IRC system showed that it significantly reduced the rate of juvenile recidivism. After implementation of the IRC system in all JTCs, a few challenges for recidivism prevention were found to exist. One of them is an insufficiency of experience and skills of some IRCs to handle serious juvenile cases. The DJOP offers mentors to coach the IRCs who need a consultant for work and also provides intensive trainings to enhance their competencies and knowledge. In addition, there is a professional team from the DJOP headquarters visiting IRCs at their

workplaces to give any suggestions and support. This assistance is likely to make IRCs have more confidence in their jobs.

The DJOP launched a campaign to stop all forms of violence in JTCs a few years ago. Staff and practitioners are trained how to positively communicate and manage negative behaviours instead of harsh control. “Do and Don’t” regulations were implemented to reduce interpersonal violence for staff and youths. In addition, the physical and mental health situation of each youth has become a concern. The DJOP set the standard rules of providing physical and mental health services to guarantee that all youths will be given appropriate services relating to good physical and mental health while they are incarcerated in the JTCs.

According to the Act for the Procedure for Juvenile and Family Court of B.E. 2553 and the Administration of Rehabilitation for Juvenile Delinquents Act of B.E. 2561, all JTCs have to provide education for all incarcerated youths. When youths enter the JTCs, they have to continue their study in non-formal and informal education if they have not finished grade 9. However, youths can study vocational education as an extra course while they are studying primary or secondary education. A big challenge of providing education is an insufficiency of instructors who can teach basic education. The DJOP handles this by taking on educational partners to become involved with the educational activities within the JTCs. These partnerships seem promising; nevertheless, some educational partners can only participate temporally. Good organization to maintain effective collaboration needs to be a top concern.

C. Reintegration

When incarcerated youths enter the reintegration phase, which is about four months before release, social workers provide activities to prepare youths for going back home and living in their communities. In this phase, youths have an opportunity to work as trainees in workplaces. Social workers contact entrepreneurial partners to recruit youths who are interested in working. Youths who want to continue their studies will also get support such as educational funds and information to apply to schools. Family guidance is also available for youths’ families and parents to help them understand youths’ changes while they are incarcerated in JTCs and to be able to support them as they adjust to new environments after release.

Furthermore, youths in the reintegration phase will have their criminogenic risks and needs reassessed. Their families are also interviewed to identify current situations of their relationships, economics, home environments, and families’ concern about youths. The information gained from the assessment and interview will be used to make an individual reintegration plan. This plan determines the frequency of visiting youths, specific assistance and services that are necessary for reducing the likelihood of recidivism after youths are released. The plan covers only one year after release. Partners in communities have a role to supervise and support some youths. They work as assistants to social workers. Only youths who are identified as having a low level of risk and needs will be assigned to the partners.

There are five elements that the DJOP uses as indicators of successful reintegration. The elements include study or work, having productive leisure or recreation, associating with conventional peers, having good relationships with family and having an appropriate place to live. These elements are a part of the Good Lives Model (GLM) of offender

rehabilitation for lives in transition.[2,3] The GLM assumes that enhancing personal fulfilment will lead to a reduction of criminogenic needs. It promotes an alternative and enhancement to RNR by focusing on positive factors and strengths of offenders. The five elements are used to make a reintegration plan for youth in the reintegration phase. Most assistance and services are offered to youths during this phase to help them accomplish those five elements.

A challenge in the reintegration phase is that a social worker of a JTC has to refer youths and their reintegration plans to social workers of JOP centres located in provinces where they will live after leaving the JTCs. The social workers of the JOP centres have responsibilities to supervise and assist them at least one year after release. As a result, the social workers of the JOP centres have to develop good relationships with youths and their parents for a certain time period. A poor relationship between a social worker and his/her clients can lead to failure of following the plans and loss of cases.

D. Community Cooperation

Having good partnership is important for the DJOP's operations to reach its ultimate goal, which is a reduction of juvenile recidivism. Roles of partners in communities can be classified into four types. They are roles of support or enhancing any activities related to treatment programmes, basic and vocational education, employment and study, and supervision of youths after release. Partners can be any person in communities, organizations, companies, schools and so on. However, their qualifications have to meet the DJOP's criteria.

Building cooperation with partners for working with JOP centres and JTCs are designed by using the concept of public participation. Participation can start at a moderate level to an intensive level. The DJOP expects an intensive level of participation for working with partners. The intensive level is engagement. At this level, partners have opportunities to give feedback and receive information, plan, make decisions and work together with the centres.

There are a few processes of seeking and preparing partners for working with JOP centres and JTCs. First, each youth's needs, according to the five elements of the GLM, are surveyed, and then the survey data are used to seek partners whose roles match the youths' needs. The partners who are interested in working with the centres and supporting youths will get essential information to clarify their roles and explain how to work with youths, such as information about the centres' mission and duties, juvenile delinquency, factors relating to delinquency and tertiary crime prevention. Then, a conference between the centres and partners will be held for sharing, discussing and making an annual operation plan. A few challenges include an inconsistency of encouraging partnerships and insufficiency of maintaining strong relationships between partners and the centres. However, the DJOP usually reviews and evaluates outputs and processes as well as obstacles found in operations, and it will propose new solutions and methods to solve the problems at the end of the year.

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[2] Ward, T. (2002). Good lives and the rehabilitation of offenders: Promises and problems. *Aggression and Violent Behavior*, *7*(5), 513-528.

[3] Fortune, C. A., Ward, T., & LL Polaschek, D. (2014). The Good Lives Model and therapeutic environments in forensic settings. *Therapeutic Communities: The International Journal of Therapeutic Communities*, *35*(3), 95-104.

IV. CONCLUSION

The trend of juvenile crime in Thailand has continually decreased for a few years; however, the rate of juvenile recidivism is likely to stabilize. The DJOP is responsible for crime prevention, particularly reducing juvenile recidivism. Important operations of the DJOP leading to tertiary crime prevention comprise our significant processes which are assessing juveniles' criminogenic risks and needs, appropriately matching interventions and juveniles' criminogenic needs, reintegrating incarcerated juveniles before release from JTCs and supporting community cooperation for crime prevention. There are some challenges that the DJOP has been working on, such as a revision of an assessment tool and sustainability of operations.

GROUP WORKSHOP REPORTS

GROUP 1

EFFECTIVELY INCORPORATING REHABILITATIVE PERSPECTIVES INTO PENALTIES AND CASE DISPOSITIONS

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I. INTRODUCTION

During the 174th UNAFEI International Seminar, it was noted, through the diverse discussions, that many countries are still using the criminal justice system as a way to punish, more than to guarantee the rehabilitation of the offenders and to avoid recidivism. After almost 30 years since the adoption of the "Tokyo Rules" by the United Nations General Assembly, many countries are not adequately using all instruments for non-custodial measures. Moreover, in many of these countries the judiciary and other decision-making institutions do not sufficiently consider the individual risks and needs of the offenders or their rehabilitative perspectives.

Although it has been demonstrated that prison is not necessarily the best solution for rehabilitation and prevention of reoffending, and it less cost-effective than non-custodial measures, it is still the preferred disposition in cases of criminal sentencing in many countries.

The main purpose of this group workshop was to discuss the reasons as to why in most of our jurisdictions it is preferable to use custodial instead of non-custodial measures, to suggest possible solutions in order to effectively use non-custodial measures in sentencing and to explore effective policies and practices to incorporate rehabilitative perspectives into dispositions and sentencing.

There are several non-custodial and rehabilitative measures which are considered as important mechanisms, as well as effective modes of treatment of offenders, in order to emphasize rehabilitation. Moreover, several challenges, both legal restrictions and difficulties of implementing non-custodial measures, and how to overcome those problems, were discussed. The following aspects were studied by comparison of the legal systems and practices in the countries represented in the group.

II. ISSUES AND CHALLENGES

A. Current Situation of Incorporating Rehabilitative Perspectives into Penalties and Case Dispositions

It was identified that most countries have adopted some kind of non-custodial measures, but some of them use basically suspended sentence and fine as alternatives to prison. Others have many alternative dispositions, as summarized in the Table 1.

Table 1 Types of non-custodial measures in the participating countries

	Non-Prose-cution	Suspension of proceeding	Suspended sentence	Fine	Community work	Restriction of rights	Health treatment	Com-munity fine	Restorative justice
Brazil	✓	✓	✓	✓	✓	✓	✓	✓	-
Côte d'Ivoire	✓	✓ (transaction)	✓	✓	✓ (not implemented)	✓ (judicial review)	-	-	-
PNG	✓	✓	✓	✓	-	-	-	-	-
Thailand	✓	✓	✓	✓	✓	✓	✓	✓	✓
Japan	✓	-	✓	✓	-	-	-	-	-
Sri Lanka	✓	✓	✓	✓	✓	-	✓	✓	✓
Kenya	-	-	✓	✓	✓	✓	✓	-	✓

When considering the issuance of non-custodial measures in their jurisdictions, most of the countries have several considerations and criteria to be used, mainly as follows: personal background, criminal history, type of crime, repentance and related individual circumstances. The views of the victims or their consent to the non-custodial measure is important; for example, in domestic violence cases, in some jurisdictions, the victims' views are considered by the authorities.

Most of the members of the group believe that, in their countries, there is satisfactory information collected about the offender during investigation or criminal procedure. However, for some countries, the willingness of offenders to give such information could prove difficult, as some systems principally use direct interviews with the offender and do not have special tools or human resources to collect personal information about the offender, for instance, from his community or work.

In the case of juvenile offenders, most of the countries do consider rehabilitative perspectives and provide treatment for them, such as training schools for juvenile rehabilitation. The members of the group agreed that rehabilitative perspectives are vital principles for treatment of juvenile offenders. However, in the case of adult offenders, rehabilitative perspectives are still not the major consideration in sentencing or case disposition. Besides the adoption of the Tokyo Rules, some of the countries also have national laws or guidelines imposing rehabilitation as a factor or as the aim of the penal system. In reality, decision-makers do not take this into consideration much, and they still give much value to punishment and retribution.

The mindset of the authorities about the advantages and importance of the use of non-custodial measures, the absence or inefficiency of the probation service and the pressure made by the society in order to send offenders to prison as retribution still represent the reality in most jurisdictions.

Prisons in many countries are overcrowded and, instead of preventing recidivism, they are places where offenders learn more about crimes and are integrated into criminal organizations.

B. Legal Impediments and Practical Challenges

In most countries, statutes place a limitation on imposing non-custodial measures for some types of crimes or maximum penalties, or exclude their use in "grave crimes" (or crimes with violence and drug trafficking). The lack of some non-custodial measures in some countries (such as restriction of rights and community service) was identified as a legal impediment that limits the consideration of rehabilitative perspectives in case dispositions.

One of the biggest obstacles identified is the attitude, both from the public and the authorities, towards the use of non-custodial measures in the pre-trial phase, as well as non-custodial sentences/measures in final case dispositions. This mindset can be attributed to the following reasons:

a. framing of sentencing laws that place an emphasis on custodial measures;

b. the belief of the authorities that pre-trial detention is the best method to ensure court attendance;

c. the belief that pre-trial detention is the best way to ensure non-interference in the investigation and to ensure public safety and security;

d. the media influence on the general public and the pressure on prosecutors and judges to mete out custodial sentences/measures;

e. the belief that custodial measures are the best to protect the community; and

f. prison being seen as the most effective punishment and means of deterrence to would-be criminals.

The lack of analysis by authorities of the individual risk and needs of the offender is identified as a practical challenge for rehabilitation.

In most countries, the different criminal justice players each have a role that they play, and information is often not shared between the various agencies. The lack of synergy between the agencies does not provide a true picture of the offender, affecting the offender's rehabilitative prospects.

III. POSSIBLE SOLUTIONS TO PROMOTE THE INCORPORATION OF REHABILITATIVE PERSPECTIVES INTO PENALTIES AND CASE DISPOSITIONS

Law and Policy Review – the revision of laws and offender-treatment policies should be considered where needed in order to create more options for meting out non-custodial measures that achieve rehabilitation and avoid recidivism. Introducing the importance of using imprisonment as a last resort might also help change the mindset of authorities. The

possibility of decriminalizing certain offences, such as the use of drugs and instead of incarcerating the addict they are offered treatment in drug rehabilitation facilities through the health care system (and not by criminal justice), is also a measure that would focus more on rehabilitation and that could be considered by some jurisdictions.

Alternatives to pre-trial detention – it was agreed that, in some cases, instead of pre-trial detention, the possibility of non-custodial measures, such as a judicial review to impose restriction of rights (e.g. impounding passports, house arrest, imposition of curfews, electronic monitoring), bail or bonds, could be considered. The use of pre-trial judicial hearings to collect testimonial evidence can also be effective in avoiding pre-trial detention as a way to prevent the manipulation of testimony and to ensure the availability of credible testimony at trial.

Use of evidence such as statistical data – Evidence-based methods on the benefits of non-custodial measures should be collected and provided to the community and authorities. The prison-overcrowding and reoffending statistics should be published continually, and evidence illustrating the effectiveness of the use of non-custodial and custodial measures should be shared.

Identifying individual needs – It was identified that the creation or improvement of probation services might help to identify best individual solutions for rehabilitation instead of, or complementary to, imprisonment. After identification of the individual needs, a better rehabilitation programme or treatment can be designed specifically for each offender in order to prevent recidivism. For the reintegration of offenders into the community, it is important to have an aftercare system to promote offenders' reinsertion into the labour market. This can be done by having skills training and helping offenders to find jobs, accommodation and also by giving social or psychological support to the offenders and their family members.

Promote awareness and the benefits of the use of non-custodial measures – Generally, there is a need to promote awareness of the effectiveness of non-custodial measures to prevent reoffending and rehabilitate ex-offenders, as well as awareness of the fact that non-custodial measures have a lower cost to society (budgetary considerations), in comparison to incarceration.

a) Encourage judicial officers and practitioners to use more non-custodial measures by raising their awareness about the advantages of non-custodial measures through the use of statistics, training seminars, among others.

b) Keeping the media accountable and encouraging the media to report responsibly, especially on criminal justice matters, is also fundamental for the acceptance of non-custodial measures and the incorporation of rehabilitative perspectives into penalties.

c) Creating public awareness of the importance of rehabilitative perspectives of non-custodial measures is fundamental. This can be done by providing information to the general public on the advantages of non-custodial sentences. Further, promoting the acceptance of ex-offenders back into the community helps to avoid reoffending. The public can also be involved in projects supporting the offenders, such as the volunteer probation officer programme in Japan and the Yellow

Ribbon Project in Singapore; such efforts can also contribute to changing the mindset of the general public.

Creation of synergy – The creation of synergy between the criminal justice chain and the criminal justice authorities (police, prosecutors, judges, correctional and probation officers) would also help to foster attitudinal change in case dispositions.

IV. CONCLUSION

Statistics prove that non-custodial measures are more effective in offender rehabilitation, community reintegration and preventing recidivism. Non-custodial measures are more cost-effective in both monetary terms and rehabilitative aspects than custodial measures. The creation and strengthening of synergy within the criminal justice sector chain will enhance the effectiveness of incorporating rehabilitative aspects in penalties and case dispositions.

GROUP 2
PROMOTING INTERVENTIONS, TREATMENT AND SUPPORT TAILORED TO OFFENDERS' INDIVIDUAL NEEDS

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I. INTRODUCTION

Most of the inmates who are incarcerated in prisons have generally committed crimes several times, and some of them come back to prison after release. As effective interventions have some effects on reducing recidivism, organizations in the justice system need effective tools and interventions to deal with those inmates who are more likely to reoffend.

This paper focuses on effective risk assessment and intervention in prison and the community, leading to preventing inmates from continuing their criminal behaviour. It aims to discuss the challenges and good practices in selected countries (i.e. the Dominican Republic, Indonesia, Japan, Malawi, Malaysia and Thailand). In addition, recommendations to deal with the challenges will be stated.

II. CHALLENGES AND GOOD PRACTICES

It is generally agreed that the need to prevent crime and reoffending cannot be overemphasized. Various countries have put in place measures to assess offenders and then place them under programmes that will assist them to change into better persons in their society. It is acknowledged that every offender has to be treated according to the offender's own circumstances. As will be noted from the discussion below, this paper has focused on the treatment plans available in prison and in the community through the probation service.

A. Justice System

1. Prison Environment

Treatment programmes in prisons are sometimes hampered by lack of appropriate structures and overcrowding. It is also difficult to carry out a treatment plan in the community in the absence of a functional probation system or with a probation system that has overstretched human resources.

The Dominican Republic is an example of how reforms can be implemented in prisons to achieve a reduction in recidivism. This nation is moving from its traditional

prison system to the New Penitentiary Management Model, in which all prisoners shall be guaranteed their constitutional and human rights, including enough clothing, food, housing and security in prison. This prison reform made it possible for the authorities to provide all inmates with evaluations to determine the type of treatment they will receive while serving their sentences and the rehabilitation programmes in prison.

2. Treatment in the Community

Currently, some countries have no community supervision system. During the discussions, the group found that other countries have good models of probation systems which can be displayed as good practices. In the particular case of Japan, in addition to having probation officers, they also have volunteer probation officers, who collaborate in the rehabilitation and reintegration of offenders into society.

B. Human Resources

Human resources are important factors needed in conducting assessments and interventions. The accuracy of the results of the assessment is determined by the quality of the officers carrying out the assessment. Likewise, the effectiveness of treatment is also determined by the competence of human resources carrying out the treatment.

Current conditions related to human resources in the participants' countries are:

- Insufficient numbers of human resources possessing the qualifications to carry out assessments and treatment;

- Considerable variations of competence in carrying out assessments and treatment.

Several countries (e.g. Indonesia, Japan, Malaysia and Thailand) conduct assessment trainings for officers who are responsible for assessment. Besides that, a simple intervention training programme is conducted for prison officers so that they can overcome the simple psychological and emotional problems of prisoners (Dominican Republic, Indonesia and Japan), whereas more complex interventions or treatments will be carried out by clinical psychologists and psychiatrists.

C. Assessment

Risk assessment attempts to predict individuals' likelihood of recidivism by exploring and evaluating their risk factors. Good risk assessment enables the tailoring of treatment plans and the administration of treatment programmes conforming to an individual's needs. This tailored treatment reduces the recidivism rate.

There are, however, some challenges in the tool and its practice. First, in some countries, it is only available for certain juvenile delinquents. Furthermore, the standard of the risk assessment tool might be questioned. Empirical evidence and updated knowledge about risk factors can be used to improve the tool by determining significant factors associated with different types of offences. In addition, some studies indicate that protective factors reducing the impact of risk behaviours and promoting an alternative pathway should be considered. These risk and protective factors need to be added in the tool for use with a particular group, and the tool has to be validated and standardized by statistical methods.

D. Specific Treatment Programmes

Many offenders face difficulties in their lives associated with their criminal behaviours such as conflicts in their family, chronic drug use, any type of abuse, and physical and mental impairment. Some of them need to be rehabilitated with certain types of treatment programmes in order to overcome such difficulties. Unfortunately, existing treatment programmes for dealing with these offenders may be ineffective and insufficient to respond to significant risk factors related to the likelihood of reoffending, particularly serious and violent offending. As several psychological and social factors mitigate behaviours associated with risk, treatment programmes should be designed to increase protective factors and decrease risk factors. A treatment programme needs to attend to various needs of the offender, have appropriate duration and be suitable to the offender's characteristics such as age and gender. Evaluation and statistical testing for the treatment programmes may need to be done. Furthermore, cooperating with partners (e.g. academic institutions) to develop and revise specific treatment programmes is a possible alternative to achieve effective outputs.

E. Awareness of the Community

The community should be aware that it has an important role to play in helping to provide effective offender rehabilitation. If the community does not help, the consequences of repeated offences by the offenders will have a negative effect on the society itself.

Governments need to be aware of the importance of community cooperation. They must have a precise and consistent policy on this issue by considering a form of programme that is intimate and can build good relationships between offenders and the community. The "Yellow Ribbon Project" in Singapore is an influential programme that builds strong and close friendships between the community and offenders. It is already a well-known brand and has been followed by other countries around the world. This has given aspiration to the offenders that they still have value to society. The same theme or essence needs to be created in all countries.

Awareness of the community is very important in playing a role in the rehabilitation of offenders. This understanding does not come easily. There must be a constant effort and a high level of commitment. When there is "trust" between the community, government and the offenders, the percentage of recidivism will decrease.

III. RECOMMENDATIONS

From the foregoing discussion, several recommendations have been proposed to assist in the prevention of recidivism in the various countries. Some of the recommendations arise out of best practices obtaining in some participating countries in the seminar. The recommendations are as follows:

- Establishing or improving probation systems and, if necessary, a volunteer probation officer system in which citizens with integrity in the community help offenders rehabilitate themselves;

- Building facilities and introducing tailored programmes for offenders both in prison and in the community in order to enhance the chance of rehabilitation;

- Improving the quality of assessment, which enables the tailoring of treatment plans and the provision of treatment programmes conforming to an individual's needs;

- Educating and training practitioners who conduct assessment and treatment in order to enhance the chance of reintegration of offenders into society;

- Strengthening public cooperation, which plays an important role in helping offenders return to ordinary life.

IV. CONCLUSION

With a concerted effort, reforms that pay particular attention to the prevention of recidivism are very possible. Apart from introducing innovative ideas to prevent crime or, where a crime has been committed, to prevent reoffending, various countries should be open to learning about systems that are working in other countries and adapting them to their unique circumstances.

GROUP 3

FOSTERING PUBLIC UNDERSTANDING AND MULTI-STAKEHOLDER PARTNERSHIPS FOR ACCEPTANCE OF OFFENDERS

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Co-Rapporteur: Ms. MIYAGAWA Tsubura (Japan)

Chairperson	Mr. Vanahnakone Chanthapanya	(Lao PDR)
Co-Chairperson	Mr. MATSUMURA Tadanori	(Japan)
Members	Mr. Oka Parama Budita Anak Agung	(Indonesia)
	Ms. Lilian Akinyi Otieno	(Kenya)
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	Prof. WATANABE Hiroyuki	(UNAFEI)

I. INTRODUCTION

Recent research reveals that support by stakeholders is required to tackle crime prevention and facilitate rehabilitation. At the same time, creating awareness about the magnitude of the matter is not easy. Although statistics show that Japan has a low crime rate, the country faces different challenges in rehabilitation and reintegration of offenders.

The topic allocated to group three was “Forming multi-stakeholder partnerships and engaging the community in the social reintegration of offenders.” At the initial stage of the group discussion, all the members highlighted the situation of their own countries. The member countries in this group include: Japan, Laos, Myanmar, Kenya, Indonesia and Maldives. The specific discussions include the public/private stakeholders and their involvement in the pretrial, post-trial and trial phases. It was identified that the member countries who have a well-established relationship with stakeholders in this matter are Japan and Kenya. The main discussions of the group focused the challenges faced regarding stakeholder involvement, solutions and best practices that can be suggested. Accordingly, based on the lectures provided and field visits, recommendations are provided to the pressing issues in all member countries of the group.

Hence, it was agreed that the most prevalent issue in all the countries is the concern on eliminating public stigmatization and enhancing offender acceptance. In order to overcome the mentioned issues, it is important to foster public understanding and multi-stakeholder partnerships for acceptance of offenders.

Based on the group discussion, several stages regarding the stigma and discrimination of offenders were identified. Therefore, the group came up with three steps according to the level of acceptance by the community and proposed the best practices based on the discussion.

II. ISSUES AND CHALLENGES

In the group discussion, the following three steps were identified to eliminate prejudice against offenders:

A. Public Awareness

The first step is to make the public aware of the need to support offenders and prevent recidivism.

In Japan, challenges must be overcome in order to demolish stigma and discrimination against offenders. Many intervention programmes have been conducted throughout the country. One of the main programmes is the Brighter Society Movement, which is a nationwide movement launched by the Ministry of Justice in 1949. The aim of the movement is to make society brighter and inclusive through the deeper understanding of offenders, their rehabilitation and their need for support from all the people in Japan. Every year the Ministry of Justice holds festivals that include the distribution of flyers and booklets. In addition, social media is used to create awareness among the public.

In addition to the movement, the public prosecutors' offices in Japan launched re-entry support in 2009. The support aims to provide social welfare services to suspects, in cooperation with social welfare agencies. The public prosecutors' offices take every opportunity to promote the importance of support because it is critical to prevent crime.

In Kenya, the involvement of community members in supervision through Community Probation Volunteers promotes the sense that the community is rehabilitating their own offender for community safety. Also, the Community Service Order (CSO) supervisor is from the community, and the work done is for the benefit of the community. Open days are held where successfully rehabilitated offenders tell their stories and encourage community members to help in social reintegration of offenders.

However, despite these challenges explained above, it is assumed that stigma and discrimination against offenders are still prevalent. It should be noted that these challenges have only involved people who are interested in offender rehabilitation. As a result, people who are not interested in the issue have not been sufficiently influenced.

B. Acceptance of Offenders into the Community

The second step is to eliminate prejudice against offenders without imprisonment. There is no doubt that offenders face discrimination in the community. It is understandable that people seek safer communities; therefore, offenders might be regarded as threats to the community. However, what should be emphasized from the viewpoint of building a safer community is as follows.

First, in many countries, most offenders who return to the community without imprisonment have committed minor crimes. It is doubtful that these offenders will become a threat to the community. Second, based on research, offenders often have a broad range of problems including lack of education, diseases, disadvantaged family backgrounds and so forth. Therefore, exclusion from the community will worsen the problems and cause reoffending.

C. Acceptance of Ex-inmates into the Community

The third step is to eliminate prejudice against ex-inmates: offenders who served time in a correctional facility. The ex-inmates released both before and after completion of the terms of their sentences face harsher stigma and discrimination than offenders without imprisonment. People fear ex-inmates because they are usually regarded as vicious criminals who are likely to commit crimes again. Thus, ex-inmates have difficulty finding housing, employment, healthcare services and getting married.

The general public understands that people who have been released from prison need to live without discrimination in society in order to reintegrate and prevent recidivism, but they refuse to accept offenders as their neighbours, which prevents the offenders from living normal lives.

In some countries, the ex-inmates released from prison receive various forms of support, such as admission to a halfway house, employment support and welfare support. In addition, some countries provide support through volunteer probation officers. However, not all of these interventions have been successful.

In response to this problem, for example, in Laos, where Buddhism is widespread, some ex-inmates released from correctional institutions are likely to become monks. However, it is not practical to adopt ex-inmates released from prisons or correctional institutions in countries with relatively low interest in religion. It is also possible to make a fresh start by living in a different area, where no one knows about the offender's criminal record. Even in this case, the Internet is so advanced that, even if offenders move, their criminal records may be revealed, and this does not lead to a fundamental solution. On the other hand, in some countries, ex-inmates are still facing the difficulties in finding housing, employment and health care services due to lack of links to the community.

III. BEST PRACTICES

In the discussions, it was proposed that the following best practices can be used in order to build more inclusive communities which discriminate less against offenders. It is critical to change the perception of people in the community. Based on the lessons and experiences obtained from both seminars and group work sessions, it should be noted that inclusive communities would effectively reduce recidivism. Especially, ex-inmates need tailored bridges linking them between the prison or correctional institutions and society in terms of rehabilitation and reintegration after they are released. At the same time, the state and society should organize programmes or projects with public participation in order to raise awareness for people in society on understanding and providing more chances for the ex-inmates in terms of reintegration into society and living together.

A. Awareness Raising

First, as discussed above, raising the community's awareness about offender rehabilitation is critical. For this purpose, public awareness campaigns by criminal justice agencies and other related agencies would be helpful. The more attractive and catchy tools will bring more effective results. For example, to publicize how offenders' community work or activities contribute to the community would be persuasive, as in

some countries, offenders are obliged to do something for a community as diversion or a condition of probation.

Singapore is a country that has a lower crime rate in comparison to other countries. A visiting expert from Singapore shared success stories related to the Yellow Ribbon Project in Singapore. The purpose of the Yellow Ribbon Project is to create awareness of the need to give second chances to offenders, secondly, to generate acceptance of offenders and their families by the community and, thirdly, to inspire community action to support the rehabilitation and reintegration of ex-inmates. The success of the Yellow Ribbon Project can be attributed to the media campaign and outreach strategies and strong community ownership of the Yellow Ribbon brand.

In order to make such projects more attractive, a symbol can be used to create and visualize the efforts to support reintegration. In general, in order to attract young people who are not interested in such activities, the government works to raise awareness of the Yellow Ribbon Project through public relations activities that make full use of SNS, marathons and concerts that seem to be largely successful. The point of this plan is to create a symbol of the activity, involve young people and clarify the goals, and it can be adopted in each country. In addition, Japan's Movement for a Brighter Society has created a mascot character called "Hogo-Chan", which can be taken up as a best practice.

B. Providing Support Services for Offenders

Second, in the discussion, the group members highlighted information delivered by visiting lectures who provided information about best practices in their respective countries. One of the best practices was the success of the Probation Service in Croatia, which aims to effectively resocialize and reintegrate offenders into the community. The positive effect brought to the country within a short timeframe is a key factor to acknowledge. Due to the positive outcome of the service, it has been acknowledged at the national and the international levels. Substitution of prison sentences with community work orders has had a significant role on public acceptance of offenders into the community. Those participating countries, such as Maldives and Myanmar, that do not have established mechanisms can adopt the best practices of the Croatia Probation Service.

In Japan, various public and private partners engage in supporting offenders. Some of the examples are volunteer probation officers (VPOs), who are volunteers working under the close supervision of the probation office and who play crucial roles in offender rehabilitation in the community. Big Brothers and Sisters (BBS) works with youth and juvenile offenders. Hello Work works for the promotion of employment support projects for ex-offenders. The establishment of halfway houses in Japan has played an important role in the accommodation and support of offenders who are released back to the community.

In Kenya, some of the following practices help with the acceptance of offenders within the community. Offenders perform community service orders (CSOs), which is unpaid public work to pay back to the community for the offences committed, for example, by doing afforestation for environmental conservation, rehabilitating community access roads and the like. Offenders with technical skills, like carpentry, make classroom desks for pupils and repair broken ones including school doors and windows. Empowering offenders is done, for example, with school fees for education and

technical skills including capital to start a business to be productive members of the community. This gives hope to the community that offenders will change positively and promotes acceptance.

C. Appreciation and Persuasion of the Community

Third, rewarding the community in various ways is also effective. In Japan, employers are paid money by a public agency when they hire an ex-inmate. This approach can also be applied to an offender. For example, instead of building facilities such as prisons or correctional institutions, it may be effective to improve roads in the surrounding area. Giving incentives to companies that let offenders work may also be effective. In order to resolve the high costs, we believe that the costs of prison should be reduced by community work whenever possible. Although the reward does not help to change the community's perception itself, it could enhance the acceptance of offenders.

It is also important to demonstrate the effectiveness of support for offenders to reduce crimes. It should be noted that most people in a community do not know that excluding offenders from the community possibly causes reoffending. Therefore, the criminal justice agencies are obliged to demonstrate that support for offenders will prevent crimes and contribute to building a safer community. At the same time, how to deliver the information to people in the community should be considered. Merely publishing a white paper or distributing a booklet to related agencies is not the best way to reach to people who are not interested in rehabilitation of offenders. Finding ways to involve those people is a key which we identified through discussions.

IV. CONCLUSION

Acceptance of an offender back into society by the public is a topic of global interest. Most developed countries face several stages of offender stigmatization and discrimination which tend to result in reoffending. However, it was agreed that in the past few years, few interventions have been done in their respective countries towards eliminating offender stigmatization and discrimination within the community. Effective measures are needed to overcome these issues. Implementation of the best practices mentioned in this report would minimize stigmatization of offenders and increase public acceptance in accordance with integrated approaches of all multi-stakeholder partnerships, including both public and private partners.

RESOURCE MATERIAL SERIES

No. 111

APPENDIX

UNAFEI

SUPPLEMENTAL MATERIAL

EVALUATION OF INTERVENTIONS FOR REDUCING THE RISK OF REOFFENDING: BASIC CONCEPTS AND RESEARCH EXAMPLES IN JAPAN

YAMAMOTO Mana[*]

I. INTRODUCTION

This article reflects on practical considerations in conducting evaluations and in interpreting the results of evaluations of interventions for reducing the risk of reoffending. Several studies conducted in Japan are introduced briefly to illustrate these considerations. In order to prevent reoffending, it is important to demonstrate what practices and treatment programmes are efficient and effective at preventing crime and rehabilitating offenders. Efforts have been developed to focus on “interventions” to prevent crime and delinquency and to examine the effects of interventions based on whether or not the recidivism rate has been reduced. There is a field of study called "programme evaluation" in which knowledge about methods are accumulated. Programme evaluation mainly includes (1) programme improvement, (2) knowledge generation and (3) accountability as its purposes (Rossi, Lipsey, & Freeman, 2004). *Programme improvement* has the purpose of identifying problems and points that can be improved by evaluation and taking steps to improve the effectiveness of the intervention. *Knowledge generation* has the purpose of obtaining knowledge that contributes to future interventions in the process of evaluating the intervention actually performed. *Accountability* is to publicly explain whether the intervention was implemented effectively, efficiently and within budget.

These demands for interventions in the prefectural and local governments have intensified recently in Japan. For example, in July 2012, the “Comprehensive Measures for Preventing Recidivism” were agreed upon at the Ministerial Conference on Crime Control, setting numerical targets for 2022. Accordingly, the need for policy evaluation in the field of crime prevention and criminal justice is growing.

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II. NECESSARY STEPS FOR EVALUATION

In order to examine the effectiveness of any intervention, two main questions must be answered: (1) Is programme effectiveness only due to the intervention, and (2) is programme effectiveness due to the intended intervention? Moreover, it is important to take into account the data collection plan before conducting the intervention on the assumption that an evaluation of effectiveness will be performed.

A. Is Programme Effectiveness Only Due to the Intervention? (Ensure That the Intervention's Effectiveness Was Not Influenced by Bias)

When conducting an evaluation, researchers should focus on the impact of the intervention itself. The effects of intervention can be considered to be factors related to intervention (content and frequency). Other relevant factors include the attributes and environment of implementation, the motivation of the target person, psychological characteristics and state, etc. In other words, even if the person does not reoffend, it is unclear whether this is due to the intervention or other psychological characteristics. Without understanding why the person does not reoffend, we cannot discuss effectiveness of the intervention itself. Thus, the evaluation process includes the exclusion of factors other than the intervention in order to clarify that the intervention itself had some effect. The possibility that known or unknown variables other than the intervention caused the observed effect is called "bias" (Torgerson & Torgerson, 2008).

I am going to touch on *selection bias* and *dropout bias* as forms of bias that threaten the validity of verification, and I will introduce an evaluation of a sex offender treatment programme conducted in prisons in Japan as a study where these forms of bias can be seen. First, *selection bias* occurs when offenders who are likely to succeed in the intervention are selected over other offenders who are less likely to succeed. Those who are likely to succeed in the first place may have a naturally lower recidivism rate than other offenders. As a result, even if the recidivism rate is lower, the effectiveness of the intervention cannot be proved. *Dropout bias* means that those who drop out of a certain intervention may have unique problems associated with criminality and social adaptability, and when those persons are removed from the treatment group, the apparent effect is that the recidivism rate of the treatment group is lower than that of the control group. Referring to the report on the effectiveness of the sex offender treatment programme in Japan (Yamamoto & Mori, 2016), static and dynamic risk scores indicate that recidivism risk is higher in the control group (poor/no attendance) than in the treated group (see Table 1).

Table 1. Basic Statistics and Differences between the Treated Group and Control Group

	Treated Group			Control Group			t or $\chi 2$	
	Number of offenders	Average or %	Standard deviation	Number of offenders	Average or %	Standard deviation		
Number of times imprisoned	1198	1.6	1.5	949	2.2	2.44	-6.055	**
Age at release	1198	38.5	11.67	949	42	12.99	-6.466	**
Parole rate	1198	65.0%	-	949	37.8%	-	157.23	**
Number of days served	1198	917.6	435.53	949	1032.5	951.93	-3.445	**
IQ-equivalent	1196	89	13.49	865	81.4	18.38	10.275	**
Static risk score	**1198**	**3.9**	**1.96**	**949**	**4.4**	**2.04**	**-6.007**	**
Dynamic risk score	**1198**	**6.5**	**1.88**	**874**	**6.9**	**2.11**	**-4.893**	**
Observation period	1198	604.2	352.67	949	620.2	379.25	-.997	

**p < .01

Note: Emphasis added by author

The reason is that those who did not attend the programme due to problematic behaviour in the facility did not enter the treatment group (selection bias), and those who were highly problematic dropped out if they participated in the programme (dropout bias). Since it is not possible to accurately evaluate the programme by simply comparing the recidivism rates of both groups as is, this evaluation was dealt with by using the quasi-experiment method. A method was used in which the treatment group and the control group were compared in the case where test scores of static risk (covariates) are the same (see Table 2).

Table 2. Results of regression analysis of "all types of recidivism" among all sex offenders in the sample, using Cox proportional hazard models in which the static risk score and the status of participation in the programme are independent variables

	Model 1	Model 2
Covariate	Coefficient (Odds ratio)	Coefficient (Odds ratio)
Static risk score	.35**(1.41)	.34**(1.40)
Status of participation in the programme	-	-.22*(.80)

**p <.01, *p <.05

Note: It was shown that the instantaneous probability of recidivism for the Treated Group was 0.80 times that for the Control Group Putting it the other way around, it was demonstrated that the instantaneous probability of recidivism for the Control Group was 1.25 times greater(1/.80=1.25) than that for the Treated Group, thereby demonstrating the effectiveness of the programme.

If these biases are eliminated and more accurate evaluation results are sought, measures such as planning a randomized controlled trial (RCT) may be considered at the stage of introducing the intervention. Even if it is impossible to introduce an RCT, it is necessary to collect covariate data in order to perform analysis by using the quasi-experiment method. Also, it is important to address these biases when interpreting the results.

B. Is Programme Effectiveness Due to the Intended Intervention? (Ensure That the Intervention Was Performed as Intended)

When conducting an evaluation, researchers should determine whether the intervention was conducted as intended. Theoretically, the evaluation of effectiveness can be explained as the process of clarification of the series of relationships leading to the reduction of the recidivism rate (outcome) as being directly caused by the intervention (input). It is also important to clarify whether or not the intervention was carried out as intended. If the expected effect was not obtained from the intervention, it would be

unclear whether there was a problem with the execution of the intervention or with the theory itself. For example, by examining this, we may sometimes find that the number of staff was insufficient, or the content of the intervention was difficult for the target person to understand.

As a specific research example, Yamamoto & Mori (2015) measured changes in coping skills before and after drug programmes, determining that the recidivism rate was reduced by obtaining coping skills (see Table 3 and Table 4, below).

Table 3. Result of *T*-test change before and after treatment

	Score
Treatment Programme	
before	28.75 (6.43)
after	31.35 (6.15)
t (*df*)	-4.74 (108)
p	.00 ***

$***p<.001$

Note: It was shown that the score of the coping skill was significantly higher after treatment than before.

Table 4. Result of regression analysis using Cox proportional hazard models in which age at the beginning of treatment, the number of times imprisoned, and the coping-skills score at the end of treatment

Covariances	*β coefficient*	Odds ratio	*Wald*	*p-value*
age at the beginning of treatment	.01	1.01	.14	.71
number of times imprisoned	.38	1.46	4.09	.04 *
coping-skills score at the end of treatment	-1.12	.33	6.32	.01 *

$*p<.05$

Note: It was demonstrated that the instantaneous probability of recidivism for the group with low coping-skills scores was 3.03 times greater (1/.33=3.03) than that for the group with high coping-skills scores at the end of treatment.

This is a suitable example to demonstrate that by understanding the change of psychological factors caused by the programme and confirming that the recidivism rate had fallen, it was possible to verify that the programme was working as intended. That is, by examining whether changes in psychological factors occur as a result of the treatment programmes and whether those changes contribute to the reduction of reoffending, it is possible to identify psychological factors that impact reoffending and to improve treatment programmes (see Figure 1, below).

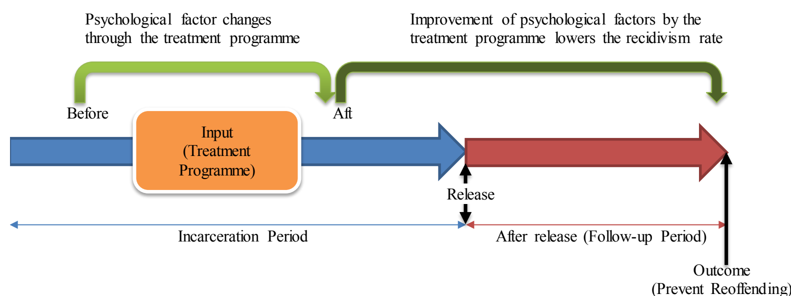

Figure 1. Logic model of the study conducted by Yamamoto & Mori (2015)

C. Interpreting the Results of Evaluation

I would like to touch upon some important points in interpreting the results of evaluation. First, although many studies have pointed out the effectiveness of psychological interventions in recidivism studies, the longer the follow-up period (the follow-up period after being issued), the worse the result. Therefore, for example, it is important to analyse areas for improvement and to make changes for subsequent treatment instead of concluding that the treatment was ineffective due to reoffending within X years. As a result, if the period until the next offence has been X + α years, it is necessary to analyse what has and has not been done while understanding what was different from the time of the previous crime.

Second, when evaluation is conducted on the basis of recidivism, there are many cases in which a positive result occurred but cannot be seen. It is a difficult task to prevent recidivism, and it may not be possible to detect the effect in the process of examining each and every intervention. In such cases, it is necessary to establish a system that can construct an effective intervention through trial and error. As a result of evaluation, there is a possibility to argue that the intervention may be determined to be ineffective and a wasteful allocation of budgetary resources, but it should be kept in mind that interventions into the lives of offenders may not always be overnight solutions. What is most important is to understand the results of evaluation objectively and use the results in the next step.

D. Conducting Research in Correctional Environments

Perennial issues associated with conducting research within a rigid environment, like the correctional environment, can stymie research projects and the enthusiasm to undertake them. Field, Archer, & Bowman (2019) identified problems and provided solutions, where possible, to challenges routinely encountered in prison-based research, including:

> [1] Overly hasty data collection, where a focus on getting as many responses as possible in a limited timeframe predominates, is likely to produce poor quality and incomplete data. It is important to remember that it is not easy, and often not possible, to correct or complete poor quality data. . . . In addition, the corrections environment is a fluid one in which inmates are often relocated or released. In light of these difficulties, precision and patience in data collection are encouraged, and the need to realistically plan for data collection by allowing a generous amount of time to collect sound and complete responses is emphasized. A comprehensive orientation for data collectors and other research staff who may not have experience working in a corrections environment is indispensable. (Field et al., 2019, p. 9)
>
> . . . .
>
> [2] Perhaps the biggest issue associated with collecting data from inmates relates to the accuracy of self-report data. In particular, it can be difficult for inmates to accurately estimate behavior prior to incarceration. This problem understandably increases with the length of time a person has been in prison and as their memories of many aspects of their life in the community fade. Inmates may also be reluctant to respond accurately to questions relating to specific topics, such as their offending history or the likelihood they will

> recidivate, as doing so may have serious repercussions for them. Certain aspects of prison life have also proven difficult to explore due to inmate reluctance to self-report. (Field et al., 2019, p. 10)
>
> . . . .
>
> [3] Inmates may also be circumspect because they do not trust researchers. This may be due to an authoritarian and often dangerous environment. Trust can be gained when inmates are approached honestly, with respect, and when the purpose of research is explained to them in meaningful ways. Whenever researchers engage with inmates, researchers should make a point of introducing themselves. (Field et al., 2019, p. 11)
>
> . . . .
>
> [4] Full disclosure regarding the purpose of the study and the use of data, and the assurance that they may withdraw from participation at any time and their data will be destroyed puts to rest the majority of concerns participants may have. (Field et al., 2019, p. 11)
>
> . . . .
>
> [5] Researchers have to build productive relationships with organizations and individuals working within the corrections environment and to ensure that procedures are in place to ensure proper oversight and clear, appropriate feedback. (Field et al., 2019, p. 12)

According to Field et al., these factors should be considered before the research is conducted. They concluded by stating that “undertaking research in the corrections environment is by no means easy, it remains, for those who undertake it, an exceptionally rewarding experience”. (Field et al., 2019, p. 12-13)

III. CONCLUSION

Although it is a positive change that reference to evaluation has become commonplace, it is necessary to avoid neglecting important points as a result of seeking rapid results. Therefore, it is important to establish a common understanding that evaluation effectiveness of interventions for offenders involves various difficulties and is a challenging task.

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The 174th International Senior Seminar

The 174th International Senior Seminar (UNAFEI, 16 January - 14 February 2020)

Left to Right:

Above

Dr. Matti Joutsen (Thailand Institute of Justice)

4th Row

Ms. Odagiri (Chef), Ms. Yamada (Staff), Mr. Toyoda (Staff), Ms. Matsuda (Staff), Ms. Warotamasikkhadit (Thailand), Ms. Bandeira Lins (Brazil), Ms. Iinuma (Staff), Ms. Okumoto (Staff), Mr. Kondo (Staff), Mr. Taomoto (Staff), Mr. Hirose (Staff), Mr. Tsukamoto (Staff), Ms. Tateoka (Japan), Mr. Saito (Staff)

3rd Row

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