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PREVENTION OF CRIME AND TREATMENT OF OFFENDERS

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COURSE REPORTS

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

RESOURCE MATERIAL SERIES NO. 116

UNAFEI

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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 this issue of *Prevention of Crime and Treatment of Offenders*, UNAFEI's Resource Material Series No. 116.

This issue contains the work products of the 180th International Senior Seminar on Promoting Legal Aid for Offenders and Victims, the Second International Training Course on Building Inclusive Societies on Rehabilitation and Social Reintegration of Offenders with Substance Use Disorders and the 181st International Training Course on Countermeasures against Transnational Organized Crime – The 20th Anniversary of UNTOC. These programmes were held to promote Goal 16 of the 2030 Agenda for Sustainable Development, which underscores the importance of governance and the rule of law in promoting peaceful, just and inclusive societies, as well as to follow-up on the implementation of the Kyoto Declaration adopted at the 14th United Nations Congress on Crime Prevention and Criminal Justice.

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 and other activities.

Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

October 2023

MORINAGA Taro
Director of UNAFEI

PART ONE

RESOURCE MATERIAL SERIES No. 116

Work Product of the 180th

International Senior Seminar

UNAFEI

REPORT OF THE SEMINAR

THE 180TH INTERNATIONAL SENIOR SEMINAR
"PROMOTING LEGAL AID FOR OFFENDERS AND VICTIMS"

1. Duration and Participants

- From 13 January to 6 February 2023
- 22 overseas participants from 16 countries
- 3 participants from Japan

2. Seminar Overview

This seminar focused on promoting legal aid for offenders and victims. The participants made presentations about legal aid for offenders and/or victims in their respective countries. Through presentations and lectures, the participants learned from the participating countries' experiences, practices and strategies with respect to legal aid for offenders and victims, with reference to recent international trends. In addition to enhancing their knowledge of effective measures, the participants established a global network for the exchange of updated information on the practices of the participating countries.

3. Contents of the Seminar

(1) Lectures

The following experts from overseas and Japanese experts, as well as UNAFEI faculty members, gave lectures as follows:

- Experts from overseas

  - Mr. Vincent Cheng Yang (Online)
    Senior Associate
    International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR, Vancouver, Canada)
    Title of lecture: Criminal Legal Aid in Canada

  - Ms. Anika Holterhof (Online)
    Crime Prevention and Criminal Justice Officer & Focal Point for Legal Aid, Crime Prevention and Criminal Justice Section, Division for Treaty Affairs
    United Nations Office on Drugs and Crime (UNODC, Vienna, Austria)
    Title of lecture: Enhancing Access to Legal Aid in Criminal Justice Systems
    (Joint lecture with Ms. Sonya Rahaman)

  - Ms. Sonya Rahaman (Online)
    Legal Consultant, the Access to Justice Team, Crime Prevention and Criminal Justice Section, Division for Treaty Affairs, United Nations Office on Drugs and Crime (UNODC, Vienna, Austria)
    Title of lecture: UNODC Technical Assistance on Access to Legal Aid for Suspects, Prisoners and Victims and Witnesses of Crime (Joint lecture with Ms. Anika Holterhof)

- Japanese Experts

  - Ms. KAMITANI Sakura
    Lawyer
    Sakura-Mirai Law Firm
    Title of lecture: Support for Victims of Crime by a Private Practice Lawyer in Japan

  - Ms. TOMITA Satoko
    Head, International Affairs Office (Lawyer)
    Japan Legal Support Center

Title of lecture: Legal Aid in Criminal Justice System in Japan

- Mr. MUTOU Issei
  Deputy Director, Crime Victim Support Office
  National Police Agency
  Title of lecture: Crime Victim Support Provided by the Police

- Mr. HASEGAWA Kaoru
  Head of the Crime Victim Support Office (Public Prosecutor)
  Tokyo District Public Prosecutors Office
  Title of lecture: Efforts of the Crime Victim Support Office of the Tokyo District Public Prosecutors Office

(2) Individual Presentations

All participants made presentations on the systems, practices and challenges related to legal aid in their respective countries. In response to each presentation, many questions were asked by participants and a lively Q&A session took place. Participants showed a strong interest in the systems, practices and challenges of other countries.

(3) Group Workshops

Participants were divided into four groups, and discussions were held in each group on how to promote legal aid for offenders and/or victims. Each group decided whether it would discuss both forms of legal aid or just one. One group discussed legal aid for offenders, two groups discussed legal aid for victims, and another group discussed both.

In the discussions, the participants shared the systems and practices of their respective countries, identified challenges facing the promotion of legal aid based on the knowledge gained through the individual presentations and lectures, and discussed specific solutions to resolve those challenges. Participants were very serious and enthusiastic, so very active and constructive discussions were held. The good relationships that had been established before the discussions also contributed to them.

Each group made presentations on the results of the discussion. In response to each presentation, participants in other groups asked many questions and a lively Q&A session was held.

4. Feedback from the Participants

Most participants made positive comments. They said that individual presentations, lectures, and group workshops were very helpful. In addition, some participants said that they were surprised at the discipline of the Japanese people, based on what they had seen and heard inside and outside the seminar.

5. Comments from the Programming Officer (Professor NAKAYAMA Noboru)

Legal aid for offenders has long been one of the themes of great concern in many countries. On the other hand, legal aid for victims is a new area compared to legal aid for offenders. Therefore, when I prepared this seminar, I felt a little anxious about whether the participants would be interested in legal aid for victims. However, legal aid for victims was also of very high interest to participants, and active Q&A and discussions were conducted in terms of both forms of legal aid.

I learned a lot from the participants, including the systems, practices, and challenges related to legal aid in the participating countries. In addition, I was deeply impressed by the seriousness and enthusiasm of participants. I hope that the knowledge gained in this seminar will contribute to the development of the systems and practices in their respective countries.

UNAFEI's in-person training courses had been suspended due to the Covid-19 pandemic. However, this seminar was held in person, following the 24th UNCAC Training Programme that was held in November last year. I felt that face-to-face communication made it easier to actively exchange opinions and to build a good personal network among participants, and increased the quality of the seminar. I strongly hope that the personal network that was established during this seminar will continue for a long time to come.

PARTICIPANTS' PAPERS

LEGAL AID FOR OFFENDERS IN BRUNEI DARUSSALAM

*Hjh Ervy Sufitriana Haji Abdul Rahman**

I. INTRODUCTION

Legal aid serves the purpose of aiding defendants who cannot afford to engage counsel and of facilitating access to legal representation. The Legal Aid Committee was set up by the Supreme Court of Brunei Darussalam to oversee and assess legal aid applications and appoint qualified counsel to eligible defendants. The Committee, which consists of Judicial Officers and staff members of the Supreme Court of Brunei Darussalam, upholds the following vision and mission statements, reflecting the core principle of legal aid:

Vision: To uphold the rule of law by ensuring access to justice for capital cases.
Mission: a. To provide independent, expeditious and transparent legal aid services.
b. To ensure the rights of defendants or people of limited means are met.
c. To secure public trust and confidence in the criminal justice system.

This paper summarizes the rules and procedures for legal aid applications for offenders in Brunei Darussalam.

II. LEGISLATION

Currently, there is no legislation that governs legal aid in Brunei Darussalam. However, the principles of legal aid are provided for under the Chief Justice's Practice Direction No. 10 of 1997 issued on 2 October 1997.

Practice Direction No. 10 of 1997
1. An appointment by the Chief Registrar to defend in a capital case is personal to the person appointed and should not be assumed by other persons in the firm.
2. An appointment will not usually be made of a person with less than five years of practice, whether in Brunei or elsewhere.
3. No member of the legal profession should refuse an appointment to defend in a capital case, except for good reason to the satisfaction of the Chief Registrar.
4. If a defendant is committed on a capital charge, the person appointed will continue to represent the defendant (and receive the appropriate fee therefor) even if the charge is reduced to one which is not capital.
5. Appointment to defend in a capital charge will include any charges which are tried with it.
6. A list will be published every year or so, specifying those who have been appointed in recent years and also those who may be appointed in the future.

III. ELIGIBILITY

A. General

Legal aid is only available for proceedings in the High Court and appeals to the Court of Appeal. The grant of legal aid will be decided by the Legal Aid Committee. The decision of the Committee is final. The

* Senior Magistrate, Magistrates' Court, Judiciary, Supreme Court, Brunei Darussalam.

Committee further reserves the right to discharge or revoke legal aid.

B. Charged with a Capital Offence

Defendants must have been charged with a capital offence to be eligible for Government legal aid. Capital punishments is imposed for certain capital offences under the Penal Code, the Misuse of Drugs Act, the Internal Security Act, the Public Order Act and the Anti–Terrorism Order 2011.

C. Applicants Must Pass the Means Test

In order to be eligible for legal aid, the applicant must pass the means test. The means test is an assessment tool to determine whether the applicant has sufficient funds to engage a lawyer to represent them. An applicant will only be eligible for legal aid if he earns less than an amount that has been set by the Legal Aid Committee. This test reviews the applicant's disposable income[1] and assets.[2] Applicants who fall outside the means test or can afford the cost of engaging a defence counsel will not be provided with legal aid.

The value of disposable income and assets is calculated by adding the gross monthly income and assets of the applicant, less the allowable deduction. Allowable deductions include rent and maintenance cost or living expenses. Applicant's debts are not included as allowable deductions. An applicant is eligible for legal aid if he earns less than an amount set by the Legal Aid committee. This amount is determined by the average salary earned by a person in Brunei and is subject to review by the Legal Aid Committee.

The Committee reserves the discretion to discharge legal aid if the financial circumstances of the applicant change. The Committee can revoke legal aid if the aided person fails to make full disclosure of his or her financial resources, made a false statement of his financial status and/or fails to report change in financial circumstances.

IV. PROCEDURE

Applicants may only apply for legal aid once charged with a capital offence and once the matter has been referred to the High Court. The applicant or his or her family members may apply for legal aid to the Chief Registrar via the High Court Registry. Applicants who are in prison may apply through the Prison Department. The High Court Judge hearing the matter may also refer the applicant to the Chief Registrar for legal aid to be considered. Applicants or their family members must fill in the legal aid forms available at the High Court Registry, and must submit the form within four weeks of the first mention in the High Court. The applicant will then be interviewed by legal assistants within one month of the application to assess the applicant's eligibility for legal aid. The Committee will then decide on the defendant's means not more than one month after submission.

If the applicant is eligible for legal aid, the Committee will nominate a qualified defence counsel to represent the applicant throughout the duration of the court proceedings until judgment and, in the event of a conviction, sentence is passed. If the applicant is unsatisfied with the nomination and request for a different counsel, the Committee has discretion to consider his application after hearing both the applicant and the appointed counsel.

If there is a conviction and the sentence passed is death, applicants that wish to appeal against the Judge's decision may apply for the legal aid to continue. The same counsel who represented the applicant during the trial may represent the applicant at the appeal. Applicants that wish to change counsel for the purpose of appeal shall provide satisfactory reasons to the Committee. Applicants who previously engaged a defence counsel, but subsequently discharged the counsel, may apply for legal aid provided that there are good

[1] Income includes salary, overtime pay, commissions, allowances, benefits, pensions, insurance payments and maintenance received.

[2] Assets include business, land, shares, cars, debentures and inheritance, but does not include the land on which the applicant built his or her house, tools of trade and household furniture. Assets in dispute are also not included, such as assets where legal ownership is undetermined and assets that are subject to a legal suit.

reasons in discharging the counsel in the first place. The grant of legal aid will be decided by the Legal Aid Committee. The decision of the Committee is final. The Committee further reserves the right to discharge or revoke legal aid.

V. APPOINTMENT OF COUNSEL

A. Guidelines

If legal aid is granted, the Committee will then assign a qualified defence counsel to represent the applicant. As stated in the Chief Justice's Practice Direction No. 10 of 1997, counsel must have at least five (5) years' experience in practice. Additionally, counsel must have at least conducted two capital trials or one capital trial and five criminal appeals either in the High Court or the Court of Appeal or five non-capital criminal trials, of which at least three must be in the High Court or Intermediate Court. Previous experiences of counsel from the bench or as deputy public prosecutor may be taken into account.

B. Remuneration

Guidelines on remuneration can be found in the Chief Justice's Circular No. 3 of 2001 as outlined below:

Chief Justice's Circular No. 3 of 2001

I am pleased to inform you that, as from 1st January 2001, the following scale of fees, in place of the present one, will be payable to anyone assigned to defend in a capital case.

High Court

Getting up fee	–	$7,000
Attending pre-trial reviews	–	$300
Brief fee for the first day of trial	–	$1,300
Refresher for each day or part of day after the first	–	$700

Court of Appeal

Getting up fee	–	$2,500
First day of appeal	–	$1,300
Refresher for each day after the first	–	$1,300
Petition for clemency	–	$700

Outlays reasonably incurred will also be refunded. These will include notes of evidence in a Magistrate's Court, photo charges for a bundle of authorities, visits to the defendant (in prison or elsewhere) fees payable to expert witnesses; the list is intended only to be a guide and is not comprehensive.

Counsel will only be paid for work undertaken after the granting of the legal aid. Work done before authorization of the committee, such as representing the application for appeal without prior confirmation from the committee that the legal aid is continued, will not be compensated. Counsel may not discharge themselves without good reason, failing which counsel will not be paid for work done.

VI. CASES

Between 2016 and October 2022, legal aid has been awarded in 29 cases. These cases were largely composed of drug-related cases (19 cases are under section 3A of Misuse of Drugs Act). Ten of the cases are defendants charged for murder under section 302 of the Penal Code.

VII. LEGAL ADVICE CLINIC

Defendants may also seek assistance from the Legal Advice Clinic. The Legal Advice Clinic was "established by the Law Society of Brunei Darussalam to assist members of the public who are unable to afford legal representation with free legal advice. It is part of the Law Society's mission to ensure equal access to justice for all."[3]

The Clinic functions to provide professional advice to parties engaged in legal proceedings where capital punishment does not apply.

The following requirements are imposed by the Law Society for eligibility to seek advice under the Legal Advice Clinic:

a. The applicant must not be represented by any legal firm.

b. The applicant must produce his or her current Brunei identity card at the Clinic.

c. The applicant must provide proof of his or her present residential address at the Clinic.

d. The applicant must be in receipt of income or allowance less than B$1,500 a month and provide proof of such fact.

VIII. CURRENT CHALLENGES

The Legal Aid committee are limited to a small pool of counsel who are willing to accept legal aid cases. This can cause conflict in schedules if counsel has more than one legal aid defendant or several cases in his portfolio.

[3] https://www.bruneilawsociety.com/legal-advice-clinic/

PROMOTION OF LEGAL AID FOR OFFENDERS AND VICTIMS IN THE DOMINICAN REPUBLIC

*Julio A. Aybar Ortiz**

I. ACCESS TO JUSTICE

Access to justice is a universally recognized principle which is of central importance within the estate of law, since without access to justice citizens will not be able to make themselves heard, exercise their rights, face discrimination or hold public officials to account for state decision-making.

This principle has been consigned in several international treaties of which the Dominican Republic is a signatory, including article 10 of the Universal Declaration of Human Rights, article 25 of the American Convention on Human Rights, article 14 of the International Covenant on Civil and Political Rights, article 13 of the Brasilia rules, and more recently in the Sustainable Development Goals, especially number 16.3, which states that each nation must promote the rule of law at the national and international levels and guarantee equal access to justice for all.

Sustainable development goal 16 summarizes the interest of the signatory nations arguing that: "the rule of law and development are significantly interrelated and mutually reinforcing, which is why it is essential for sustainable development at the national and international level." Goal 3 places the machinery of judiciary systems as irreplaceable factors in achieving peaceful and just societies. This is so because equitable access to justice is essential to guarantee the fundamental principle of human dignity, in the same way it serves as a cross-cutting mechanism for the redistribution of social justice.

In the Dominican nation, following these guidelines, the principle of access to justice has been enshrined in the constitution itself, when it states in article 69 that every person in the exercise of their legitimate rights and interests has the right to obtain effective judicial protection, with respect for due process that will be made up of the minimum guarantees, the first being the right to accessible, timely and free justice.

Nationwide, the debate on justice and access to it arouses great interest in different sectors of public opinion. The Judiciary has designated itself as a standard-bearer to reform the justice system, since 1994 there are records of clear actions and adoption of policies to improve the justice service and access to it. In effect, since the last appointments of judges of the Supreme Court of Justice who can rule on matters pertaining to the development of justice, the country has undergone considerable reforms in the entire justice administration apparatus, among them, the dignification of the judiciary career, the training of human capital for the judiciary and the expansion of relevant services such as the public defender's office.

The procedural criminal law, for its part, has also enshrined the principle of fast, free and timely access to justice; we can appreciate it in the criminal procedure code, for example, which establishes in articles 11 and 12 that all persons are equal before the law and must be treated according to the same rules and that the parties participate in the process on equal terms. For the full and unrestricted exercise of their powers and rights, judges must remove all obstacles that impede the validity or weaken this principle.

These principles of access to justice, equality of parties and dignity of people have promoted the creation of institutions whose purpose is to ensure the right of defence of citizens and that they can access judicial services easily, quickly and free of charge. Next, we go on to point out those in the Dominican legal system, their legal basis and the prevailing reality today.

* Judge, Criminal Courts of Santo Domingo Judicial Branch, Dominican Republic.

II. NATIONAL PUBLIC DEFENDER'S OFFICE

A. Background

The right to legal assistance has been enshrined since the first Dominican constitution, this right to legal assistance has evolved over time and it is no longer enough that the defendant knows the accusation, but that in his defence he can provide evidence, refute those that are produced against him, and of course, choose the services of a lawyer he trusts, in case he does not have the financial means to pay for it, he must be assigned a defender paid by the State as a guarantee of the aforementioned access to justice.

Before the creation of the national public defender's office, in the Dominican Republic there was only the figure of the office defender's, who was a legal professional appointed by the Judiciary who was attached to a certain court. Needless to say, he did not have the same preparation as current public defenders.

This defender was assigned to any person who requested it and only during the trial phase. Along with them, there were some popular lawyers of university law schools, some NGOs dedicated to free legal defence and law students who carried out their legal practice, since the law at that time allowed high school graduates to represent criminal defendants.

Faced with these deficiencies, local entities and international organizations signed a cooperation agreement in 1993, among them we can highlight the participation of the Supreme Court of Justice, the Pedro Henríquez Ureña National University (UNPHU) and the Latin American Institute of Nations for the Prevention of Crime and Treatment of Delinquents (ILANUD), starting a pilot project to establish a system of free legal assistance. The project failed promptly due to lack of funding; it was only in force until 1997. We must highlight that other entities supported and financed the project, such as the United States Agency for International Development (USAID). In 1998, the Commissioner for Support to the Reform and Modernization of Justice assumed this programme until it was closed for budgetary reasons and lack of political will.

Given the lack of public defenders, in 1998, the Supreme Court of Justice, making use of the power established in Article 77 of Law no. 327 of the Judiciary Career, which deals with arranging everything necessary to organize a system of free legal assistance, approved by Resolution no. 512, dated 19 April 2002, the creation of the National Office of Judiciary Defense, in order to organize, direct and guarantee the provision of technical defence services, provided in an effective, timely, free and permanent manner, to persons of low economic resources. This office was created within the judiciary body, with administrative dependency, but technical and functional independence.

B. Present

In 2004, Law no. 277, created the National Public Defender's Office. This law establishes the functional, administrative and financial autonomy of the institution within the Judiciary, remaining within it for the first five years and at the end of the aforementioned period it acquired total independence.

Law no. 277-04 not only changed the name of the National Office of Judicial Defense to the National Public Defender's Office (NPDO), but also created a career for the public defenders, clearly establishing the role of the defence attorney.

The reform of the Constitution of the Dominican Republic in 2010, at its article 176 enshrined the institutionality of the Public Defenders as an independent, administrative and budgetary body, responsible for the effective protection of the right to defence, which must be provided in response to the criteria of free, easy access, efficiency and quality, for people who for whatever reason are not assisted by a lawyer.

C. Future

The figure of the technical defender currently achieves constitutional recognition, and the fruits of the hard work carried out by public defenders every day for the benefit of low-income citizens can be appreciated. As a defender's office protocol, daily visits are made to the police detachments of all demarcations, so that citizens from the moment of their arrest – should they need it – can count on the immediate and technical assistance of a public defender, who ensures the guarantee of their fundamental rights of rapid access to justice as well as the protection of the offender's integrity.

The most serious problem that public defence currently has is that, according to the director of that body, 87 per cent of criminal cases nationwide are handled by public defenders who provide free assistance to low-income people in conflict with the law, but without having the office, the necessary staff, much less with a decent budget that allows them to face the function for which they have been designated with greater dignity.

The same director of the National Public Defender's Office, when giving statements on the occasion of the Defender's Day in 2022, explained in his speech that in relation to the cases of children and adolescents in conflict with criminal law, public defenders attend 100 per cent of the processes – a figure that powerfully draws attention.

This constitutional body with administrative, functional and financial autonomy has spent several years complaining in the public arena about how the budget assigned to it by the State is not enough to meet the needs of the institution and make it functional. It stands out among the statistics that the national office has approximately 200 public defenders, for a population of more than eleven million inhabitants, which is not enough for the universe of active criminal cases, where eight offices have yet to be opened at the national level to be able to guarantee due process and that the rights of the processed persons are not violated.

Only in 2017, the Public Defense was seized of 3,500 cases for abandonment of private lawyers, on which they already had assets. It stands out in practice that a single public defender handles up to 11 processes on a daily basis, which technically can affect the interests of the defendants by not being able to ensure the preparation of a sufficiently technical and effective defence due to lack of time.

III. VICTIM REPRESENTATION OFFICE

Like the previous body, the representation of victims is also a constitutional mandate, the text is enshrined in article 177, when it establishes that: "The State will be responsible for organizing free legal assistance programmes and services in favour of people who lack the economic resources to obtain judicial representation of their interests, particularly for the protection of the rights of the victim, without prejudice to the powers that correspond to the Public Ministry in the field of criminal proceedings."

Even so, the treatment given by the State to this mandate does not have the same impact as that given to the public defence, which is only in charge of representing offenders. The Attorney General of the Republic has timidly had to regulate this right, when through resolution 8518, dated 13 June 2005, the National Directorate for Attention to Victims is created, a body directly attached to the Attorney General of the Republic.

If we make a comparison, this situation was the one experienced by the national public defender's office in its origins, when it was a dependency of the judiciary, which leads us to the conclusion that political interest are needed to influence the victims representation office so that the appropriate arrangements can be made and this office can stand out and become a true bastion of the rights of victims in judiciary processes.

Unlike the public defence, which has a body of professional lawyers, the victim assistance office is much more modest since they have only a few offices nationwide. Currently, extensions of the office are being created in the Duarte province in the facilities of the Center of Community Houses of Justice, with the purpose of providing greater space facilities for the services offered to its users.

The function of these victim's service offices includes directing, coordinating and articulating the efforts of the institutions and organizations committed to the protection, care, intervention and/or monitoring of victims of violence, in addition to preventing violations of citizens' rights.

As its name indicates, this office only serves people who are victims of third parties for criminal offences who receive free legal assistance and guidance services at its offices.

It is worth saying that there are so few lawyers in the victims office that other public institutions have had to provide the service in order to satisfy the demand, among them we can mention the case of the Women's Ministry, which has an entire legal department to provide assistance to victims of gender and intrafamily violence, but they only provide service when the crime perpetrated is of this nature.

This ministry has created the service whose sole purpose is to provide support to victims of violence against women and intrafamily violence, without discrimination based on race, nationality, religion, social condition, in the different legal processes carried out by the users in search of that their human rights be respected, particularly their right to live a life free from violence.

This office is not independent since it is attached to the Direction of Prevention and Attention to Violence of the Women's Ministry, and the budget of the office also draws from the annual budget item of the ministry that creates it.

LEGAL AID TO OFFENDERS AND VICTIMS IN THE CRIMINAL JUSTICE SYSTEM OF THE MALDIVES

*Hussain Nashid**

I. INTRODUCTION

The right to criminal defence is a fundamental right recognized internationally. It entitles anyone being investigated for or charged with a criminal offence to legal advice, assistance and representation.[1] The provision of legal aid, as such, is regarded as a vital element in ensuring the right to criminal defence as well as in securing justice as a basic human right altogether. In that regard, the legal systems of many countries have adopted a mechanism to provide legal aid on a gratuitous basis and is usually provided from the State budget. The Maldives, although its legal system has remained greatly underdeveloped for decades, have also recognized the provision of legal aid in its criminal justice system.

This paper, therefore, aims to explore the right to legal counsel enshrined in the Constitution of the Maldives as well as to assess the legal aid framework and the challenges faced by the Maldivian government in fulfilling its constitutional obligations to provide legal aid in criminal cases.

II. LEGAL AID FRAMEWORK

A. Legal Aid to Offenders

The provision of legal aid in the Maldives evolved following the promulgation of the new Constitution in 2008. The new Constitution enshrines the key principles of equality before the law, the presumption of innocence, the right to fair and transparent hearings, along with all the guarantees necessary for the defence of anyone charged with a criminal offence.[2] In securing the right to criminal defence in the justice system, the new Constitution enumerates the right to legal counsel to offenders in different stages of the criminal justice process. As such, Article 48(b) of the Constitution stipulates the right of persons being arrested or detained to retain or instruct legal counsel, while Article 51(e) stipulates the right of persons charged with an offence to instruct and communicate with legal counsel of their own choosing. Similarly, Article 53 of the Constitution further enumerates the general right to legal counsel, and with regard to State-funded legal representation, Article 53(b) extends the responsibility upon the government to fund legal representation for serious crimes when the accused do not have the means to pay for it themselves. Therefore, the right to legal representation, with respect to criminal matters is provided to all criminal defendants regardless of the nature of the offence. However, state-funded legal representation is available only in those cases that meet the criteria mentioned in Article 53(b) of the Constitution.

The obligation of the State to provide legal aid to offenders is further detailed in the following statutes: Law Number 12/2016 (Criminal Procedure Act); Law Number 18/2019 (Juvenile Justice Act).

1. Legal Aid under the Criminal Procedure Code

Although the Constitution obligates the government to fund legal representation in serious criminal cases, it does not enumerate the type of offences that fall into the category of "serious criminal offence". The Criminal Procedure Act, which came into force in 2017 now lists a number of crimes that are deemed

* Assistant Public Prosecutor, Drug Unit / Public Prosecution, Prosecutor General Office, Maldives.
[1] United Nations, Model Law on Legal Aid in Criminal Justice Systems with Commentaries (2017).
[2] Constitution of the Republic of Maldives 2008, Arts. 20, 42, 48 and 51.

serious, namely the following:[3]

(a) Murder;
(b) Rape;
(c) Child Sexual Abuse;
(d) Terrorism and financing terrorism;
(e) Money-laundering;
(f) Human trafficking;
(g) Drug trafficking;
(h) Theft-related crimes (involving amounts with a value over MVR 100,000);
(i) Corruption and bribery (involving amounts with a value over MVR 100,000);
(j) Tax Evasion (Involving amounts with a value over MVR 500,000);
(k) Engaging in assault using sharp objects or weapons resulting grievous bodily harm;
(l) Rioting, *coup d'etat* related crimes and recruiting mercenaries;
(m) Offences graded Class 1 and 2 felonies under the Penal Code and any offence with a sentence of more than 10-years' imprisonment.

The Act goes on to describe the right to legal aid to offenders, both during the investigation and the trial process of their case. As such, S.51 of the Act mentions the general right to legal counsel during the investigation process. According to this section, if an accused who has been arrested or detained by the police for questioning without it amounting to an arrest, requests his right to legal counsel, the police must give him the chance to appoint a lawyer, and must only question him in the presence of his lawyer. If the detainee is accused of a serious offence and lacks the financial means to hire legal counsel, the section mandates the State to appoint a public defender for them as per established regulations.

The right to legal counsel during the trial process is specified in S.114 of the Act. Under this section, the defendant shall be informed of his right to legal counsel during the preliminary hearing. If the defendant demands legal counsel, the court shall allow him 10 days to do so and order him to answer the charges only with his legal counsel present. If the defendant is charged of a serious criminal offence and lacks the financial means to hire a lawyer, the court must allow him to appoint a lawyer from the State.

2. Legal Aid under the Juvenile Justice Act

Following the commencement of the Juvenile Justice Act in 2020, the government is also required to provide state-funded legal aid to children who have been detained or arrested on suspicion of committing a criminal offence and are unable to engage a lawyer for any reason.[4] Unlike, Article 53(b) of the Constitution, the Juvenile Justice Act imposes no coverage restriction on the provision of state-funded legal aid. If legal counsel cannot be arranged for a child accused of committing a crime who is arrested or detained, S.50(b) of the Act now mandates the State to provide legal counsel.

3. State-Funded Legal Aid

Since 2009, the Constitutional responsibility of the government to provide state-funded legal aid has been administered by the Attorney General's Office (AGO).[5] Since then, the AGO has been providing legal aid to people who meet the criteria mentioned in Article 53(b) of the Constitution. Furthermore, the AGO has also been fulfilling the State's obligation to provide state-funded legal aid for cases that fall under the regime of S.50(b) of the Juvenile Justice Act.

Therefore, although the concept of legal aid is to provide legal advice, assistance and representation at no cost for those without sufficient means, state-funded legal aid administered by the AGO is only available in the following two areas:

- Persons accused of or charged with a serious criminal offence who are unable to afford to engage a lawyer pursuant to Article 53(b) of the Constitution and S.51(e) of the Criminal Procedure Act;

[3] Criminal Procedure Act (law no: 12/2016), s.22.
[4] Juvenile Justice Act (Law no: 18/2019) s.50(b).
[5] UNDP Maldives Report, "Options for Legal Aid Programming in the Maldives", Working Paper Series, United Nations, 9.

- Children who have been detained or arrested on suspicion of committing a criminal offence and are unable to engage a lawyer for any reason pursuant to s.50(b) of the Juvenile Justice Act.

B. Legal Aid to Victims

While the Constitution provides state-funded legal aid for offenders charged with serious crimes, there is, unfortunately, no obligation on the State to provide such services for victims of such crimes. Following the commencement of Domestic Violence Act,[6] the State is now responsible for the provision of legal assistance upon request to those victims of domestic violence without the financial means. In practice, however, there is no functional mechanism for legal aid delivery for victims by the State. Luckily though, there are at least a few NGOs providing legal aid services for domestic violence, sexual and other abuse.[7] Among the few are the following NGOs:

- Advocacy and Legal Advice Centre: Established in 2012 to provide free legal advice to victims and witnesses of corruption. The Centre also provided services to vulnerable expats in the Maldives.[8]

- Family Legal Clinic: Founded in 2014 and registered as an Independent NGO in 2017 provides legal aid for victims of domestic violence and other forms of abuse.[9]

III. THE CHALLENGES IN ADMINISTERING LEGAL AID

While legal aid is a fundamental component of access to justice, like many other countries, the Maldives also face a number of challenges to accomplish this constitutional obligation. The Attorney General's Office, being the authority charged with procuring legal aid in the Maldives, have noted the main challenges they face to facilitate it. Below are some of these issues.[10]

A. Stigmatization

Often times defence lawyers are stigmatized within the society, discouraging them from representing individuals' charged with major crimes. It was reported by stakeholders that in 2011–2012, the Attorney General's Office was unable to find a lawyer in a total of six cases. The reasons provided by the Attorney General's Office for this lapse included the fact that lawyers did not want to defend persons accused of particularly heinous or unpopular crimes such as mothers killing their children and persons killing police officers.[11]

B. Geographical Gap

Due to the physical setting of the country, many fundamental services were largely limited to the capital city, Malé. There were no law firms and a very small number of practicing lawyers in the islands. Although this reality has not changed much, there are a few registered law firms in some of the islands now.[12] Furthermore, in order to ensure continuity of essential judicial services during the Covid-19 pandemic, the Maldives successfully introduced remote judicial services in the Maldives, moving a step forward in closing the geographical gap.

C. Unable to Monitor the Service

The lack of a proper legislative provision on issues such as a Legal Aid Act has vastly contributed to the

[6] Domestic Violence Act (law no: 3/2012), s.64.
[7] Hassan Haneef, "Easy Access to Justice for all Including Vulnerable Persons in Maldives", United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Resource Material Series No. 105 (168th International Senior Seminar, Participant Paper, September 2018) <https://www.unafei.or.jp/publications/pdf/RS_No105/No105_18_IP_Maldives.pdf> accessed 11 October 2022.
[8] Marium Jabyn, "Advancing Justice Interests and Human Rights of Vulnerable Groups through clinical Legal Education" [2020] Jinda Global Law Review 272.
[9] Ibid.
[10] UNDP Maldives Report, "Options for Legal Aid Programming in the Maldives", Working Paper Series, United Nations, 9.
[11] Ibid.
[12] Bar Council of the Maldives < https://maldivesbarcouncil.org/legal-practices-and-law-firms/> accessed 11 October 2022.

failure of regulating and monitoring the legal aid service. At present, the Regulation on the Provision of Legal Counsel[13] by the State is the only provision that covers the current regulatory measures on this area but it fails to address many imperative issues.

D. Lack of Competitive Fees

The monthly remuneration paid to the lawyers hired by the State for the purpose of legal aid is significantly low compared to what a defence lawyer charges per case. This has led most lawyers to choose to work in private practice, making it challenging for the State to recruit state-appointed lawyers for the eligible individuals.

E. Lack of Public Awareness about Legal Aid

In order for people to avail themselves of legal aid services, they must be fully aware of their right to a state-appointed lawyer. Particularly, the people living on small islands and vulnerable populations everywhere are known to be less aware of their rights. Although an accused's right to a lawyer is guaranteed during the investigation process and by the Courts, the lack of knowledge on how the legal aid system works is one of the major challenges faced by the State to provide legal aid services in the Maldives. In order for people to avail themselves of legal aid services, they must be fully aware of their right to a state-appointed lawyer.

IV. CONCLUSION

Undoubtedly, the legal aid frameworks and the Maldivian legal system in general have undergone notable transformations since 2008. In terms of the legal aid mechanism for instance, from not having a single statute that enumerates the type of offences that qualify for state-funded legal aid since 2009 to having at least a regulation that now provides guidance on the provision of state-funded legal aid. However, in order to further enhance the quality of legal aid services, it is important that a comprehensive Legal Aid Act that covers all the aspects of the legal aid service be enacted to ensure that both the legal aid providers as well as the recipient of it have a clear and comprehensive understanding of the system, thus, addressing the lack of public awareness of the legal aid system.

[13] Regulation on the Provision of Legal Counsel by the State (Regulation no: 2021/R-4).

LEGAL AID IN CRIMINAL JUSTICE IN VIET NAM

*Luong Thi Van**

I. REGULATIONS ON LEGAL AID IN CRIMINAL JUSTICE

In Viet Nam, before 1997, the right to legal aid was generally recognized in the right to a defence. The right to a defence is a constitutional right recognized in all versions of the Vietnamese constitutions. The 2013 Constitution stipulates: "Any person who has been arrested, held in custody, temporarily detained, prosecuted, investigated, charged or brought to trial in violation of the law has the right to self-defend or to seek the assistance of defence from lawyers or other people" (Clause 4 of Article 31) and for the first time recognizes: "The adversarial principle shall be guaranteed in trials" (Clause 5 of Article 103).

On 6 September 1997, the Prime Minister issued Decision No. 734/TTg on the establishment of organizations providing pro bono legal services for the poor and policy beneficiaries, creating an important legal basis for the emergence and development of a system of legal aid organizations. To flesh out Decision No. 734/TTg, the Ministry of Justice promulgated and coordinated with other ministries and branches in promulgating 15 legal documents quite comprehensively regulating legal aid organizations and activities; guiding the establishment, organization and operation of legal aid organizations and their payroll, personnel and material foundations; subjects, scope and domains of legal aid; building and development of a contingent of legal aid collaborators; management of legal aid and professional operations; and funding for legal aid activities.

On 29 June 2006, a historic step forward in legislative activities in the field of legal aid was that the National Assembly passed the Law on Legal Aid, raising the institutional level from the Prime Minister's Decision. The introduction of this Act consistently demonstrated the Party and State's policy in providing legal aid and legal support to protect citizens' legitimate rights and interests, especially the disadvantaged ones.

However, facing the new development requirements of the country, the implementation of the 2013 Constitution and many important new laws promulgated by the National Assembly, requirements for institutional modification to improve the quality of legal aid were raised. Therefore, on 20 June 2017, the XIV National Assembly approved the new Law on Legal Aid. The introduction of the Law on Legal Aid in 2017 marked an important milestone in perfecting the institution of legal aid in particular and implementing the 2013 Constitution on human rights, basic rights and obligations of citizens in general, thereby continuing to affirm that legal aid is an important element in the criminal justice system and the responsibility of the State in ensuring human rights and citizens' rights for legal aid beneficiaries.

The Criminal Procedure Code is an important legal document that is closely related to legal aid activities. Article 16 of the Criminal Procedure Code 2015 stipulates:

> An accused person is entitled to defend himself or be defended by a lawyer or another person. Competent procedural authorities and persons are responsible for informing accused persons, defendants and litigants of all of their rights of defence, legitimate rights and benefits according to this Law. Moreover, competent procedural authorities and persons shall provide explanations and guarantee the implementation of all of such rights and benefits.

It can be said that this is an important principle for legal aid institutions. To ensure this principle, the Criminal Procedure Code 2015 has a number of provisions on legal aid such as: (1) Supplementing the

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category of advocates as legal assistants to defend free of charge for policy beneficiaries; (2) Specifying the responsibilities of the procedure-conducting agency related to the guarantee of the right to legal aid specified in Article 71 (Responsibilities for announcement and explanation of rights and duties of participants in proceedings and assurance of their execution of such obligations and rights), Article 76 (Appointment of defence counsel) and articles related to assuring the rights and obligations of procedure participants; (3) Supplementing regulations on principles of conducting proceedings against persons under 18 years old (Article 414), including ensuring the right to a defence and legal aid.

At the same time, the Law on Temporary Detention and Custody also stipulates the rights and obligations of persons held in custody and temporary detention to receive instructions and explanation and exercise self-defence, ask for the appointment of defence counsel and legal aid (Point dd, Clause 1, Article 9).

To solidify the above provisions of the Law on Legal Aid, the Criminal Procedure Code, the Law on Temporary Detention and Custody, in order to ensure the right to legal aid of persons arrested, detained and accused, ministries have issued many specific guiding circulars such as the Circular of the Ministry of Public Security,[1] the Joint Circular of the Ministry of Justice, the Ministry of Public Security, the Ministry of National Defence, the Ministry of Finance, the Supreme People's Procuracy and the Supreme People's Court.[2]

Up to now, it can be said that the legal framework on legal aid in criminal justice has been relatively comprehensive, further affirming that legal aid is a legal institution associated with judicial institutions, establishing the State's responsibility in ensuring human rights and citizenship for the disadvantaged groups who cannot afford legal services and policy beneficiaries who need attention and help in specific cases directly related to their legitimate rights and interests.

II. LEGAL AID PROVIDERS AND THEIR ROLE IN CRIMINAL JUSTICE: LEGAL AID BENEFICIARIES; FIELDS AND FORMS OF LEGAL AID PROVISION

A. Legal Aid Providers and Their Role in Criminal Justice

1. The Law on Legal Aid

According to the Law on Legal Aid, legal aid-providing organizations are state legal aid centres and organizations participating in legal aid provision (including law-practicing organizations and legal counselling organizations signing legal aid contracts or registering to participate in legal aid provision in accordance with Law on Legal Aid).

Legal aid-providing persons include: (i) legal aid officers; (ii) lawyers providing legal aid under contracts signed with state legal aid centres; and lawyers providing legal aid as assigned by organizations participating in legal aid provision; (iii) legal counsellors with at least two years' experience in legal counselling in organizations participating in legal aid provision; and (iv) legal aid collaborators.

2. The Law on Lawyers

In addition to the Law on Legal Aid, the Law on Lawyers also stipulates that lawyers have an obligation to provide pro bono legal aid (at least four hours per year). Legal aid activities of lawyers according to the Law on Lawyers are different from legal aid activities according to the Law on Legal Aid. Providing pro bono legal aid to legal aid beneficiaries is not only an obligation but also a professional ethic of lawyers.

3. Role of Legal Aid Officers and Lawyers Providing Pro Bono Legal Aid in Criminal Justice

The 2015 Criminal Procedure Code stipulates that legal assistants and lawyers have the following roles: (1) a defence counsel (Article 72), (2) a defender for the legitimate rights and interests of persons facing accusations or requisitions for charges (Article 83), and (3) a defender for the legitimate rights and interests of crime victims or litigants (Article 84).

[1] Circular No. 46/2019/TT-BCA, dated 10 October 2019, by the Minister of Public Security.

[2] Joint Circular No. 10/2018/TTLT-BTP-BCA-BQP-BTC-VKSNDTC-TANDTC, dated 29 June 2018, issued jointly by Ministry of Justice, the Ministry of Public Security, the Ministry of National Defense, the Ministry of Finance, the Supreme People's Procuracy and the Supreme People's Court.

B. Legal Aid Beneficiaries

According to the Law on Legal Aid, there are 14 groups of legal aid beneficiaries: (1) People with meritorious service to the revolution; (2) members of poor households; (3) children; (4) ethnic minority people residing in areas with extremely difficult socio-economic conditions; (5) the accused who are aged between 16 years and under 18 years; (6) the accused who are members of households living just above the poverty line; (7) people experiencing financial difficulties who fall into one of the following cases: (i) natural parents, spouses or children of fallen heroes or persons nurturing fallen heroes during their childhood; (ii) agent orange victims; (iii) the elderly; (iv) people with disabilities; (v) victims in criminal cases who are aged between 16 years and under 18 years; (vi) victims of domestic violence cases or matters; (vii) victims of human trafficking under the Law on Human Trafficking Prevention and Combat; (viii) HIV-infected people.

C. Fields and Forms of Legal Aid Provision

In Viet Nam, legal aid is provided in law-related fields, except the fields of trade and commerce. Forms of legal aid provision include: (1) participation in legal proceedings; (2) legal counselling; (3) representation beyond legal proceedings.

III. RESULTS OF LEGAL AID IMPLEMENTATION IN CRIMINAL JUSTICE

According to Report No. 141/BC - BTP, dated 14 July 2021, by the Ministry of Justice on the preliminary review on five years of implementation of the Legal Aid Innovation Project for the period 2015–2025, from 2016 to 2020, there were 310,081 legal aid cases nationwide, including 92,082 cases involving legal proceedings (accounting for 29.7 per cent of the total number of cases). The number of cases involving legal proceedings increased gradually over the years (2016: 10,937 cases, 2017: 15,519 cases, 2018: 16,886 cases, 2019: 21,244 cases, 2020: 27,496 cases). In 2021 and 2022, despite the impact of the Covid-19 pandemic, legal aid providers continue to exhaust all solutions and combine great efforts to achieve the core goal of carrying out the case with high quality. As a result, the number of legal aid cases, especially those in legal proceedings in 2021, 2022 increased and reached the highest level ever since (33,127[3] cases in 2021 and 32,081[4] cases in 2022).

The quality of legal aid services has improved. Many cases of legal proceedings are effectively implemented by legal aid providers with many cases being sentenced to lighter sentences or transferring crimes or changing the penalty frame to a lower level than recommended by the People's Procuracy. The participation of the legal aid providers team at procedure-conducting agencies assists the procedure-conducting agencies and proceedings-conducting persons to objectively investigate, prosecute and adjudicate, handing out sentences to the right person for the right crime and in accordance with the law. For legal aid beneficiaries who are the accused or defendants, the case which involves legal aid providers helps them maintain peace of mind and confidence because they have spiritual support and legal help. This result is demonstrated in the increasing rate of successful and effective cases, the number of criminal cases accepted by the Trial Panel with favourable circumstances for the defendant at the request of the legal aid officer, the assessment and recognition of the procedure-conducting agencies and proceedings-conducting persons. According to statistics, from 2018 (the year the Law on Legal Aid 2017 took effect) to the end of the first six months of 2020, 62 of 63 provinces had 8,389 successful and effective cases (accounting for 27.84 per cent[5] of the total number of cases of legal proceedings).

According to the report of the Vietnam Bar Federation, the number of legal aid cases (without division of field) that lawyers had performed from 2015 to 2022 is as follows: 7,250 (2015); 85,320 (2016); 18,022 (2017); 20,692 (2018); 12,835 (2019); 17,877 (2020), 7329 (2021); 10998 (2022 – reports from 50 of 63 Bar Associations).

[3] Report No. 90/BC-CTGPL, dated 1 March 2022, by the Legal Aid Department, Ministry of Justice on summarizing legal aid innovation in 2021 and tasks and working solutions in 2022.

[4] https://tgpl.moj.gov.vn/Pages/chi-tiet-tin.aspx?ItemID=1920&l=Nghiencuutraodoi

[5] Report No. 141/BC - BTP, dated 14 July 2021, by the Ministry of Justice on the preliminary review of 5 years of implementation of the Project of Legal aid Innovation for the period 2015-2025.

IV. GENERAL AND PARTICULAR DIFFICULTIES AND CONCERNS RELATED TO LEGAL AID IN CRIMINAL JUSTICE FOR OFFENDERS AND VICTIMS

Firstly, people's ability to access legal aid services is still limited, so the annual number of legal aid cases is still low compared to the number of people eligible for legal aid.

Secondly, there are legal restrictions to legal aid:

- The right to legal aid has not been stipulated in the Constitution, so some legal aid providers and beneficiaries are not deeply aware of the concept of legal aid in the proceedings, the right to receive legal aid, and the responsibility of the competent authorities, especially the agency conducting the proceedings in ensuring the above right. Therefore, it is not possible to coordinate and create conditions for legal aid practitioners, legal aid providing organizations and legal aid beneficiaries in ensuring the implementation of legal aid rights of the beneficiaries.

- The implementation of provisions of procedural codes and laws related to legal aid beneficiaries is not as effective as intended.

Thirdly, although the quantity and quality of legal aid providers have been improved, they still cannot meet the people's legal aid demand. There are only 668 legal aid officers in 63 legal aid centres.

Fourthly, many organizations and individuals have not been mobilized to participate in legal aid activities according to the provisions of the Law on Legal Aid (currently there are only 667 of 17,284 lawyers, 159 of 5,000 law-practicing organizations, 39 of 200 legal consultancy centres nationwide participating in legal aid while lawyers and legal consultants have lots of knowledge and skills in legal aid in criminal justice for both offenders and victims).

Fifthly, although the beneficiaries of legal aid have been expanded (from 6 groups of beneficiaries to 14 groups of beneficiaries, according to the Law on Legal Aid 2017), those who are not eligible for legal aid according to the provisions of the Law on Legal Aid and cannot afford to hire a lawyer to protect their legitimate rights and interests make up the majority of the population.

Moreover, in some criminal cases, particularly serious cases falling under the jurisdiction of provincial-level investigating agencies, where the accused are the beneficiaries of legal aid, defence counsel must be appointed according to regulations. According to the Criminal Procedure Code 2015, the investigating agency often requests both the State Legal Aid Centre and the Bar Association to appoint defence counsel for the accused. That leads to the case of both defence cases where the Centre and the Bar Association participate in pro bono defence for the same beneficiaries in a case. In cases with a large number of defendants, the number of lawyers and legal aid officers involved is quite large, causing a waste of state resources (costs of remuneration for defence counsel from the state budget).

V. SOME ORIENTATIONS AND SOLUTIONS

A. Enhancing Access to Legal Aid Services for People

- Researching the implementation of a mechanism for legal aid providers to be on duty at headquarters or by phone at a number of procedure-conducting agencies (police, courts) so that persons held in custody, accused and defendants can get early access to legal aid.

- Set up and maintain a hotline on legal aid so that the legal aid beneficiaries can call whenever there is a dispute or legal problem.

- Promoting the propagation and dissemination of information on legal aid to the people, to help people access and directly enjoy their rights as prescribed by law; diversifying and innovating/creating

methods of communication about legal aid (via newspapers, radio, television, internet; drawing/acting plays to introduce legal aid; etc.) which are suitable for each specific area, people's intellectual level, especially suitable for ethnic minority groups.

B. Amending and Supplementing a Number of Provisions of the Law Related to Criminal Proceedings

- The right to legal aid should be recognized in the constitution.

- It is necessary to stipulate the time and procedures for the legal aid to participate as the defender for the legitimate rights and interests, especially the defender for the legitimate rights and interests of the denounced person, the accused person, person subject to prosecution. While the Criminal Procedure Code 2015 clearly stipulates the time when the defence counsel participate in the defence, the regulations on the time and procedures for becoming a defender for the legitimate rights and interests are not detailed, especially in the case of a defender for the legitimate rights and interests of the denounced person or the person subject to prosecution.

C. Strengthen Training and Education in Order to Develop Legal Aid Resources; Improve the Quality of Legal aid Providers

Legal assistants who perform procedures in criminal cases not only help legal aid beneficiaries in terms of legal matters, but also help and encourage them to overcome psychological crises. Therefore, in order to enhance the role of legal aid in participating in criminal proceedings and to protect the rights and best interests of legal aid beneficiaries, it is necessary to do the following:

- Organizing training courses, experience sharing seminars, workshops and other forms to improve the capacity of legal aid providers (including legal aid officers, legal aid collaborators, legal consultants and lawyers participating in legal aid), improve the researching skills of case files, improve questioning skills to clarify the contents of the case, enhance the qualifications of the legal aid providers involved in the case; equip those involved with experience using devices to store the information provided; improve skills to collect documents and evidence related to the case; conduct in-depth study of unclear or contradictory points of evidence, mitigating circumstances of criminal liability, motives, purposes, causes and conditions of crime, identity of legal aid beneficiaries; and further prepare to attend the trial thoroughly when participating in criminal proceedings. Legal assistants need to be familiar with the procedures under the Criminal Procedure Code 2015 and fully participate in investigative activities such as experimental investigation, scene examination, exhumation of corpses, distraint of property, confrontation, identification etc. (The Ministry of Justice and Departments of Justice annually organize many training courses for lawyers, legal aid providers and legal consultants in counselling skills and legal support for offenders and victims. The lecturers are lawyers, legal experts with experience in this field).

- Coordinating with the Supreme People's Court, the Supreme People's Procuracy and the Ministry of Public Security to select appropriate topics to train and draw experience on litigation trials in the spirit of judicial reform for legal aid providers and proceeding-conducting persons. Especially, training them with specific skills and experiences to work effectively with subjects with specific psychological characteristics such as: the accused who are aged between 16 years and under 18 years; the accused who are members of households living just above the poverty line; victims in criminal cases who are aged between 16 years and under 18 years; victims of domestic violence cases or matters; victims of human trafficking under the Law on Human Trafficking Prevention and Combat etc.; gender mainstreaming skills in legal aid implementation.

D. Attracting Social Resources

- Continue to study processes and procedures to create favourable conditions for law-practicing organizations, reputable and experienced legal consultancy centres to participate in legal aid; amending regulations on signing legal aid performance contracts in the direction of simplifying procedures and order for selecting and signing legal aid performance contracts. At the same time, the study has specific regulations to honour agencies, organizations and individuals participating and contributing to legal aid activities.

- Coordinating with socio-political, socio-political-professional organizations, socio-professional organizations (such as the Vietnam Lawyers Association, the Vietnam Bar Federation, Vietnam Association for Protection of Child Rights, Vietnam Women's Union etc.) to have solutions to mobilize and motivate members and members of the organization to contribute to the society through participation in legal aid.

- There should be coordination in the provision of legal aid according to the Law on Lawyers in order to take advantage of legal aid resources and save the state budget.

E. International Cooperation

Strengthening and expanding cooperation relationships with countries and international organizations on legal aid in general and legal aid in criminal justice in particular in various forms (technical assistance, capacity-building, support resources etc.). In recent years, the Ministry of Justice has also received support from a number of projects such as from the UNDP, UN Women, UNICEF, USAID etc.

PART TWO

RESOURCE MATERIAL SERIES No. 116

Work Product of the Second International Training Course on Building Inclusive Societies

UNAFEI

REPORT OF THE COURSE

THE SECOND INTERNATIONAL TRAINING COURSE ON BUILDING INCLUSIVE SOCIETIES

"REHABILITATION AND SOCIAL REINTEGRATION OF OFFENDERS WITH SUBSTANCE USE DISORDERS"

1. Duration and Participants

- From 8 to 20 March 2023
- 15 overseas participants from 10 countries (Belize, Brazil, Colombia, Egypt, Kenya, Maldives, Nepal, Peru, Samoa and Sri Lanka)
- 2 participants from Japan

2. Programme Overview

Goals 3, 16 and 17 of the 2030 Agenda for Sustainable Development (SDGs) seek to ensure healthy lives for all at all ages and promote peaceful and inclusive societies, and this training course aims to promote the role of criminal justice in achieving such societies. This programme offered participants an opportunity to share experiences and knowledge on effective measures to facilitate rehabilitation and social reintegration of offenders with substance use disorders.

3. The Content of the Programme

(1) Lectures

The following experts from overseas and Japanese experts, as well as UNAFEI faculty members, gave lectures:

- Experts from overseas

  - Dr. Wataru Kashino and Ms. Sanita Suhartono
    Prevention, Treatment and Rehabilitation Section
    United Nations Office on Drugs and Crime
    "Effective treatment interventions for people with substance use disorders in contact with the criminal justice system"

  - Ms. Ingunn Seim
    Associate Programme Officer
    Deputy Director of the Region West
    The Norwegian Correctional Service
    "Alternatives to incarceration for offenders with substance use disorders in Norway"

- Japanese experts

  - Dr. KOBAYASHI Oji
    Psychiatrist, Assistant Hospital Director
    Kanagawa Psychiatric Centre
    "Basics of alcohol and drug addiction – Psychopathology and treatment"

  - Mr. HIRAHATA Shohei
    Deputy Director of the Supervision Division
    Rehabilitation Bureau, Ministry of Justice of Japan
    "Community corrections for persons with substance use disorders"

  - Ms. SUZUKI Rie
    Official
    Correction Bureau, Ministry of Justice of Japan

"Treatment for drug offenders in penal institutions"

- Dr. HARAI Hiroaki
  Psychiatrist, Director
  Harai Clinic
  "Motivational interviewing"

- Mr. SHIKANO Akira and Ms. NAKAMURA Mayumi
  Tokyo Metropolitan Chubu General Mental Health Welfare Center
  "Efforts for measures against drug and alcohol dependence in Tokyo"

- Mr. KATO Takashi
  Director, Hachioji DARC
  "Activities and community cooperation of the Hachioji DARC"

(2) Individual Presentations

All participants made presentations on the systems, practices and challenges related to rehabilitation and social reintegration of offenders with substance use disorders in their respective countries. In response to each presentation, questions were asked by participants and a lively Q&A session took place.

(3) Group Workshops (Case Study)

Participants were divided into two groups. The participants discussed a fictional case of a female offender with substance use disorders and explored appropriate interventions for offenders with substance use disorders for rehabilitation and social reintegration, which is the main topic of this training programme.

The 23-year-old female named "X" in the fictional case used illicit drugs. Based on the facts of the case, one of the following two topics was allocated to each group to discuss: (i) Appropriate criminal justice dispositions for X considering her rehabilitation and reintegration and (ii) Appropriate treatment and interventions to facilitate X's rehabilitation and reintegration. The results of the discussion were presented by each group.

The discussions of each group referred to their knowledge gained from the lectures in the training programme and their professional experience. The participants constructively discussed and explored the best practices that could be applied to the case, making the most of their respective expertise.

(4) Dialogue with Volunteer Probation Officers (*Hogoshi*)

A session to listen to Japanese Volunteer Probation Officers' (*Hogoshi*) experience was held. The participants were divided into two groups, and two *hogoshi* joined each group. *Hogoshi* shared their experiences supporting rehabilitation of offenders as community volunteers and took many questions from the participants.

(5) Observation Visits

The participants visited Fuchu prison and a halfway house named Shinsai-kai, where they toured the facility, learned how it is managed and learned about rehabilitation and social reintegration programmes for offenders, including those with substance use disorders.

4. Feedback from the Participants

We received a lot of positive feedback from the participants. They commented that each component of the training programme was useful to improve practices in their country. They also were able to network with the participants from different countries.

5. Comments from the Programming Officer (Professor TANAKA Mii)

The main topic of the training programme was "Rehabilitation and Social Reintegration of Offenders with Substance Use Disorders". As substance use is a health issue, the programme included a wide range of content, not only in criminal justice and offender rehabilitation, but also in psychology and psychiatry, practices by health care agencies and peer support organizations, and counselling techniques. Reflecting the

wide range of programme content, participants came from diverse backgrounds, including police officers, prosecutors, judges, correctional officers, probation officers, psychologists and NGO staff. The rehabilitation of offenders with substance use disorders is an issue that requires multi-agency collaboration. The programme allowed practitioners from different parts of the justice system to learn and discuss issues together, which helped them realize the usefulness of such collaboration. The participants attended the lectures with great enthusiasm, including some outside their own field of expertise. I hope the insights gained through this programme will help them to improve the measures and practices for the rehabilitation and reintegration of offenders with substance use disorders in their respective countries.

VISITING EXPERTS' PAPER

EFFECTIVE TREATMENT INTERVENTIONS FOR PEOPLE WITH SUBSTANCE USE DISORDERS IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM

*Wataru Kashino*and Sanita Suhartono※*

I. INTRODUCTION

This article is based on the publication "Treatment and care of people with drug use disorders in contact with the criminal justice system: Alternatives to conviction or punishment"[1] (UNODC/WHO, 2019), the draft summary report on available measures based on an analysis of Note Verbale responses by UN Member States to UNODC on "Alternatives to conviction or punishment available for people who use drugs and with drug use disorders in contact with the criminal justice system"[2] (UNODC, 2022), the 65th Commission on Narcotic Drugs (CND) conference room paper on "Treatment of drug use disorders and associated mental health disorders in prison settings and forensic hospitals"[3] (UNODC, 2022), and the 66th CND conference room paper on "Review of interventions to treat drug use disorders among girls and women in the criminal justice system in low- and middle-income countries (UNODC, 2023).[4]

Enhancing prevention and treatment of drug use disorders while creating healthy, safe, and sustainable communities is in line with UNODC's strategy 2021–2025 pillar on addressing the world drug problem. It is an essential demand reduction strategy that contributes to significant public health importance of the 2016 United Nations General Assembly Special Session (UNGASS) on the World Drug Problem outcome document[5] and contributes to the overall achievement of Sustainable Development Goal (SDGs) 3,[6] targeting goal 3.5 ("Strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol"), and SDG 16,[7] targeting especially goal 16.3 ("Promote the rule of law at the national and

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[1] United Nations Office on Drugs and Crime, UNODC and World Health Organization, WHO, "Treatment and Care of People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment", 2019, https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_WHO_Alternatives.pdf

[2] United Nations Office on Drugs and Crime, UNODC, "Alternatives to Conviction or Punishment available for People Who Use Drugs and with Drug Use Disorders in Contact with the Criminal Justice System. Draft Summary Report on Available Measures Based on an Analysis of Note Verbale Responses by UN Member States to UNODC", 2022, https://www.unodc.org/res/drug-prevention-and-treatment/publications_html/Report_on_NVs_on_Alternatives_to_Incarceration_FINAL_0609221.pdf

[3] United Nations Office on Drugs and Crime, UNODC, E/CN.7/2022/CRP.9, "Treatment of Drug Use Disorders and Associated Mental Health Disorders in Prison Settings and Forensic Hospitals", 2022, https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_TX_in_Prisons_March22.pdf

[4] United Nations Office on Drugs and Crime, UNODC, E/CN.7/2023/CRP.XX, "Review of interventions to treat drug use disorders among girls and women in the criminal justice system in low- and middle-income countries", 2023 (forthcoming)

[5] United Nations Office on Drugs and Crime, UNODC, "Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem. Our Joint Commitment to effectively addressing and countering the World Drug Problem", 2016, https: //www. unodc.org/documents/postungass2016/outcome/V1603301-E.pdf

[6] United Nations Sustainable Development Knowledge Platform, SDG Goal 3 "Ensure healthy lives and promote well-being for all at all ages" https://sustainabledevelopment.un.org/sdg3

[7] United Nations Sustainable Development Knowledge Platform, SDG Goal 16 "Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels" https://sustainabledevelopment.un.org/sdg16

international level and ensure equal access to justice for all") and 16.6 ("Develop effective, accountable and transparent institutions at all levels").

The United Nations Office on Drugs and Crime (UNODC) and the World Health Organization (WHO) initiative on "Treatment and Care of People with Drug Use Disorders in Contact with the Criminal Justice System" was launched in 2016, in response to the Commission on Narcotic Drugs (CND) resolution 58/5 entitled "Supporting the collaboration of the public health and justice authorities in pursuing alternative measures to conviction or punishment for appropriate drug related offences of a minor nature".[8] The initiative aims at enhancing the knowledge, understanding, scope and potential for non-custodial alternative measures to conviction or punishment for drug-related offences of a minor nature. As part of the initiative, UNODC and WHO published a handbook on Alternatives to Conviction or Punishment" in 2019. Options of diverting people with drug use disorders who are in contact with the criminal justice system to treatment are being explored at a global level, in line with the international drug control conventions and other relevant international instruments, including human rights treaties and UN standards and norms in crime prevention and criminal justice.[9]

Moreover, providing effective treatment interventions for people with drug use disorders in contact with the criminal justice system, such as in prison settings responds to CND resolution 61/7 on "Addressing the specific needs of vulnerable members of the society in response to the world drug problem"[10] and the 2016 UNGASS Outcome Document that suggests United Nations (UN) Member States to "promote and strengthen regional and international cooperation in developing and implementing treatment-related initiatives (…), enhance technical cooperation and capacity-building and ensure non-discriminatory access to a broad range of interventions, including psychosocial, behavioural and medication-assisted treatment, as appropriate and in accordance with national legislation, as well as to rehabilitation, social reintegration and recovery-support programmes, including access to such services in prisons and after imprisonment (…)".

Understanding that prison is a high-risk environment for many health threats, including drug use and associated mental health disorders, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) highlight the needs for equitable access to health care, including mental health services and services for the treatment of drug use disorders.[11] The provision of treatment of drug use disorders in prison settings, as well as the integrated treatment of drug use disorders and related mental health disorders, has been furthermore described in the UNODC/WHO "International Standards for the Treatment of Drug Use Disorders".[12]

II. GOBAL SITUATION WITH REGARD TO DRUG USE DISORDERS IN THE CRIMINAL JUSTICE SYSTEM

According to the 2022 World Drug Report, there are currently about 284 million people worldwide who have used drugs at least once in 2020, of which an estimated 36.7 million people suffer from drug use

[8] United Nations Office on Drugs and Crime, UNODC, Commission on Narcotic Drugs (CND) resolution 58/5, "Supporting the collaboration of the public health and justice authorities in pursuing alternative measure to conviction or punishment for appropriate drug related offences of a minor nature", 2015, https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_58/2015_Resolutions/Resolution_58_5.pdf

[9] The United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules); the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)

[10] United Nations Office on Drugs and Crime, UNODC, Commission on Narcotic Drugs (CND) resolution 61/7, "Addressing the specific needs of vulnerable members of the society in response to the world drug problem", 2018, https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_61/CND_res2018/CND_Resolution_61_7.pdf

[11] United Nations Office on Drugs and Crime, UNODC, "The United Nations Standard Minimum Rules for the Treatment of Prisoners. (the Nelson Mandela Rules)", 2015, https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf

[12] United Nations Office on Drugs and Crime, UNODC and World Health Organization, WHO, "International Standards for the Treatment of Drug Use Disorders", 2020, https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC-WHO_International_Standards_Treatment_Drug_Use_Disorders_April_2020.pdf

disorders (UNODC, 2022).[13] Cannabis remains the most used drug globally. Drug use disorders are a multifactorial health disorder, associated with socio-economic inequalities, criminal behaviour and social exclusion. They account for 31 million healthy lives lost due to disability and premature deaths (DALYs) in 2019.

Although the majority of people using drugs is men, only 1 in 3 people using drugs is a woman. For this reason, treatment services are primarily designed to cater to the male patient majority and females who use drugs may not be adequately met. With increasing numbers of people using drugs, the treatment gap keeps growing, only 1 in 8 people with drug use disorders have access to any form of treatment globally. In terms of women with drug use disorders, they continue to be underrepresented in drug treatment, as only 1 in 6 women have access to treatment globally. This proportion of women in drug treatment varied greatly across regions, influenced by factors such as the prevalence of substance use disorders among men and women, accessibility and availability of treatment, as well as societal stigmas and additional barriers women may face when seeking treatment.

People with drug use disorders are often in contact with the criminal justice system, and many people in the criminal justice system have a history of drug use disorder (UNODC, 2019). The 2020 World Drug Report presented data on an estimated number of people in the criminal justice system for drug-related offences. There are about 3.1 million people arrested due to drug-related offences of which 61 per cent are arrested due to drug possession for their personal use (UNODC, 2019).[14] This data indicates that more people are in contact with the criminal justice system on drug possession charges globally and implies the need of non-custodial alternatives to conviction or punishment for people with drug use disorders and for key intervention points and types of diversion programmes along the criminal justice continuum. Non-custodial measures as an alternative to conviction or punishment are effective ways of treating people with drug use disorders in the criminal justice system, and diversion mechanisms should be applied whenever appropriate.

According to the 2015 World Drug Report, people who use drugs that have a history of incarceration are affected by increasing vulnerability to infectious diseases (UNODC, 2015).[15] Drug use does not stop in the criminal justice system or prison settings. Data from the 2017 World Drug Report confirms that the prevalence of drug use in prison settings is higher than drug use among the general population (UNODC, 2017).[16] Updated data from the 2019 World Drug Report confirms that 31 per cent of people have used any kind of drugs during incarceration globally at least once and 19 per cent of those even in the past month, 16 per cent of those have been reporting current use of cannabis and 10 per cent reporting heroin use (UNODC, 2019). Moreover, people who inject drugs often represent a large part of the prison population (WHO, 2014).[17]

Currently, there are nearly twelve million people in prison globally with about one-third of the people in prison being unsentenced and a solid majority of countries worldwide are operating with overcrowded prisons (UNODC, 2021).[18] According to the 2019 World Drug Report, it is important to note that with 35 per cent, there is a higher proportion of women than men, comparatively 19 per cent in prison for drug-related offences (UNODC, 2019).[19] Deeply concerning is also the rate of increase in the female prison population. Although they only make up 10 per cent of the world's prison population, they are increasing at a much faster rate than the male population, as there has been a 50 per cent increase since 2000, compared to 18 per cent for males in prisons (UNODC, 2021).[18] Fortunately, there has been a drastic reversal in the trend from

[13] United Nations Office on Drugs and Crime, World Drug Report 2022. https://www.unodc.org/res/wdr2022/MS/WDR22_Booklet_1.pdf

[14] United Nations Office on Drugs and Crime, UNODC, World Drug Report, "Global Overview of Drug Demand and Supply", 2019. https://wdr.unodc.org/wdr2019/prelaunch/WDR19_Booklet_2_DRUG_DEMAND.pdf

[15] United Nations Office on Drugs and Crime, UNODC, World Drug Report, "Status and Trend Analysis of Illicit Drug Markets", 2015, https://www.unodc.org/documents/wdr2015/WDR15_Chapter_1.pdf

[16] United Nations Office on Drugs and Crime, World Drug Report "Drug Demand and Supply" 2017. https://www.unodc.org/wdr2017/index.html

[17] United Nations Office on Drugs and Crime, World Drug Report "Drug Demand and Supply" 2017. https://www.unodc.org/wdr2017/index.html

[18] United Nations Office on Drugs and Crime, UNODC, Data Matters, 2021. https://www.unodc.org/documents/data-and-analysis/statistics/DataMatters1_prison.pdf

[19] United Nations Office on Drugs and Crime, UNODC, World Drug Report, "Global Overview of Drug Demand and Supply", 2019. https://wdr.unodc.org/wdr2019/prelaunch/WDR19_Booklet_2_DRUG_DEMAND.pdf

the preceding decades since the start of the Covid-19 pandemic. From 2019 to 2020, the global prison population actually declined by around 4.7 per cent from about 11.8 million to 11.2 million people held in prison settings.[20]

III. DRUG USE DISORDER TREATMENT AS AN ALTERTNATIVE TO CONVICTION OR PUNISHMENT

Individuals with drug use disorders who are in contact with the criminal justice system have complex needs and require a range of interventions that address both their drug use disorder and other social and health needs. When people with drug use disorders commit an offence of a minor nature, non-custodial measures for treatment, education or social reintegration should be applied as alternatives to conviction or punishment or be applied in addition to conviction and punishment. Providing treatment as an alternative to conviction or punishment for people with drug use disorders who are in contact with the criminal justice system in appropriate cases, contributes to improving public health and public safety.

UNODC's support in promoting non-custodial measures for people with drug use disorders in contact with the criminal justice system, along all stages of the criminal justice continuum is in line with the international policy and legal frameworks mentioned above. Moving from a coercive to a cohesive approach towards people with drug use disorders in contact with the criminal justice system requires the involvement of a multisectoral approach, including close collaboration among the health, social and justice sectors as well as a concerted investment in evidence-based treatment services in the community.

Health is a fundamental right, indispensable for the exercise of other human rights. The right to health extends to any person in contact with the criminal justice system and thus people with drug use disorders who are in contact with the criminal justice system should be provided with effective treatment of drug use disorders. The provision of treatment as an alternative to conviction or punishment, based on the international drug control conventions, can be implemented in appropriate cases of a minor nature:

- Community: Parties shall take all practical measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved

- Persons in contact with the criminal justice system: Parties may provide (those measures) either as an alternative to conviction or punishment or in addition to conviction or punishment

- Cases of drug consumption-related offences and other cases of drug trafficking of a minor nature: Parties shall measure those cases as an alternative to conviction or punishment

Treatment and care as an alternative to conviction or punishment has been implemented in different countries and different legal systems. However, the process, time frame and key judicial actors, in particular the roles of the prosecutor and the judge, can differ. A key task in implementing treatment and care requires provision of appropriate sensitization and training to the key policymakers, practitioners and advocates from different sectors. Sensitization and capacity-building should also be offered within communities to reduce stigma, both from the justice side as well as from the health side and strengthen a common understanding of drug use and drug use disorders, especially in the criminal justice setting.

Through the UNODC-WHO initiative and handbook on "Treatment and care for people with drug use disorders in contact with the criminal justice system – alternatives to conviction or punishment", seven principles highlight the importance of using treatment and care strategies for individuals with drug use disorders who come into contact with the justice system.

[20] https://dataunodc.un.org/dp-prisons-persons-held

1) *Drug use disorders are a public health concern requiring responses that are health-centred. Individuals with drug use disorders should not be punished for their drug use disorder but be provided with appropriate treatment.*

The right to health is a crucial aspect of drug policies, and promoting public health is a key part of addressing drug use disorders. Access to essential medicines and treatment, as well as the right to the prevention and treatment of diseases should be a universal right to health. However, due to varying levels of capacity, the full realization of the right to health is achieved progressively, and significant gaps still exist in the delivery of prevention, treatment and rehabilitation services for people with drug use disorders.

2) *The use of alternatives to conviction or punishment at all stages of the criminal justice system for offenders with drug use disorders, on the basis of an assessment using established criteria, should be encouraged.*

The criminal justice system should provide a range of non-custodial alternative measures at all stages of the process, considering the nature and gravity of the offence, offender background, and protection of victims and society. Non-custodial alternatives are effective in reducing reoffending and promoting social reintegration, and international drug control conventions allow Member States to provide drug treatment and other measures as an alternative or addition to conviction or punishment. The selection of alternatives should be based on established criteria related to the offence, offender, sentencing purpose and victim rights.

3) *Proportionality is required at all stages of the diversion and supervision process.*

Proportionality should be applied as a guiding principle throughout the criminal justice process, such as when deciding on the eligibility of an offender for diversion, the intensity and the length of supervision and the responses to non-compliance or breaches of conditions.

4) *A diversion to treatment should be made with the informed consent of the offender.*

The right to health includes the right to be free from torture, non-consensual treatment and experimentation. This means that alternatives to conviction or punishment shall not involve non-consensual medical or psychological experimentation or undue risk of physical or mental injury to the offender. In general, no treatment should be given to a patient without their informed consent, and nobody should be compelled to undergo medical treatment against their will, unless in an extreme acute emergency.

5) *The implementation of alternatives to conviction or punishment should respect legal and procedural safeguards.*

The observance of legal and procedural safeguards for protecting the rights of individuals with drug use disorders during the implementation of alternatives to conviction or punishment is crucial. Authorities must adhere to relevant laws and define and prescribe the application of alternative measures and conditions for supervision. Furthermore, special attention must be paid to respecting the rights to dignity and privacy, and individuals should have the right to review decisions, seek recourse, and appeal against decisions to modify or revoke alternatives. Lastly, the text emphasizes the importance of providing clear information to offenders about their obligations and rights and conducting drug treatment only by trained professionals.

6) *Specific attention to special groups and their access to treatment as an alternative to conviction or punishment is required to avoid discrimination.*

This principle highlights the importance of giving specific attention to the particular needs of various population groups such as women, young adults, persons with co-occurring mental health and drug use disorders, persons with cognitive and intellectual disabilities, and racial and ethnic minorities. Non-discrimination principles require adopting specific measures to eliminate existing forms of discrimination faced by particular groups in areas such as justice or health. For instance, women offenders and prisoners have unique needs that are often not adequately met by criminal justice systems dealing with male offenders, and gender-specific options should be implemented. Women with drug use disorders should be diverted or referred to gender-sensitive, trauma-informed treatment programmes, and residential treatment should

either be women-only or have gender segregation to increase safety and enhance outcomes.

7) Prisoners with drug use disorders may not be deprived of their right to health and are entitled to the same level of treatment as the general population.

The last principle emphasizes that even when individuals with drug use disorders are in prison, they still have the right to receive health care, which is the State's responsibility. They should have access to necessary health care services without discrimination, and these services should be organized in a way that ensures continuity of treatment and care, including for infectious diseases and mental and behavioural disorders. The relationship between health care professionals and prisoners should be governed by the same ethical and professional standards as those applicable to patients in the community, including the adherence to prisoners' autonomy with regard to their own health and informed consent in the doctor-patient relationship.

Between 2016 and 2021, UNODC consulted Member States three times to gather different information on non-custodial alternative measures to conviction or punishment for people with drug use disorders in contact with the criminal justice system. In 2016, UNODC reached out to UN Member States to obtain information on national responses with regard to justice and health collaboration on alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature through a Note Verbale (NV). In December 2020, the Commission of the African Union, together with UNODC reached out especially to African Union Member States to identify existing practices on alternatives to conviction or punishment for people with drug use disorders in contact with the criminal justice system through another Note Verbale and lastly, in February 2021, UNODC invited UN Member States to provide information on existing national tools on the collaboration of justice and health authorities with regard to alternatives measures to conviction or punishment for appropriate drug-related offences of a minor nature and the roles of different professional groups that divert people with drug use disorders in contact with the criminal justice system in appropriate cases at each stage of the criminal justice continuum, from pre-arrest to post-sentencing stage, through the last Note Verbale.

Based on these, a draft summary of NV responses was prepared by UNODC to provide an overview of existing laws, legislation and practices between justice and health authorities on alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature. The report highlights both progress and challenges in implementing the international drug conventions. Although Member States generally agreed on the need for alternatives to conviction or punishment for people with drug use disorders in contact with the criminal justice system, challenges in implementing these alternatives were highlighted, such as the lack of availability to treatment for drug use disorders and limited infrastructure and insufficient trained human resources for evidence-based assessment, treatment and supervision. To make non-custodial alternatives for people with drug use disorders in contact with the criminal justice system work, they need to be appropriately tailored to different groups and evaluated to demonstrate their effectiveness in achieving positive health, social and justice outcomes. It is also important to have a multisectoral approach and support from professionals and communities form the health, justice and social sectors, in establishing networks and mentoring programmes for sharing good practices and experiences between countries. More monitoring and evaluation efforts are needed to ensure that alternatives for people with drug use disorders in contact with the criminal justice system are successfully used. Further, efforts must be made to develop legal frameworks and national budgets to allow for a drug use disorder treatment infrastructure, in line with the UNODC-WHO International Standards for the Treatment of Drug Use Disorders. Overall, there is a need to build on the existing policy consensus and interest expressed by Member States to provide effective non-custodial alternatives to conviction or punishment for those in need.

To further advance the UNODC-WHO's initiative on "Treatment and care for people with drug use disorders in contact with the criminal justice system", UNODC has embarked on the development of detailed principles for the implementation of treatment as an alternative at the various stages of the criminal justice system, highlighting the different roles of health, justice and relevant professionals.

To start identifying these principles, UNODC organized four informal preparatory consultations from 2020 to 2022. The objective of these meetings was to outline options along the criminal justice continuum, namely at pre-arrest, pre-trial, trial and post-trial stages. While gaps and opportunities have been identified in implementing alternatives to conviction or punishment for people with drug use disorders in contact with

the criminal justice system along the different criminal justice stages, the principles will be developed after a technical consultation that will be held in 2023, where all stages of the criminal justice continuum and different professional groups will be considered.

Lastly, UNODC prepared a Conference Room Paper (CRP) which will be published at the upcoming 66th CND on the "Review on interventions to treat drug use disorders among girls and women in the criminal justice system in low-and middle-income countries", due to the unique needs of women with drug use disorders including those in criminal justice systems. Women with drug use disorders should be diverted or referred to gender-sensitive, trauma-informed drug treatment programmes, and if residential treatment is needed, they should either be women-only or consider gender segregation to increase safety and enhance outcomes.

The findings of this study indicated a public health concern for girls and women with drug use disorders who are involved with the criminal justice system. For those girls and women who come into contact with the criminal justice system, screening for substance use disorders should take place immediately. They should also be considered for alternatives to punishment or conviction, and gender-sensitive and trauma-informed treatment should be provided and evaluated for its effectiveness. While this study has summarized available findings on drug use disorders among women and girls in the criminal justice system, data from low-and-middle-income countries (LMIC) are limited. Therefore, further research is necessary to understand the factors that influence drug use and to develop effective interventions for this population, especially in low-and-middle income countries.

The report aimed to investigate the factors influencing drug use, including alcohol and tobacco use, in women and young girls who have had contact with the criminal justice system and live in LMIC. Available evidence of interventions targeting drug use and related harms in this group were discussed. Evidence of research in LMIC that include female cohorts was found in China and Thailand and studies providing psychosocial interventions for drug use disorders treatment such as cognitive behavioural therapy (CBT) and peer-based support groups in LMIC show no positive impact on drug use, injecting risk behaviours or sexual risk behaviours.

Government approaches and inter-agency cooperation within the criminal justice system were encouraged to ensure that drug use among women and girls are addressed and Member States responses adequately documented and evaluated. Additionally, development of national programmes that specifically target women and their traumatic experiences influencing their drug use was recommended.

IV. TREATMENT OF DRUG USE AND ASSOCIATED MENTAL HEALTH DISORDERS IN PRISON SETTINGS

Prison overcrowding severely impacts the quality of nutrition, sanitation, activities of people held in prison settings, physical and mental health conditions, and the care available for vulnerable groups in prison settings. Applying alternatives to conviction or punishment for people with drug use disorders in contact with the criminal justice system should be the first priority for all Member States. When alternatives to conviction or punishment are used to replace imprisonment, they contribute directly to the reduction of the prison population. A further advantage of using alternatives to imprisonment is that they can help reduce reoffending, and thereby lower the prison population in the long term. For people with drug use disorders in contact with the criminal justice system, treatment as an alternative to conviction or punishment can be applied in all appropriate cases to benefit public health and public safety. Moreover, drug treatment is more cost-effective than imprisonment.

The global prison population is on the rise, which poses serious negative health and social consequences including financial challenges for governments. It is estimated that around 10 to 50 per cent of all people held in prison have a drug use disorder. The rate of imprisonment varies across different regions, with some areas having higher rates of drug use and infectious diseases like HIV and tuberculosis among people held in prison settings. This makes them more vulnerable to health risks compared to the general population.

The Covid-19 pandemic has drastically shifted attention towards the issue of prison overcrowding. According to a global analysis, nearly 550,000 people held in prisons have contracted Covid-19 in 122 countries. Globally, close to 4,000 fatalities of people held in prison settings due to Covid-19 occurred in 47 countries.[21] In response to the pandemic, some prisons limited recreation, work opportunities and visitation rights – all essential components of rehabilitation programmes. Some countries opted to release people in prison settings at least temporarily, as prevention measures were difficult to implement, especially when they are overcrowded. Large numbers of people in custody, particularly people in remand, or the pre-trial stage, and those convicted of non-violent offences were among those released early. Since March 2020, at least 700,000 persons around the globe – or roughly 6 per cent of the estimated global prison population – have been authorized or considered eligible for release through emergency release mechanisms adopted by 119 Member States.

While criminal sanctions no doubt deter some people from drug use, those with more severe drug use disorders are relatively insensitive to the threat of criminal sanctions, and higher incarceration rates have not led to reduced drug use in the community. At the same time, incarceration has severe negative consequences for people with drug use disorders, their families and their communities, and incarceration can worsen the underlying health and social conditions associated with drug use. Above all, imprisonment should always be a measure of last resort and community-based interventions for people with drug use disorders, including those in contact with the criminal justice system, should always be considered.

UNODC supports Member States in addressing treatment of drug use and associated mental health disorders in prison settings, specifically for people with drug use disorders in contact with the criminal justice system, who have committed a more serious crime and, due to the nature of their crime, alternatives to conviction or punishment cannot be considered. Promoting appropriate, evidence-based drug use disorder treatment services in prison settings, in line with the UNODC WHO International Standards for the Treatment of Drug Use Disorders, coordination should take place between the criminal justice system and health and social services.

Prison health is an integral part of public health, as the right to health extends to people in contact with the criminal justice system, no matter the legal status of a person. This is in line with the UNODC Nelson Mandela Rules, specifically rule 109 which states that individuals with severe mental disabilities or health conditions should not be held in prisons and should be transferred to appropriate mental health facilities for treatment. Furthermore, all prisoners who require psychiatric treatment should receive it from the health care service.

Evidence-based treatment of drug use disorders that seeks to promote a balanced, human rights-centred and compassionate approach for individuals with drug use disorders contributes to the overall quality of care and outcomes for people with drug use disorders, including those in contact with the criminal justice system. According to the UNODC-WHO International Standards for the Treatment of Drug Use Disorders, and in line with other international conventions, drug use disorders should be considered primarily as health problems rather than criminal behaviours and, as a rule, people with drug use disorders should be treated in the health care system rather than the criminal justice system. Not all people with drug use disorders commit crimes and, even if they do, these are typically low-level crimes committed to sustain their drug use. Moreover, it is important to understand that drug use does not automatically lead to dependence.

In cases of drug use disorder treatment within prison settings, the criminal justice system should collaborate closely with the health and social sectors to ensure that treatment for drug use disorders in the health care system takes precedence over criminal prosecution or imprisonment. Law enforcement, legal practitioners and penitentiary or prison staff should receive appropriate training to effectively engage in and support drug use disorder treatment, rehabilitation and social reintegration. Upon prison release, providing a continuum of care, such as effective continuous drug use disorder treatment, lowers the risk of relapse, overdose death and reoffending. In all justice-related cases, people should receive the same health standards, including treatment and care for drug use disorders, of a standard, equal quality as available in the community.

[21] https://www.unodc.org/unodc/frontpage/2021/July/one-in-three-people-globally-imprisoned-without-trial--while-overcrowding-puts-prisoners-at-risk-of-contracting-covid-19--says-unodcs-first-global-research-on-imprisonment.html

In 2021, UNODC conducted an online and informal technical consultation on addressing treatment of drug use disorders and associated mental health disorders in prison settings, which brought together 120 experts from 53 countries. Health and justice practitioners, researchers, policymakers, civil society, people with lived experience, and representatives of regional and international organizations shared practices, challenges and needs on drug use and associated mental health disorders in prison settings. This year, the UNODC-WHO Informal Scientific Network is also preparing a statement of recommendations to be presented to policymakers at the 66th CND plenary on how to strengthen treatment of substance use disorders in prison settings.

In both meetings, closing the overall treatment gap for people with drug use disorders and increasing the accessibility of evidence-based treatment were underlined as key efforts to reduce substance use and criminal justice contacts, as well as associated prison overcrowding. Thus, improving public health and public safety in a synergic approach are beneficial for communities and prison settings. Pharmacological treatments for opioid use disorders, including when offered in prison settings, are effective clinical interventions in reducing substance use, related mortality and morbidity, as well as recidivism and reincarceration. Psychosocial interventions such as cognitive behavioural therapy, contingency management, the community reinforcement approach and therapeutic communities, including opioid overdose prevention trainings, were also considered beneficial.

Furthermore, UNODC conducted a literature review on the effectiveness of treatment options for drug use disorders in prison settings and forensic hospitals, soon to be published in the scientific journal *Criminal Justice and Behaviour*. Its findings suggest that the coverage of treatment at a global level is low.

Lastly, during the 65th CND, UNODC published a CRP that reported on treatment of drug use and associated mental health disorders in prison settings and forensic hospitals. Member States were asked: 1) to share information on existing national level programmes, protocols and good practices addressing mental health including the treatment of disorders/drug use disorders for people in prison settings and in forensic hospitals; and 2) to provide relevant evaluation of research data on the effectiveness of such treatment for mental health disorders and substance/drug use disorders in prison settings or in forensic hospitals. A total of 35 countries submitted information in response to the NV.

Responses to the NV request showed that Member States acknowledge the need for a high-quality response to drug use disorder treatment in prison settings. In particular, countries reported good practices in relation to drug use disorder treatment for people in prison settings and confirmed that the principle of equity is widely acknowledged. Countries provided an overview on inter-ministerial collaborations and synergies. Despite this progress, the responses highlighted a number of challenges, including drug treatment gaps and less common interventions.

V. CONCLUSION

UN Member States promote evidence-based treatment for people with drug use disorders in contact with the criminal justice system in cases of a minor nature an alternative to conviction or punishment and for more severe crimes also in prison settings, in line with relevant international policy agreements. Good practices were described by Member States but, overall, only with limited evaluation data on the outcomes. More efforts on monitoring and evaluation to inform policymakers on the importance of evidence-based treatment and care of drug use disorders for people in contact with the criminal justice system and associated public health and public safety benefits is recommended. Member States acknowledged that imprisonment by itself is ineffective in addressing drug use and drug use disorders. Alternatives to conviction or punishment, therefore, are a crucial component of proportionate responses to certain criminal offences. They have the potential to reduce reoffending, promote social reintegration and offer an opportunity to foster recovery from drug use disorders and a reduction in drug use and associated criminal behaviour.

The provision of treatment as an alternative to conviction or punishment can be implemented at all stages of the criminal justice process (pre-trial, trial, post-trial) in line with the International Conventions and other relevant legal documents as well as in coordination with the International Standards for Treatment of Drug Use Disorders. It is widely recognized that imprisonment alone is not a sufficient solution for dealing

with drug use and drug use disorders. Consequently, it is essential to have alternatives to conviction or punishment as a significant part of appropriate measures for certain criminal offences. Such alternatives have the potential to decrease recidivism rates, encourage social reintegration, and provide a chance for individuals to recover from drug use disorders and reduce their drug use and related criminal conduct.

Universal health coverage and equity are critical concepts for quality prison health service, and cooperation between health, justice and social services will ensure that people with drug use and associated mental health disorders in prisons are not left behind.

Above all, imprisonment should always be a measure of last resort, and community-based interventions for people with drug use disorders, including those in contact with the criminal justice system, should always be considered. Prison-based drug treatment needs to be of the same standard as community-based interventions and can only be effective if there is a continuity of treatment and care in the community. Non-custodial measures to increase access to drug dependence treatment, address prison overcrowding and reduce recidivism and alternatives to conviction or punishment are crucial for responding to the world drug problem more effectively and proportionately. Multisectoral partnerships are crucial to promote both public health and public safety. UNODC will continue to support Member States in promoting alternatives to conviction or punishment, including as an integral part in prison health services.

PARTICIPANTS' PAPER

THE ROLE OF THE EGYPTIAN PUBLIC PROSECUTION IN SUPPORTING THE TREATMENT AND REHABILITATION OF OFFENDERS WITH SUBSTANCE USE DISORDERS

*Ahmed Mahmoud Abdelbary Hamouda**

The Egyptian Public Prosecution in general and the Department of International Cooperation, Execution of Sentences, Care of Prisoners and Human Rights at the Office of the Prosecutor General in particular, support the reintegration and rehabilitation of drug users, so that it works to support treatment instead of punishment. This comes through its role as the trustee of the criminal case, and in light of the national strategy of the Egyptian State to confront the drug problem taking into account the recommendations of the United Nations, as the Arab Republic of Egypt is a member of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and one of the first signatories to the Convention on 20 December 1988.[1]

The Egyptian Public Prosecution has a societal and preventive role, where the law empowers it to harmonize and appropriate in terms of working to support the treatment of drug users instead of bringing the accused to criminal trial. It also works to propose general policies and plans for the treatment and combating of addiction, which originates from its role as a member of the National Council and the Fund for Combating and Treating Addiction, which will be clarified in more detail, but it must first be clarified: I. What is the Egyptian Public Prosecution, and II. What is the Department of International Cooperation Execution of Sentences and Care for Prisoners and Human Rights?

I. THE EGYPTIAN PUBLIC PROSECUTION

Article 184/[1] of the Constitution of the Arab Republic of Egypt[2] stipulates that "The judiciary is independent", and Article 189/[1] added that "The public prosecution is an integral part of the judiciary."

The Public Prosecution is a branch of the judicial authority, and it is the representative of society, and it acts in the public interest. It seeks to fulfil the obligations of the law and has the powers of investigation, accusation and pleading. It is exclusively competent to file criminal cases and initiate its procedures within the Arab Republic of Egypt before the competent authorities and courts. Its mission ends with the issuance of a final judgment, whether of conviction or innocence. The Prosecutor General of the Arab Republic of Egypt shall, in person or through a member of the Public Prosecution Office, initiate the criminal case as prescribed by law.

In addition, the Public Prosecution supervises prisons, judicial enforcement officers, and other places where criminal judgments are executed or designated for the detention of detainees, by visiting them, examining their books, and contacting any imprisoned therein. As stipulated in Article 27 of the Judicial Authority Law, "The Public Prosecution is responsible for supervising prisons and other places where criminal sentences are executed".

A. Functions of the Public Prosecution

Being a branch of the judiciary and a pillar of justice, the Public Prosecution is specialized in the following tasks:

* Chief Prosecutor at the Department of International Cooperation, Execution of Sentences, Care of Prisoners and Human Rights at the Office of the Prosecutor General, Egypt.

[1] https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VI-19&chapter=6&clang=_en

[2] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.sis.gov.eg/UP/Dustor/Dustor-English002.pdf

- Conducting the preliminary investigation in the criminal case, referring it and following it up before the court.
- Supervising the judicial police officers.
- Supervising the implementation of criminal judgments issued in criminal cases.
- Supervising reform and rehabilitation centres (prisons).
- Monitoring the application of the provisions of the Penal Code in an optimal manner in order to achieve respect and protection of human rights.

II. DEPARTMENT OF INTERNATIONAL COOPERATION, EXECUTION OF SENTENCES, AND CARE OF PRISONERS AND HUMAN RIGHTS IN THE OFFICE OF THE PROSECUTOR GENERAL

The Department of International Cooperation in the Office of the Prosecutor General is concerned with two tasks that are no less important than each other, one related to international cooperation and the other related to the implementation of sentences and the care of prisoners within the Arab Republic of Egypt. We refer to some of them as follows:

A. Competences Related to International Cooperation

- Preparing requests for the extradition or trial of the accused, and those sentenced to conviction who are abroad, in cases of felonies or misdemeanours.
- Issuing international arrest warrants.
- Preparing mutual legal assistance requests to take legal or investigation procedures in a foreign country.
- Representing the Public Prosecution in national, regional and international committees, meetings and conferences.

B. Competences Related to the Implementation of Sentences and the Care of Prisoners within the Arab Republic of Egypt

- Correspondence related to addiction and drug treatment facilities and placement orders therein to take the necessary action in their regard, as well as the decisions issued to release the accused detained in the mentioned facilities; Follow up on addiction and abuse treatment facilities in which detainees are kept and inquire about their recovery.
- Deciding on detainees who committed crimes during the period of placement in addiction and abuse treatment facilities for presentation to the competent court.
- Correspondence related to mental health facilities and orders of placement in them to take the necessary action in this regard, as well as decisions issued to release suspects who are detained in the mentioned facilities.
- Examination and deposit papers for the accused who were afflicted with a psychological or mental illness after the commission of the crime and before sentencing to implement the procedures of placement and follow-up with the mental health facility in which the accused is detained, to inquire about his or her recovery, and to notify the competent prosecution to deal with the case.
- Requests to postpone the execution of the penalty restricting freedom if the convict suffers from a

psychological or mental disorder before starting the execution.

- Representing the Public Prosecution in the presence of a committee reviewing the justifications and reasons for placing people with mental or mental illness in mental health facilities, as well as those placed in addiction and abuse treatment sanatoriums.

- Competence in everything related to complaints of conditional release at the level of the Republic to consider and examine them and take the necessary actions in this regard.

III. THE ROLE OF THE PUBLIC PROSECUTION IN SUPPORTING TREATMENT AND REHABILITATION

The Public Prosecution believes that treating and following-up on an addict until his or her recovery is an inherent human right. In this regard, the Egyptian Public Prosecution is one of the most important guarantor authorities for the effective enforcement of all international conventions, covenants, instruments and protocols related to the promotion and protection of human rights to which Egypt is a party. The Public Prosecution plays a vital and essential role in taking due criminal measures regarding investigation of the perpetrators and bringing them to criminal trial, while taking all necessary measures to assist and protect the victims – both Egyptians and foreigners – as permitted by law and Egypt's international obligations, taking into account the balance between the requirements of the security of society and the impunity of the perpetrators on one hand, and human rights and the principles of fair trial on the other hand.

The Public Prosecution has a role in working on rehabilitation and integration into society, and it stems from its authority to assess the appropriateness of referring the criminal case to trial or not, and the Public Prosecution has a supervisory role, as in the case of conditional release, in addition to its membership on the committee concerned with supervising those deposited in addiction treatment sanatoriums, adding to that, its role in participating in setting public policy regarding the treatment and combating of addiction and abuse.

The previous items will be covered below.

A. The Role of the Public Prosecution in Working to Rehabilitate and Integrate Drug Abusers into Society

The Public Prosecution in Egypt is the trustee of the criminal case and has the appropriate discretion to refer the criminal case or not. From this point of view, the Public Prosecution works according to this authority to rehabilitate and integrate the abuser back into society, through the following:

The Public Prosecution Office works in cases of drug abuse to inform drug users of their rights and duties and to support their treatment instead of bringing them to criminal trial, by interrogating them as patients and not as suspects and encouraging them to speak and express their desire for treatment. When expressing a desire for treatment, no criminal case shall be instituted against them, and in this case the drug user will remain under treatment in one of the sanatoriums established for this purpose to receive medical, psychological and social treatment until the committee decides otherwise, which has been stipulated in Article 37 bis (a) of the amended Law No. 182 of 1960 regarding drug control and regulation use and trade thereof.

It is clear from the foregoing that the Public Prosecution has the power not to file a criminal case against a drug user in the event that he expresses a desire for treatment, as the Public Prosecution is keen to support treatment instead of punishment, because treatment is more beneficial for the drug user and to society than punishment.

B. The Role of the Public Prosecution in Conditional Release

Conditional release means the release of a person sentenced to a penalty that restricts the person's freedom before the expiration of the entire period of the sentence, subject to conditions represented in obligations imposed on the person and restricting the freedom, and this freedom depends on the fulfilment of those obligations.

In this sense, the conditional release is not considered an end to the sentence, but rather a mere modification of the method of its implementation, in that the convict who is finally sentenced to a custodial sentence is released if part of the term of the sentence imposed is spent and certain conditions specified by the law are fulfilled and there is no danger to public security from the person's release.

A conditional release does not turn into a final release unless the remaining period of the sentence expires without being cancelled. It is not a right for the convict, but rather a discretionary decision for the authority authorized by the law to issue it, which is the Director General of Prisons.

The Public Prosecution is not the authority to issue the conditional release, but it is the one that works to supervise its cancellation or not, in the event that the convict violates the conditions of the conditional release, as stipulated in Article 59/1 of the Prisons Regulation Law No. 396 of 1956, "If the released person violates the conditions set for release and does not fulfil the duties imposed on him / her, he / she will be returned to prison to complete the remaining period of the sentence imposed".

The Public Prosecution, if the prison administration is able to request the cancellation of the conditional release, may refuse the cancellation if it finds out that the convicted person did not violate the requirements of the conditional release.

It should be noted that the Department of International Cooperation and Human Rights in the Office of the Prosecutor General is the one concerned with everything related to complaints of conditional release at the level of the Republic to consider, examine and take the necessary action in this regard.

IV. SUPERVISING COMMITTEE FOR THOSE DEPOSITED IN ADDICTION SANATORIUMS

The aforementioned drug control law, pursuant to Article 37, established a committee specialized in supervising those admitted to addiction treatment sanatoriums, and the formation of the committee was specified in Article 37 bis thereof, which states: "The committee shall be formed in each governorate headed by at least one counsellor at the Court of Appeal and a representative of the Public Prosecution Office at least with the rank of Chief Prosecutor and representatives of the Ministries of Health, Interior, Defense and Social Affairs". The formation of these committees and the determination of their terms of reference and the system of work for them shall be issued by a decision of the Minister of Justice.

The committee performs the following tasks:

- The committee receives requests for treatment from a drug user, his or her spouse, one of his or her ascendants, or one of his or her descendants.
- The committee decides on the request after examining it and hearing the statements of the concerned parties, and it may request the Public Prosecution to investigate the request and provide it with a memorandum of its opinion.
- The release of the detainee after his/ her recovery.
- If the committee finds that detention is useless, or the maximum period prescribed for it expires before the convict is cured, or if the detainee violates the duties imposed, or if the detainee commits any crimes during the term of detention, the aforementioned committee shall refer the matter to the court, through the Public Prosecution, by requesting the ruling to cancel the stay of execution.

A. The Role of the Public Prosecution in the Supervising Committee for Those Placed in Addiction Sanatoriums

The Public Prosecution Office is represented, according to the law, in the supervising committee for those placed in addiction sanatoriums through the Department of International Cooperation and Human Rights in the Office of the Public Prosecutor.

The Public Prosecution has an important role in the aforementioned committee, which is represented as follows:

- Supervising the implementation of sentences in general is an inherent competence of the Public Prosecution, which is the one that supervises, and since placing the drug user in sanatoriums is considered a modification of the method of implementation, so the public prosecution supervises it, which works to reduce the period spent by the convict in the sanatorium.

- If a drug abuser, his or her spouse, one of his or her ascendants, or one of his or her descendants submits to the committee a request to receive treatment, the committee shall decide on the request after examining it and hearing the statements of the concerned parties. It may request the Public Prosecution to investigate this request and provide it with a memorandum of its opinion and, after fulfilling the necessary requirements, order that there are no grounds for filing a criminal case against the drug user, and raise the opinion of the committee to place him or her in one of the treatment sanatoriums to receive medical, psychological and social treatment, as it is more beneficial for the drug user and to the society instead of punishment.

- If the drug user commits a crime during his or her placement, the Committee raises the matter to the court through the Public Prosecution, requesting a ruling to cancel the stay of execution.

- The Public Prosecution works to preserve all data related to the treatment of addicts or drug users, which reaches the knowledge of those in charge of it, as it is secret and those who divulge it are punished with a prison sentence.

The role of the Public Prosecution does not stop there; rather, the Public Prosecution has a role in setting policies related to abuse and combating addiction, through its membership in the Fund for Combating and Treating Addiction and Abuse, which was established under Article 37 bis (d) of the Drug Control Law, which stipulates that "a special fund is established to combat and treat addiction and abuse shall have a legal personality, and a decree of the President of the Republic shall issue its organization, affiliation, financing, and competence, based on a proposal by the National Council for Combating and Treating Addiction, among its competences shall be the establishment of sanatoriums and treatment homes for addicts and drug abusers". Also, among its resources are the fines adjudicated in the crimes stipulated in this law and the funds that are ordered to be confiscated.

V. FUND FOR COMBATING AND TREATING ADDICTION AND ABUSE

The Fund was established in 1991 based on Presidential Decree No. 46 of 1991 in implementation of what was stipulated in Amended Law 182 of 1960 regarding combating drugs and regulating their use and trafficking. The Fund works to confront the phenomenon through programmes and mechanisms that seek to besiege all its manifestations and pursue all developments that occur in its context in order to prevent Egyptian youth from falling into the clutches of drugs and protecting them from slipping into them and extending a helping hand to those among them who fall into addiction to return to it healthy and participating in the development of the community.

The Public Prosecution is one of the members of the Board of Directors of the Fund, along with several ministries and stakeholders, and the Public Prosecution is represented by a member of the Department of International Cooperation and Human Rights in the Office of the Prosecutor General.

The Fund follows a holistic, balanced and effective approach that combines prevention, treatment and full recovery efforts, as well as appropriate smart measures to reintegrate the recovered into society again through economic empowerment mechanisms.

The Fund's efforts, within the framework of its endeavour to achieve its objectives and principles, are concerned with the following activities:

- Developing and implementing general and specific policies in the field of combating and treating addiction.
- Developing the legislative system and building a knowledge base on the drug issue, while drawing up an integrated programme for evaluation and follow-up.
- Implementation of programmes and activities to prevent smoking and drugs, and to prepare young people and enable them to fight against smoking and drugs.
- Supporting the role of educational curricula for preventing smoking and addiction, by including an educational component that aims to do so.
- Availability, provision and support of free treatment and rehabilitation services for addicts, in cooperation with the concerned partners.
- The fund is based on a number of basic work principles, the most important of which is the involvement of youth and activating their role in prevention efforts.
- Focusing on the family as a basic input to protect young people from smoking and drugs, and supporting the role of the family in that, and relying on community dialogue.
- Mobilizing the efforts of the concerned authorities and its main partners such as the Ministries of Health, Justice, Interior, Education and other ministries, as well as civil society organizations concerned in this regard, in a way that can enhance the Egyptian initiative in this regard.

The Fund has an executive work in dealing with addicts, which is represented by operating a hotline numbered 1623, on which a specialist in prevention and treatment is present 24 hours a day, to consult with the addict and refer him or her directly to one of the hospitals of the Ministry of Health for free treatment without revealing any secrets related to addicts, and the Fund pays the fees of the treatment without notifying the addict of that, and the Fund has expanded in dealing with hospitals that have treatment departments, and has helped increase the number of families for addiction treatment in most government hospitals.

VI. THE ROLE OF THE PUBLIC PROSECUTION IN PROMOTING THE FIELD OF CRIMINAL JUSTICE FOR CHILDREN

Within the framework of the Public Prosecution's desire to activate the texts of laws related to criminal justice for children contained in the constitution and the international laws, conventions and covenants to which Egypt is a party, the Egyptian Public Prosecution Office signed a memorandum of understanding with the United Nations Children's Fund. In the context of this cooperation, a manual was developed to protect the rights of child victims and witnesses of crimes, as well as a manual for the application of restorative justice for children in contact with the law based on regional and international practices.

The Office of the Public Prosecutor continued to support this process by issuing binding instructions with the aim of activating the role assigned to members of the Public Prosecution Office in applying the restorative justice system and periodic follow-up on places of activating alternative measures to detention and places of detention.

VII. CONCLUSION

In the end, drug users are perpetrators of a crime in the first place, but criminal justice requires treatment for them, and it is important to direct attention to treatment rather than punishment, as punishment in itself may not be a means of deterrence that achieves its purpose, since imprisonment in itself is ineffective.

Treatment may even create an opportunity to work to promote recovery from these disorders and reduce the criminal behaviour associated with them.

It should be noted that the same approach is being followed in Egypt according to what has been stipulated in Article 37 bis (a) of the amended Law No. 182 of 1960 regarding drug control and regulation of use and trade thereof.

PART THREE

RESOURCE MATERIAL SERIES
No. 116

Work Product of the 181st

International Training Course

UNAFEI

REPORT OF THE COURSE

THE 181ST UNAFEI INTERNATIONAL TRAINING COURSE "COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME –THE 20TH ANNIVERSARY OF UNTOC–"

1. Duration and Participants

- From 12 May to 8 June 2023
- 25 overseas participants from 19 jurisdictions
- 3 participants from Japan

2. Programme Overview

This programme mainly focused on the challenges that criminal justice practitioners face in countermeasures against transnational organized crime. In particular, the programme considered the following topics: (1) Effective legal frameworks and measures in investigation, prosecution and trial in various transnational organized crime cases such as organized violent crime cases, organized drug smuggling cases, organized financial crime cases and organized human trafficking/migrant smuggling cases; (2) Effective legal frameworks and measures on matters which often arise in various transnational organized crime categories and require special consideration, such as tracing and confiscation of proceeds of crime, asset recovery, witness and whistle-blower protection and mutual legal assistance, etc.; (3) Good practices, challenges and solutions in specific cases of transnational organized crime in each jurisdiction with regard to issues under paragraphs (1) and (2). Also, this programme, through lectures on best practices and the participants' discussions, aimed to enhance the participants' knowledge of measures to improve anti-transnational-organized-crime efforts in their respective jurisdictions and to establish a global network for the exchange of updated information on the practices of the respective jurisdictions.

3. Contents of the Programme

(1) Lectures

The following visiting experts from overseas and Japanese experts, as well as UNAFEI faculty members, gave lectures as follows:

- Visiting Experts

  - Mr. Rosario Salvatore Aitala
    Judge, International Criminal Court
    Lecture on investigation in transnational organized crime cases and the role of the International Criminal Court

  - Mr. David Jaffe
    Chief of Organized Crime and Gang Section
    U.S. Department of Justice, Criminal Division
    "Challenges in Complex Transnational Investigations and Prosecutions"

  - Ms. Daniela Buruiană
    Chair of the Eurojust Anti-Trafficking Team and National Member for Romania
    European Union Agency for Criminal Justice cooperation
    "Eurojust's Work against Trafficking in Human Beings: Current Landscape, Challenges, Available Tools"

- Japanese Experts

  - Mr. HARADA Ryotaro
    Superintendent, Organized Crime Department, Criminal Affairs Bureau
    National Police Agency
    Lecture on investigation in transnational phone scam cases

- Mr. HORII Takashi
  Superintendent, Organized Crime Department, Criminal Affairs Bureau,
  National Police Agency
  "Current situation of *Boryokudans* in Japan"

- Mr. OKADA Tetsuaki
  Public Prosecutor, Criminal Affairs Department
  Tokyo District Public Prosecutors Office
  "Problems with Investigations and Trials in Transnational Economic Crimes"

(2) Individual Presentations

Participants shared the practices and the challenges in their respective jurisdictions regarding the theme of the programme through their individual presentations. Materials of all presentations were uploaded online for later reference by the participants.

(3) Group Workshops

The participants were divided into three groups and exchanged their views and knowledge through discussions on the following topics: (1) Effective legal frameworks and measures in investigation, prosecution and trial in various transnational organized crime cases such as organized violent crime cases, organized drug smuggling cases, organized financial crime cases and organized human trafficking/migrant smuggling cases; (2) Effective legal frameworks and measures on matters which often arise in various transnational organized crime categories and require special consideration, such as tracing and confiscation of proceeds of crime, asset recovery, witness and whistle-blower protection and mutual legal assistance, etc.; (3) Good practices, challenges and solutions in specific cases of transnational organized crime in each jurisdiction with regard to issues under paragraphs (1) and (2).

In each group, the participants mainly discussed effective measures to identify perpetrators in investigating transnational organized crime cases involving information and communication technologies, including network services with high anonymity, enhanced use of special techniques, forfeiture of proceeds of crimes and domestic/international cooperation among authorities etc. Participants recommended the following practices: legal frameworks and practices which enable disclosure of various information from various network service providers, effective use of non-conviction-based confiscation and enhancing protection of witnesses and whistle-blowers.

Each group concluded the programme by presenting their recommendations based on the challenges they identified and what they learned in the lectures, presentations by the fellow participants and discussions.

4. Feedback from the Participants

Most participants commented that the lectures, individual presentations and group workshops helped them gain knowledge. On the other hand, some commented that it would have been better if more specific information and best practices had been exchanged and intensive discussion on mock cases had been included in the programme. We appreciate all the feedback from the participants and will take them into consideration in planning our future training programmes.

5. Comments from the Programming Officer (Professor YAMANA Rompei)

Transnational organized crime is an issue that all countries face, and identifying countermeasures thereto is an urgent issue throughout the world. I felt the enthusiasm of the participants in the programme by their active participation. The participants were highly interested in the lectures, presentations and group workshops, which led to active discussions. We hope that the knowledge gained from this course will help the development and enhancement of each participant's jurisdiction.

This programme was held in person at UNAFEI's facilities for the first time since its in-person training courses were suspended due to the Covid-19 pandemic. In-person communication among both overseas and Japanese participants throughout the programme made it easier for them to understand the content of the programme as well as to establish personal connections. We hope that this personal network will contribute to preventing transnational organized crime in the future.

PARTICIPANTS' PAPERS

BRAZIL'S COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIMES: AN ANALYSIS OF THE CATRAPO (DRUG TRAFFICKING), MENSALINHO (BRIBERY) AND DIAMONDS EXPORT CASES

*Vinícius Alexandre Fortes de Barros**

I. INTRODUCTION: TRANSNATIONAL CRIMINAL GROUPS IN BRAZIL

At the national level, Brazil has developed and strengthened some institutions to combat those criminal factions. Despite its global economic position and interest in becoming a developed country, Brazil still struggles to fight transnational organized groups. Brazil's current criminality records show this tug-of-war between development and criminality. For example, the Global Organized Crime Index recently placed Brazil with a 6.50 criminality score and 22nd place of 193 countries.[1] Hence, this demonstrates that Brazil has progressed in combating criminal groups but has a long path to run.

Brazil has two large domestic criminal gangs: The First Capital Command and the Red Command.[2] Nevertheless, the vastness of Brazil's territory and the impossibility of constant state surveillance due to economic reasons facilitate Brazilian criminals to form transnational criminal organizations. As an example of this, the United Nations Office on Drugs and Crime (UNODC)'s most recent Global Report on Cocaine 2023 illustrated that there had been an "increased use of aircraft for incoming and internal movement of cocaine" in Brazil.[3]

Because of its position amidst the Latin Countries and Europe, Brazil has become a *route* for many other transnational criminal groups to export drugs to Europe or to convert illegal assets into legal ones in tax-haven countries. Moreover, the Global Report on Cocaine 2023 shows that "Brazilian crime groups seem to be increasingly targeting Portuguese-speaking countries like Mozambique, Angola and Cabo Verde. And airports in Kenya and Ethiopia are also believed to have been targeted as 'stopovers' *en route* from Brazil to Europe".[4]

Regarding transnational criminal groups, another context is that they are not limited to committing a specific crime. On the contrary, the UNODC demonstrates that this type of criminality is flexible and fluid – also called intertwined transnational threats.[5] More and more of those groups use cybertools to commit cybercrimes or facilitate the commission of other crimes.[6] For example, they are hiring members from online

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[1] Global Initiative Against Transnational Organized Crime, "Global Organized Crime Index 2021" (2021) <https://ocindex.net/assets/downloads/global-ocindex-report.pdf> accessed 19 April 2023.

[2] Insight Crime, "Brazil in Insight Crime" (9 March 2020) <https://insightcrime.org/brazil-organized-crime-news/>.

[3] United Nations Office on Drugs and Crime, "Global Report on Cocaine 2023. Local Dynamics, Global Challenges." (UNODOC 2023) <https://www.unodc.org/documents/data-and-analysis/cocaine/Global_cocaine_report_2023.pdf> accessed 17 April 2023.

[4] Ibid. 22.

[5] Masif Rusi, "Intertwined Transnational Threats: Corruption and Organised Crime" (*Illicit Flows*, 9 December 2022) <https://illicitflows.eu/intertwined-transnational-threats-corruption-and-organised-crime/> accessed 16 April 2023.

[6] RFAI Red de Fiscales Antidrogas de la Asociacion Iberomaericana de Ministerios Publicos, "Guía de Buenas Prácticas en Materia de Drogas" (AIAMP – Asociación Iberoamericana de Ministerios Públicos 2022) <https://www.mpf.gob.ar/procunar/files/2022/12/AIAMP-RFAI-Gu%C3%ADa-de-Buenas-Prácticas-en-Materia-de-Drogas.pdf> accessed 17 April 2023.

forums or buying cryptocurrency to convert illicit money into licit money.

The fluidity is also seen in the immediate substitution of peoples, assets or instruments of crimes. This article will analyse how transnational criminal groups can easily substitute low-level criminal agents to achieve their criminal results. Also, it is astonishing how those criminal groups can buy and discharge highly expensive products, such as airplanes.

This article will first analyse the international and Brazilian national norms that provide leeway to combat macro criminality. Furthermore, it will scrutinize three criminal cases: the Catrapo, Mensalinho and Diamonds Export cases, and register which countermeasures were applied in each of them. The third part of this article will pinpoint the outcomes and challenges that Brazil has to overcome to apply the 2030 Agenda for Sustainable Development, the Kyoto Declaration and the UNODC's strategy for 2021–2025.[7]

II. INTERNATIONAL AND NATIONAL LEGAL NORMS TO COMBAT TRANSNATIONAL CRIMINAL GROUPS IN BRAZIL

A. International Conventions

Brazil is a signatory of the following conventions: i. United Nations Convention against Transnational Organized Crime (UNTOC) and its three protocols; ii. Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961 (Brazil has signed but not yet ratified it); iii. United Nations Convention Against Corruption; iv. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and v. United Nations Convention against Corruption. Also, Brazil attended the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice held in Kyoto from 7 to 12 March 2021.[8]

B. National Legislation

In Brazil's domestic jurisdiction, the laws concerning transnational criminal organizations are the National Drug Policy,[9] the Law of Combating Criminal Organizations,[10] the Law for Criminal Offences of Interstate or International Repercussions That Require Uniform Repression,[11] the Law of Money Laundering,[12] the Law Illegal Drug Trafficking[13] and some others.[14] When one compares the countermeasures that exist in the United Nations Convention against Transnational Organized Crime, all of them are either present in Brazil's national legislation or in the Brazilian Criminal Procedure Code.

For prosecution purposes, a criminal organization in Brazil is the "association of 4 (four) or more persons, organized in a structured manner and characterized by the distribution of tasks, even if informally, aimed to obtain advantages through the commission of criminal offences, whether directly or indirectly, whose maximum penalty exceeds 4 (four) years, or present a transnational nature".[15] Therefore, this categorization partially follows the one in Article 2 (a) of the United Nations Convention Against Transnational Organized Crime. For the latter, three persons can constitute an organized criminal group, while Brazilian legislation requires at least four persons.

There is a wide possibility of adopting countermeasures against criminal organizations. The Brazilian

[7] https://www.unodc.org/documents/lpo-brazil//strategy-summary.pdf

[8] United Nations, "Report of the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice" (2021) <https://www.unodc.org/documents/commissions/Congress/documents/ACONF234_16_V2102028.pdf> accessed 17 April 2023.

[9] Brazil, Brazil's National Drug Policy 2019 [9.761].

[10] Brazil, Law of Combating Criminal Organisations 2013 [12850].

[11] Brazil, Law of criminal offenses of interstate or international repercussions that require uniform repression 2002 [10,446].

[12] Brazil, Law of Money Laundering 1998 [9,613].

[13] Brazil, Law of Illegal Drug Trafficking 2006 [11,343].

[14] The International Cooperation Unit of the Brazilian Federal Prosecution Service elaborated the translation of important legislations in Brazil. One can access them here: https://www.mpf.mp.br/atuacao-tematica/sci/dados-da-atuacao/assessoria-juridica/legislacao-pertinente-a-cooperacao-juridica-internacional/legislacao-traduzida.

[15] Brazil Law of Combating Criminal Organisations (n 10).

Criminal Procedure Code has adopted some since 1941, such as seizing and arresting persons, seizure of assets and imprisonment. However, the Law of Combating Criminal Organizations of 2013 was highly influenced by the United Nations Convention Against Transnational Organized Crime. In Article 3 of the Brazilian norm, one can see that a different array of countermeasures is available for the Prosecution Service:

> Article 3. At any stage of the criminal prosecution, the following methods of collecting evidence shall be allowed, notwithstanding others already provided by Law:
> I – plea bargain agreements;
> II – recording of electromagnetic, optical or acoustic signals;
> III – controlled action;
> IV – access to the register of telephonic and telematic calls, to personal data from both public and private databases and to commercial or electoral information;
> V – interception of telephone and telematic communications, pursuant to specific Law;
> VI – lifting of bank, financial and fiscal secrecy, pursuant to specific Law;
> VII – infiltration by police officers performing activities of investigation, pursuant to Article 11;
> VIII – cooperation among institutions and federal, district, state, and municipal bodies in search of evidence and information of interest to the investigation or the evidentiary stage.[16]

Finally, some of the cited convention's countermeasures that involve international cooperation, such as extradition (Article 16), mutual legal assistance (Article 18), joint investigations (Article 19), special investigative techniques (Article 20) and the enhancement of cooperation with law enforcement authorities (Article 26) are also available in a criminal investigation. Yet, they are dispersed in other national legislation, such as the Migration Law for extradition[17] and the Brazilian Civil Procedure Code for international cooperation.[18]

From now on, the three following criminal cases will investigate the application of those countermeasures empirically.

III. ANALYSIS OF THE CATRAPO, MENSALINHO (LITTLE BRIBERY) AND DIAMOND IMPORTS CASES

A. The Catrapo Case: International Drug Trafficking

1. Factual Context

Catrapo is an international criminal case in Brazil about international drug trafficking of cocaine. The transnational criminal organization was based in Brazil and composed of eighteen members in the state of Mato Grosso, a state in Brazil – not considering members in other states. The main leader was a retired police officer who could operate both from Bolivia and Europe. The organization hired airplane pilots to export the drugs from Bolivia to Brazil using irregular and undercover airstrips amidst the forests in Brazil. Using this form of landing, the criminal group could fill the airplanes with cocaine in Bolivia. In Mato Grosso, the group changed airplanes to fly to Pernambuco, another state in Brazil, next to the Atlantic Ocean. In this state, they changed aircraft once again and flew to Europe.

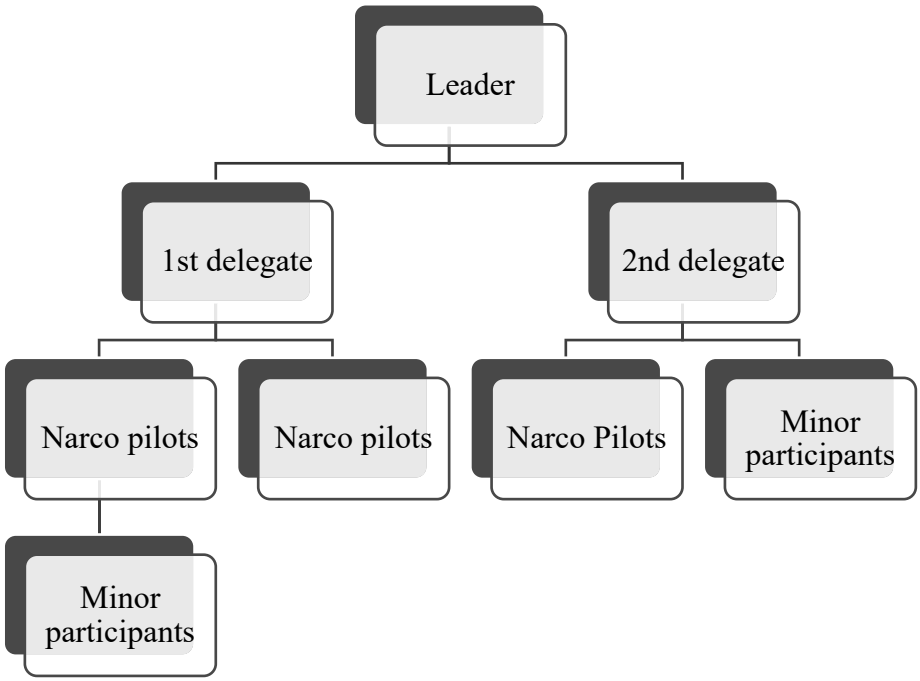
Due to the usage of clandestine airstrips, all without any type of lighting and in the middle of the forest, the group hired pilots with long expertise in flying small aeroplanes (most aeroplanes were those that could fit only four to six persons) in those harsh conditions. One must also understand that the state of Mato Grosso has two ecosystems, the Cerrado and the Amazon. The latter has a feature of increased humidity and rain for at least six months, from October to April. Therefore, only pilots with long hours of experience were hired. In total, at least five pilots were contacted by the two principal delegates of the criminal group.

Furthermore, one could observe a chain of command with hierarchy and structure that fit the description of Article 2 (a) of the United Nations Convention Against Transnational Organized Crime. On the top of the hierarchy was the retired officer, who had a deep trust in two delegates. These two members were the ones

[16] Ibid.
[17] Brazil, Migration Law 2017 [Law 13,445].
[18] Brazil, Civil Procedure Code – Law 13,105 2015 [Law 13,105].

that hired the narco pilots. However, there was a need not only for pilots but also persons who put the drugs inside the aeroplanes, those who extracted them and drove them to other airstrips and other aeroplanes and so on. During the investigation, one could observe that most of those external persons with minor duties were also hired by those two main delegates right below the organization's leader.

An example of the structure of the group is as follows:



Nonetheless, one question arose during the investigation: was it possible for the leader to control different parts of the drug exportation by hiring only people in one state, namely the Mato Grosso state? And the answer was no. After the charges were filed, the Federal Prosecution Service determined that two other investigations in different states in Brazil focused on some of the same members of the criminal group. Hence, the Federal Prosecutors of Paraná and Pernambuco, states of Brazil, were contacted to inform them of the investigation and charges produced in Mato Grosso. Consequently, this demonstrated that the leader had control of members in at least three states in Brazil.

Right after the first countermeasures were solicited by the Federal Prosecution Service, the organization's leader moved within Europe to Hungary in a strategic move because Hungary still has not signed a bilateral criminal international cooperation treaty with Brazil.[19] The leader's extradition is still pending (Article 16 of UNTOC).

2. Countermeasures

The first countermeasure applied in this case was the controlled delivery (Article 2(i) of UNTOC) of cocaine in the state of Mato Grosso. The Federal Police in Brazil contacted the Federal Prosecution Service, enabling information exchange and mutual assistance from the USA's Drug Enforcement Administration (Article 18 of UNTOC). When the first aeroplane containing cocaine was intercepted by the Brazilian Air Force, the leader of the organization determined it to be destroyed, and it resulted in the death of its pilot. Because of this and the immediate gathering of proof of drugs inside the airplane, the Federal Prosecution Service required the confiscation and seizure of at least five Cessna airplanes (Article 12 (1)(b) of UNTOC).

Additionally, the imprisonment of all leaders and participants, including the minor ones (Article 5(1)(b) of UNTOC), was requested and deferred at the judicial level. A novel feature implemented in this case is that

[19] Hungary has signed and ratified UNTOC. https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en Accessed on 17 April 2023.

many aeroplanes were registered in the name of legal persons, but those were also seized nonetheless (Article 10(1) of UNTOC). The participants' bank accounts were frozen because the money was evidence of laundering of proceeds of crimes (Article 6 of UNTOC).

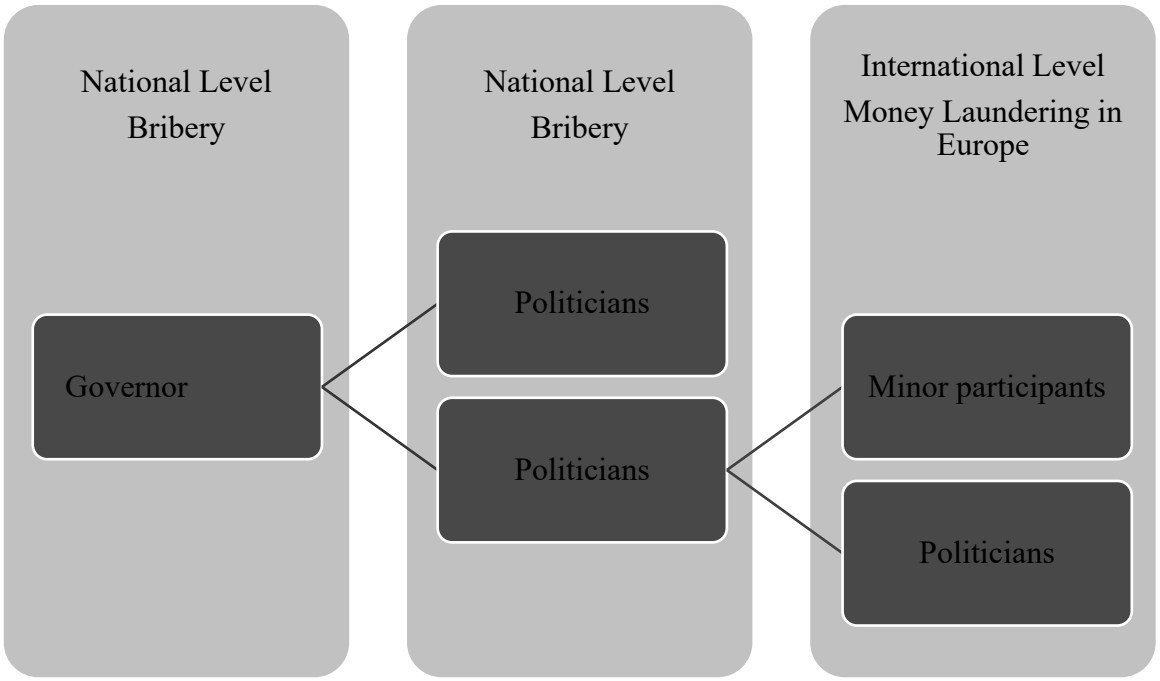
The main challenge is still the leader's extradition and obtaining information from Hungary. At the financial level, difficulties arose when countries did not share information about whether there were assets from the transnational criminal group in their territories. Finally, because Brazil focused on receiving information from the USA, it did not request enough cooperation from Bolivia so that the Latin countries could create among themselves a joint investigation group (Article 19 of UNTOC).

B. The Mensalinho (Little Bribery) Case

1. Factual Context

The Mensalinho (little bribery in English) is a corruption case in which several politicians of the Mato Grosso state received bribes to maintain the Governor's political agenda. A video obtained by the Federal Prosecution Service showed that the state deputies received huge sums of money and placed them inside their suits and backpacks or even brought other persons to place the money in their purses. One of the criminal agents made a plea bargain with the Federal Prosecution Service, and he was the one that delivered the video and enabled the imprisonment and impeachment of other politicians. At the national level, the criminal organization had an almost equanimous hierarchy, but only some of their agents committed money-laundering outside of Brazil.

An example of the structure of the group is as follows:



From this structure, one can observe that some politicians hired minor participants to commit money-laundering in Europe, while others themselves created their own bank accounts in Europe. A difficulty faced in this case is that the criminal that delivered the video to the Federal Prosecution Service faced threats from other criminals. It was hard to position him either as a victim or as a member of the organized group.

2. Countermeasures

Because of the legal nature of someone who enters into a plea bargain, that person is not juridically considered a victim or a witness (Articles 24 and 25 of UNTOC). However, because the evidence gathered from that person enabled the arrest of several other criminals, the Brazilian legislation permits that that person should be safeguarded accordingly to Article 26 (4) of UNTOC. This article was the main basis for the Brazilian Federal Service to enhance plea bargains and extend them to minor crimes. Recently, the

Brazilian Criminal Procedure Code created a new form of plea bargain named "non-persecution criminal agreement" for crimes with a penalty of less than four years of imprisonment.

Despite the main crime being corruption within Brazilian territory, when the group also sends money elsewhere, Brazil considers it within the scope of both UNTOC and the United Nations Convention Against Corruption (UNCAC). Thus, the laundering of proceeds of the crimes of bribery and corruption fell both within Article 23 of the United Nations Convention on Corruption and Article 6 of UNTOC.

In this case, mutual legal assistance was requested (Article 18 (3)(g) of UNTOC) to obtain evidence of the politician's bank accounts in Europe, but this has not been effective. This countermeasure of "identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes" is one of the hardest to implement empirically because countries often have different norms about what they consider private information that is protected against international cooperation requests.

Another challenge that this case presented is the chain of custody of the laundering of proceeds of crimes. For example, the proceeds of corruption are used to buy some gemstones. Then, these gemstones are sold in Europe. With the money from the sale, one deposits it in a European bank account. Is this final transfer still linked with the original crime of corruption? This is the main controversy faced nowadays by Brazilian and European prosecutors. UNTOC's norms do not solve this problem because UNTOC's *mens legis* is based on *bona fides*, so it requires that countries should negotiate between themselves to achieve a solution. The next case demonstrates a failure in international cooperation because of the internationalization of money-laundering proceeds in Europe.

C. Diamond Exports Case

1. Factual Context

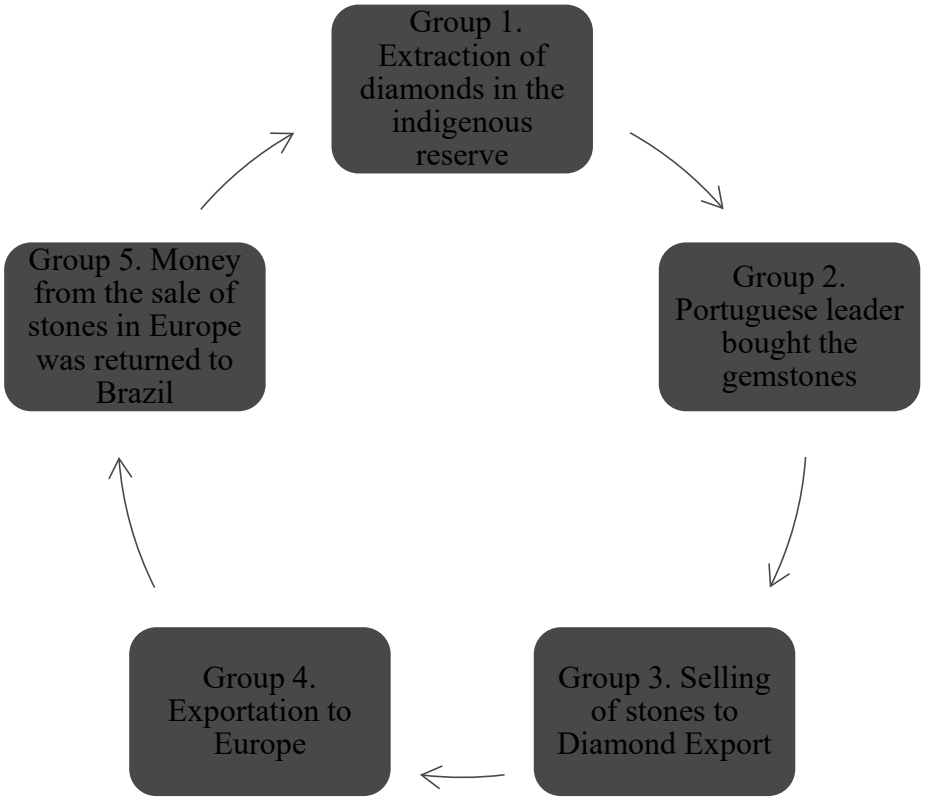
In August 2010, the Brazilian Financial Activities Control Council informed the Federal Prosecution Service that a Portuguese citizen living in Brazil sent 18 transfers of USD 5,000), via *Western Union*, to two other Portuguese citizens in one month. In the previous year, 2009, the Portuguese leader had declared to the Brazilian Federal Revenue Office that he earned a monthly salary of less than USD 400. Hence, those atypical bank transfers triggered the Federal Prosecution Service to investigate, and this organ discovered that those two other Portuguese were partners in a legal person situated in a city in the state of Mato Grosso entrenched in indigenous reserves that were known to have diamond reserves.[20] Examining this legal entity, one of its partners was a woman that was also an associate in another company, Diamond Export Ltd.[21] This company had no permit either to extract or export minerals, especially diamonds.

Furthermore, the National Department of Mineral Production informed that this company had never requested any type of permit. Diamond Export Ltd. had two other European partners, and they had no tourist visa to be in Brazil. Nevertheless, the Federal Prosecution Service discovered that they frequently departed from the cities of Brasília (the Capital of Brazil) and Rio de Janeiro with destinations to cities in Switzerland.

In sum, at least fifty rocks of rough diamonds were apprehended in one flight with these two European citizens. Because of the proximity to the indigenous reserves, it was evident that environmental crimes were also committed to illegally extract the diamonds.

[20] In Brazil, it is a federal crime to extract minerals from indigenous reserves. Also, it is a crime to extract any type of minerals, even outside of protected environmental areas, without a permit.
[21] A fictional name was used for the purposes of this article.

An example of the structure of the group is as follows:



This structure shows that Group 1 extracted the diamonds from the indigenous reserve. Group 2, the Portuguese Leader, collected those stones and brought them to Diamond Exports Ltd. Group 3, using one of its associates, and used other persons to export the gemstones to Europe. In Switzerland, Group 5 sold those diamonds and then sent the money back to Brazil to keep financing the extraction of diamonds in the indigenous reserves.

2. Countermeasures

Unfortunately, this case failed at both the national and international levels. Nationally, when the first seizure of diamonds was made in the Brazilian airport, the Portuguese citizens had absconded from Brazil. This would have been a perfect case for controlled delivery (Article 20 of UNTOC) in Switzerland if this country had cooperated with Brazil and the national police did try first to contact Switzerland's authorities before seizing the diamonds.

Secondly, even after the criminals escaped, the introduction of diamonds and later sale in Swiss territory barred Brazilian authorities from obtaining information about the outcome of the diamonds or who was selling them in Swiss territory. Switzerland would have informed Brazilian authorities of the location of the stones if Brazil had previously shared information with that country. However, the information was requested only after the seizure and arrest countermeasures were enacted. In this case, the criminals had time to erase evidence both in Brazilian and Swiss territories.

IV. CONCLUSION: OUTCOMES AND CHALLENGES

A. Positive Outcomes

In 2023, the Brazilian Federal Prosecution Service was included in the CRIMJUST Programme from UNODC.[22] Recently, the Federal Prosecution Service has promoted a conference with Mercosur authorities to repress transnational crimes happening in Brazilian borders with the support of CRIMJUST.[23] Apart from Brazilian prosecutors, there were prosecutors from Argentina, Bolivia, Chile, Colombia, Equator, Paraguay, Peru and Uruguay.

Also, the Federal Prosecution Service has defended the inclusion of Brazil in EUROJUST,[24] especially to enhance the controlled delivery of drugs in Europe as a form of implementing Article 20 of UNTOC.

Finally, within the same path as the Kyoto Declaration, the Brazilian Federal Prosecution Service has adopted the Bogota Protocol on Transmission of Information about Drugs in Containers internally[25] and promulgated Orientation number 37 for the spontaneous and non-formal communication of drug apprehension in containers.[26]

B. Room for Development: Common Challenges to Overcome in the Three Criminal Cases Presented

The apparent challenge when examining those cases is that there is an immediate need to enhance the trust among international institutions, especially those who fight transnational criminal groups. This could lead to joint investigations (Article 19 of UNTOC) and the practical application of controlled delivery, especially in Europe (Article 20 of UNTOC). One can observe that some countries only share information as a last resort, with the underlying thinking that this would undermine their national jurisdictions. However, UNTOC's goal is not only to enhance mutual legal assistance (Article 18 of UNTOC) but also to strengthen international criminal prosecution. At the International Criminal Court, the paradigm is complementarity, but among countries, the paradigm should be *bona fides* and cooperation.[27]

The UNDOC's 2021-2025 Strategy[28] aims to strengthen the effectiveness of the legal framework to combat transnational organized crimes. This leads to the strengthening of partnerships among countries. To achieve this result, the Federal Prosecution Service has implemented the "Guide of Good Practice of the Fight Against Drug Trafficking" of the Ibero-American Association of Prosecution Services.[29] Nevertheless, this network should also be created at a universal level at the United Nations, promoting direct cooperation among prosecutors.

A stepstone in the Kyoto Declaration is item 64, which recognizes that countries should "facilitate the formal and, to the extent permitted under domestic law, non-formal exchange of information and communication necessary to prevent and combat crime". Recently, the Federal Prosecution Service in Brazil has informed the Federal Prosecutors that non-formal cooperation is also a countermeasure that must be requested. The *Catrapo Case* demonstrated that Brazil has shared non-formal cooperation with the USA but has not entered the same type of bilateral exchange with Bolivia and Hungary.

Taking the *Catrapo Case* as an example, Brazil has faced enormous difficulties in requiring extradition

[22] https://www.unodc.org/lpo-brazil/pt/frontpage/2023/04/no-brasil--mpf-e-unodc-promovem-encontro-com-procuradores-de-paises-do-mercosul-para-discutir-cooperacao-no-combate-a-crimes-transfronteiricos.html Accessed on 20 April 2023.

[23] https://www.mpf.mp.br/pgr/noticias-pgr/em-manaus-procuradores-de-paises-do-mercosul-discutem-cooperacao-para-combate-a-crimes-nas-fronteiras Accessed on 20 April 2023.

[24] https://portal.mpf.mp.br/novaintra/informa/2023/conselhos/em-sessao-do-conselho-superior-do-mpf-pgr-defende-participacao-do-brasil-na-eurojust Accessed on 20 April 2023.

[25] https://www.mpf.gob.ar/procunar/files/2016/11/Protocolo-de-Bogotá-RFAI-AIAMP.pdf Accessed on 20 April 2023.

[26] https://www.mpf.mp.br/atuacao-tematica/ccr2/orientacoes/documentos/orientacao-no-37-protocolo-de-bogota_pagina.pdf Accessed on 20 April 2023.

[27] David Kohout, "Implementing the Nuremberg Principles in National Trials with Nazi Criminals: Hesitation versus Enthusiasm towards Meeting the Standards of Complementarity in the Modern International Criminal Law.' in Bartłomiej Krzan (ed), *Prosecuting international crimes: a multidisciplinary approach* (Brill Nijhoff 2016).

[28] https://www.unodc.org/documents/lpo-brazil//strategy-summary.pdf Accessed on 17 April 2023.

[29] RFAI Red de Fiscales Antidrogas de la Asociacion Iberomaericana de Ministerios Publicos (n 6).

with countries that are not regular partners in combating transnational criminal organizations. Bilateral agreements are a form of international cooperation, but in those cases where countries face difficulties, a solution would be for UNODC to intermediate as an impartial third party.

Another main challenge that needs to be overcome is the effective use of controlled delivery as a form of unique investigation technique. There was no controlled delivery in Europe in any of those three cases. This technique can be applied to drug trafficking, money-laundering and environmental crimes.

Finally, the Kyoto Declaration has shown that UNODC is aware that countries have the tools necessary to combat transnational organized groups but must increase their cooperation with *bona fides*.

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COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME

*Komal P. Pitama**

I. INTRODUCTION

It is timely for this initiative, as we are able to share our experiences as they relate to transnational crime in Guyana with member states and vice versa, and with increased collaboration, we would be able to crack down on these criminal rings.

With the emergence of the oil and gas sector in Guyana, there is a strong risk that conventional transnational crimes such as human and cocaine trafficking would become even more prevalent and also new forms of transnational crime emerge. This is as a result of the development of new sectors in the country, higher volumes of investment and there being a large influx of foreigners which include criminal elements who would look for the opportunity to continue their criminal trade.

II. ROLE OF THE GUYANA POLICE FORCE (GPF)

The GPF is the organization in Guyana that is enshrined with the responsibility to enforce its laws, investigate all criminal activities and maintain public safety and security.

III. TRANSNATIONAL CRIMES IN GUYANA

There are two conventional types of transnational crimes in Guyana – human trafficking and narcotics trafficking. Cybercrime has become more prevalent in recent times as well.

IV. HUMAN TRAFFICKING

Foreign nationals who are trafficked in Guyana usually come looking for economic opportunities as a result of hardship in their home country. The majority of them are Venezuelan Nationals.

A. Modus

Human traffickers from Guyana would recruit victims to work in brothels disguised as night clubs from their country on the condition of agreeing to be bonded until a liability is settled and withhold their identification documents in order to restrict their movements in the meanwhile.

Also, there were cases whereby these vulnerable groups were deceived by persons who promised them employment opportunities but instead were exploited for cheap labour when they arrive in Guyana.

B. Trafficking Route

They are usually smuggled into Guyana through our porous borders. The main ports of entry are through Brazil from Bonfin to Lethem border (Region 9), through Venezuela from San Martin/San Felix to Entering bang border (Region 1) then arriving to Essequibo Coast (Region 2) and from Suriname through the Nickerie

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to Moleson Creek border (Region 6).

It is important to note that people smuggling is not criminalized in Guyana; however, Law enforcement utilizes legislation under the immigration act to detain and prosecute persons who enter Guyana illegally (Section 34(1)(c) of the Immigration Act, Chapter 14:02). Venezuelan nationals have refugee status and, therefore, these immigration- related offences are not enforced on them.

C. Identifiable Trends in Human Trafficking

Nationality	2020		2021		2022		Total		
	Sexual	Labour	Sexual	Labour	Sexual	Labour	Sexual	Labour	Sum
Venezuelan	114	7	114	8	139	33	367	48	415
Haitian	2	0	0	0	0	0	2	0	2
Dominican	12	0	0	0	1	0	13	0	13
Jamaican	0	12	4	2	2	0	6	14	20
Cubans	1	0	5	0	10	6	16	6	22
Indian	0	0	0	1	0	0	0	1	1
Brazilian	0	0	2	0	11	4	13	4	17
Total	129	19	125	11	163	43	417	73	490

- Over the last 3 years, 1 January 2020 – 31 December 2022, there were a total of 417 alleged victims of sexual exploitation and 73 alleged victims of labour exploitation.

- There is a clear trend that Venezuelans are systematically trafficked as the majority of the alleged victims were Venezuelan Nationals as they make up 367 of the 417 alleged sexual exploitation victims and 48 of the 73 alleged labour exploitation victims over the said three-year period. This translates to 88.0 per cent and 65.8 per cent, respectively. Further, there has been an increasing trend in the number of alleged victims of human trafficking during the three-year period moving from 121 victims in 2020 to 122 victims in 2021 and 172 victims in 2022.

- There has been a rise in the number of alleged victims for both Brazil and Cuba totalling 15 and 16, respectively, in 2022 as compared to 2 and 6, respectively, for the sum of the two preceding years.

D. Efforts by the Guyana Police Force to Combat Human Trafficking

Given the complexity and lucrativeness of human trafficking, the Guyana Police Force has a Trafficking-in-Persons Unit to deal with these crimes. The unit conducts regular operations in all regions of Guyana to combat human trafficking by enforcing legislation under the Combatting the Trafficking-in-Persons Act 2 of 2005 and other relevant legislation covering trafficking in persons related offences such as Keeping a Brothel and Withholding of Identification Papers.

For the years 2020, 2021 and 2022, there were 39, 37 and 23 reports, respectively, of human trafficking with a total of 490 alleged victims being contacted by the police. However, only a total of 11 cases were made from the total of 99 reports over the 3 years, which is a result of the lack of interest by victims to have their traffickers prosecuted. This is because of factors such as fear of traffickers and economic hardships they face make them feel they have no alternative but to be exploited.

E. Case Study of a Trafficking in Persons Report

On 24 April 2021, a report of an alleged Trafficking in Persons incident was made by R.F., male of African descent, age 28 years, a farmer of A District, PO Jamaica and C.M., male of African descent, age 30 years, a farmer of B District, PA Jamaica, both Jamaican nationals at the M Police Station. They mentioned that they were hired by one T.B., male of African descent, aged 44 years, a farmer of Georgetown, to clean land at K, at a cost of $5,000.00US. They claimed that arrangements were made for them by T.B. who bought their tickets and on 11 December 2020, they travelled to Guyana. Three days after they arrived in Guyana, T.B. took possession of their passports, which he kept in his possession and escorted them to the area at Kara Kara, Linden, to commence working. At Kara Kara, they were given a makeshift camp and were supplied

with food items. They stayed at this location for over four months and had no means of communication or transportation except for when T.B. visited. They also claimed that when they completed one plot of land, instead of being paid they were given more land to clean and were told that they needed to work harder, but they were never paid. So, on 24 April 2021, they left the location by begging a passing boat and reported the matter to the police. T.B. was apprehended, investigated, charged and he was sentenced to four years' imprisonment, fined $200,000 for withholding their passports and to pay restitution in the sum of $6,300,000. GC to the victims.

1. Challenges Encountered

After this investigation was launched, the challenge encountered was to locate the area since it was in a riverine area and the victims were not familiar so it took hours to locate the scene, and when same was located, it was observed that marijuana plants and compressed marijuana were found at the camp and two marijuana fields were also found about 300 feet away from the camp which was subsequently destroyed. During the trial, there were complaints of the lengthy period the trial was taking and at some stage victims opted not to testify since it was alleged that the suspect would have reached out to them not to testify and they subsequently related that preferred to be paid and return home.

2. Lessons Learned

Based on the statistics of these kinds of matters, not only females are being targeted and if the trial was done in a speedy process it may not have frustrated the victims. Nevertheless, by persuasion the victims testified which resulted in a successful prosecution. Also, apart from the element of force, the element of deception is very effective; it can cause anyone to be a victim even the strongest man, woman or child.

V. NARCOTICS TRAFFICKING

Due to Guyana's strategic geographical location which connects South America to the United States of America and Europe, cocaine traffickers utilize our country as a transit point to reach their final destination.

A. Modus

Given the aforementioned, traffickers from Brazil, Colombia and Venezuela load planes from these countries and land in our densely forested regions to offload. Afterwards, local traffickers would then conceal the cocaine in local commodities which are then exported to the US and European markets.

B. Efforts to Combat Narcotics Trafficking in Guyana

The Guyana Police Force and the Customs Anti-Narcotics Unit (CANU) are the two agencies in place that investigate and prosecute drug traffickers under the Narcotic Drug and Psychotropic Substances (Control) Act Chapter 10:10

In the year 2020, there were discoveries of shipments from Guyana which were busted in these countries. One of those is a container of scrap metal that was shipped from Guyana which had 11.5 tons of cocaine and was seized in Belgium in November 2020.

Another discovery was in August 2020 when a rice shipment from Guyana with 1.5 tons of cocaine was discovered in Germany.

A discovery was also made in March 2021 totalling 139.4KG of Cocaine which was unearthed in two of six containers at the Kingston Freeport Terminal Limited, Jamaica, which was en route to Haiti and China which left Guyana port.

In 2022, there were no shipments from Guyana in which cocaine was discovered. However, a plane with a large quantity of cocaine was discovered in the years 2020 at Issano, Region 7, 2021 at Orealla, Region 6 and in 2022 at Mahdia, Region 8.

C. Overview of Report

On 10 July 2022 at about 14:20 hrs, one white 182 Cessna Skyline Single Engine aircraft, with white and

grey stripes running along the side, landed on the Potaro Airstrip Mahdia, Region # 8, without authorization. Police subsequently intercepted and arrested two foreign nationals, one Colombian and one Brazilian, who were flying the aircraft containing 639.9 lbs. of cocaine and 120.5 lbs. of cannabis. The narcotics along with the airplane were subsequently lodged into joint services custody. The 2 suspects were arrested, and an investigation was launched. They were later charged, pleaded guilty and subsequently sentenced to four years and six months in prison and fined $449M each.

D. Challenges Encountered and Solutions

In this drug bust involving planes and the other two incidents aforementioned, the language barrier was an issue given that the native language of the traffickers was different from Guyana. This delayed the investigations as a translator was necessary to interpret evidence extracted.

Further, given that the individuals were foreign nationals, the police had no knowledge as to the two suspects' affiliations; therefore, it was difficult to debunk their story that they were kidnapped and forced to traffic the narcotics which would not make them criminally liable based on case law. However, with the aid of the Guyana Defence Force, we were able to extract, translate and transcribe evidence from their digital devices which proved otherwise, and we were able to put this evidence to the perpetrators which led to them confess to doing the act willingly. The Guyana Police Force was unable to make any further dent in this criminal network; however, information obtained was passed to US authorities for then to continue investigations into the criminal network.

VI. CYBERCRIME

Many private and public organizations in Guyana within the last five years have made major strides towards the digitization of their systems and procedures. This is particularly true for the way people do their banking. As a result of this rapid transformation, many persons are not aware of the potential threats, making them easily vulnerable to scams (Infiltrate and manipulate).

A. Modus

In recent times, perpetrators have managed to successfully intercept communication via email between overseas suppliers and local entities and tricked them into wiring payments for outstanding invoices to their accounts instead. The magnitude of these losses has been the in millions of dollars. This is known as Business Email Compromise.

There have also been instances of debit/credit card fraud which arose as a result of e-commerce whereby persons shopped at irreputable merchants, or they may have been tricked into participating in online promotions/winnings which resulted in scammers obtaining card information or personal identifiable information which enabled them to make unauthorized purchases.

B. The Guyana Police Force and Combating Cybercrime

The Guyana Police force has a Cybercrime Unit with ranks that are versed in the field of network control and cybersecurity. However, much headway is not usually made in these cases of BEC and debit/credit card fraud; they usually go unsolved given a number of factors:

- There is no legislation which mandates reporting by companies of a cybersecurity breach in companies in Guyana's legislation. Therefore, it often goes unreported and the police cannot take action.

- It is difficult for law enforcement to obtain information from local commercial banks that have stringent privacy policies.

- Seeking mutual legal assistance from law enforcement in other countries is a time-consuming process which can take several months.

- Guyana is yet to join the Egmont Group which is an international organization of Financial Intelligence Units. This makes it nearly impossible to trace the proceeds of these crimes overseas.

- Guyana is yet to join the Budapest convention, making it difficult to facilitate cross-border cooperation unlike other member countries.

VII. CONCLUSION

So far in the fight against transnational crime, Guyana has made satisfactory efforts despite the challenge of the shortcomings mentioned. With more collaboration between countries through training, networking, sharing of best practices by experts and joint operations, law enforcement would be able to make significant inroads into the dismantling of criminal organizations that perpetrate these crimes so that economic development, human rights and challenges of combating it are not impacted. Also, it would enhance professional development and understanding of the global impact of transnational crime in our region.

COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME: THE 20TH ANNIVERSARY OF UNTOC – A KENYAN PERSPECTIVE

Angela Adhiambo Okallo Otieno *

I. INTRODUCTION

Organized crime has been an emerging crime trend not only affecting Kenya but as a global problem as well transcending borders, hence the term transnational organized crime. Section 3 of the Prevention of Organised Crimes Act (POCA)[1] outlines various criminal activities that form part of organized criminal activities, and these include, inter alia:

a) Membership to an organized group;
b) Knowingly advising or recruiting other persons to join an organized group;
c) Acting in concert with others to commit a serious offence (punishable by imprisonment of more than six months) for the purpose of obtaining material or financial benefit;
d) Threatens to commit or facilitate commission of an act of violence;
e) Being a member of an organized criminal group, kidnapping or attempts to kidnap any person with intention to extort or gain from the said person; and
f) Being a member of such group that endangers the life of any person or causes serious damage to the person's property.

From the above definition, the same is limited to offences done in concert with another and does not consider emerging offences and criminal trends such as Online Child Sexual Exploitation and Abuse (OSCEA), terrorism and violent extremism, drug trafficking, human trafficking, wildlife trafficking and poaching, cybercrime, racketeering to name but a few.

This paper will look at the larger definition of these crimes and not be limited to POCA as the writer notes these offences pose threats not only directly to the country, but also opens avenues for predicate offences. Predicate offences are the root offences leading to money-laundering. They are capable of generating huge amounts of money and involve crimes such as corruption, bribery, drug trafficking, illicit wildlife trafficking/poaching, illegal arms sales, counterfeiting and extortion which makes it a viable "venture" for such offenders.

The main challenge for my country in countering transnational organized crime is mainly with regard to Kenya's geographical positioning. Kenya is not a land locked country; therefore, it has access to not only air, rail and road networks but the seas as well. The Indian Ocean located in the coastal area of Kenya opens its waters to many other countries and continents, thus making the country a transit route for transnational organized crime such as drug and illegal wildlife trafficking.

Kenya also faces terrorism financing risk arising from the neighbouring countries with active terrorist groups. The vulnerabilities associated with the above offences are *hawala* activities (*hawala* being a system of money transfer without the physical movement of money) resulting in unregulated cross-border currency movements; economic sabotage, child related offences such as abduction and defilement; human trafficking, proliferation of arms, banditry, piracy and even degradation of the environment.

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[1] Prevention of Organised Crimes Act, Act No. 6 of 2010

This paper will seek to establish Kenya's position and, in particular, in tackling these crimes, and good practices adopted in addressing the situation. The paper will also outline various challenges faced by not only the country but also the criminal justice actors such as my Office, the Office of Director of Public Prosecutions (ODPP Kenya) in curbing these crimes. It will thereafter submit recommendations and possible solutions in addressing the challenges and conclude by availing a few case citations.

II. KENYA'S LEGISLATIVE FRAMEWORK TOUCHING ON ORGANIZED CRIME

The legislative framework comprises both national legislation as well as international instruments with the Constitution of Kenya (CoK)[2] being the Supreme Law of the Land. By virtue of Article 2(6) of the Constitution, Kenya also relies on international instruments so long as they have been ratified by the country. The legislation and specific provisions thereto are discussed below.

A. Prevention of Organised Crimes Act (POCA)

Section 3 as earlier indicated lists the various types of organized criminal activities, while Section 2 of POCA provides for the definition of organized criminal group to mean a structured group of three or more persons acting in concert to commit a serious crime for their own financial or material benefit.

POCA also outlines the sentences for all the outlawed offences; the procedure for property tracing, seizure and forfeiture; restraint orders to avoid depletion and lastly makes provision for mutual legal assistance in combating the offence.

B. Proceeds of Crime and Anti Money Laundering Act (POCAMLA)[3]

POCAMLA criminalizes money-laundering as well as defines what reporting institutions are and their respective obligations. The institutions include the Asset Recovery Agency (ARA), the Financial Reporting Centre (FRC) and the Anti-Money Laundering Advisory Board (AMLAB), which are institutions mandated to provide for asset tracing, preservation, recovery, seizure and confiscation.

Under Kenya's system, asset recovery can either be done through civil applications as well as criminal applications, save that for criminal procedures they are conviction based as compared to the civil procedure.

Another key provision of this Act is that it establishes the Criminal Assets Recovery Fund[4] into which all recoveries made by the reporting institutions are deposited. The Act further makes provision for international cooperation in combating money-laundering offences.

C. Prevention of Terrorism Act (POTA)[5]

POTA provides for key definitions of funds, terrorism, terrorist group, terrorist property to name but a few. The definitions are found under Section 2 of the Act and include what constitutes as funds, terrorist group and terrorist property.

POTA also outlines the different types of terrorism offences, including criminalizing the collection of funds of terrorism, soliciting and giving support to terrorist groups, facilitating terrorist acts, seizure and confiscation as well as establishing the National Counter-Terrorism Centre which is an inter-agency body comprising officers from the ODPP, National Intelligence Service (NIS), National Police Service (NPS), Immigration Department to name but a few, with the key responsibility of coordinating national counter-terrorism efforts in order to detect, deter and disrupt terrorism acts.

D. Other Legislation

[2] The Constitution of Kenya, 2010.
[3] The Proceeds of Crime and Anti-Money Laundering Act, Act No, 9 of 2009 (Revised 2012).
[4] Section 109-110 of the Proceeds of Crime and Anti- Money Laundering Act.
[5] Prevention of Terrorism, Act No. 30 of 2012.

1. Anti-Corruption and Economic Crimes Act (ACECA)[6] which outlines the various economic crimes and the sentences thereto.

2. Mutual Legal Assistance Act (MLA Act),[7] which provides for the procedures for mutual legal assistance to be given and received by Kenya in investigations, prosecutions and judicial proceedings in relation to criminal matters and connected matters.

3. The Extradition Acts (Caps 76[8] & 77[9]): these two Acts make provision for the surrender and treatment of the accused persons/suspect by Kenya to other commonwealth countries and non-commonwealth countries (which Kenya has signed MLA Agreements with).

4. Criminal Procedure Code,[10] Evidence Act,[11] which outlines the trial process and evidence needed from time of arrest to conviction.

5. Other laws on addressing specific transnational organized crimes such as Narcotics[12] ; Food, Drugs & Chemicals[13] ; Wildlife[14] ; Firearms[15] ; Human Trafficking and Smugglings[16] act to name but a few.

III. ROLE OF ODPP KENYA IN COMBATING TRANSNATIONAL ORGANIZED CRIME

A. Introduction

The Office of Director of Public Prosecutions (ODPP Kenya) is established under Article 157 of the Constitution and operationalized by the ODPP Act.[17]

The Office is headed by a Director of Public Prosecutions (DPP) whose nomination has to be approved by the National Assembly (Parliament) of Kenya and thereafter appointed by the President. He/she serves for only one term of eight (8) years and is not eligible for re-appointment.[18] The current DPP is Mr. Noordin M. Haji, CBS, OGW who came into office in March 2018.

The mandate of the ODPP is to exercise state powers of prosecutions. In exercising prosecutorial authority, the ODPP has due regard to public interest, interests of administration of justice and the need to prevent and avoid abuse of the legal process.[19] While doing so, the ODPP strives to provide quality, impartial and timely services in a manner that is professional, efficient and fair.

B. ODPP's Functions

The core mandate of the Office is to exercise state powers of prosecution and in this regard the ODPP performs the following functions:

- Institute and undertake criminal proceedings in any court, other than court martial in respect of any offence committed;
- Take over and continue any criminal proceeding instituted by any other party or authority with their

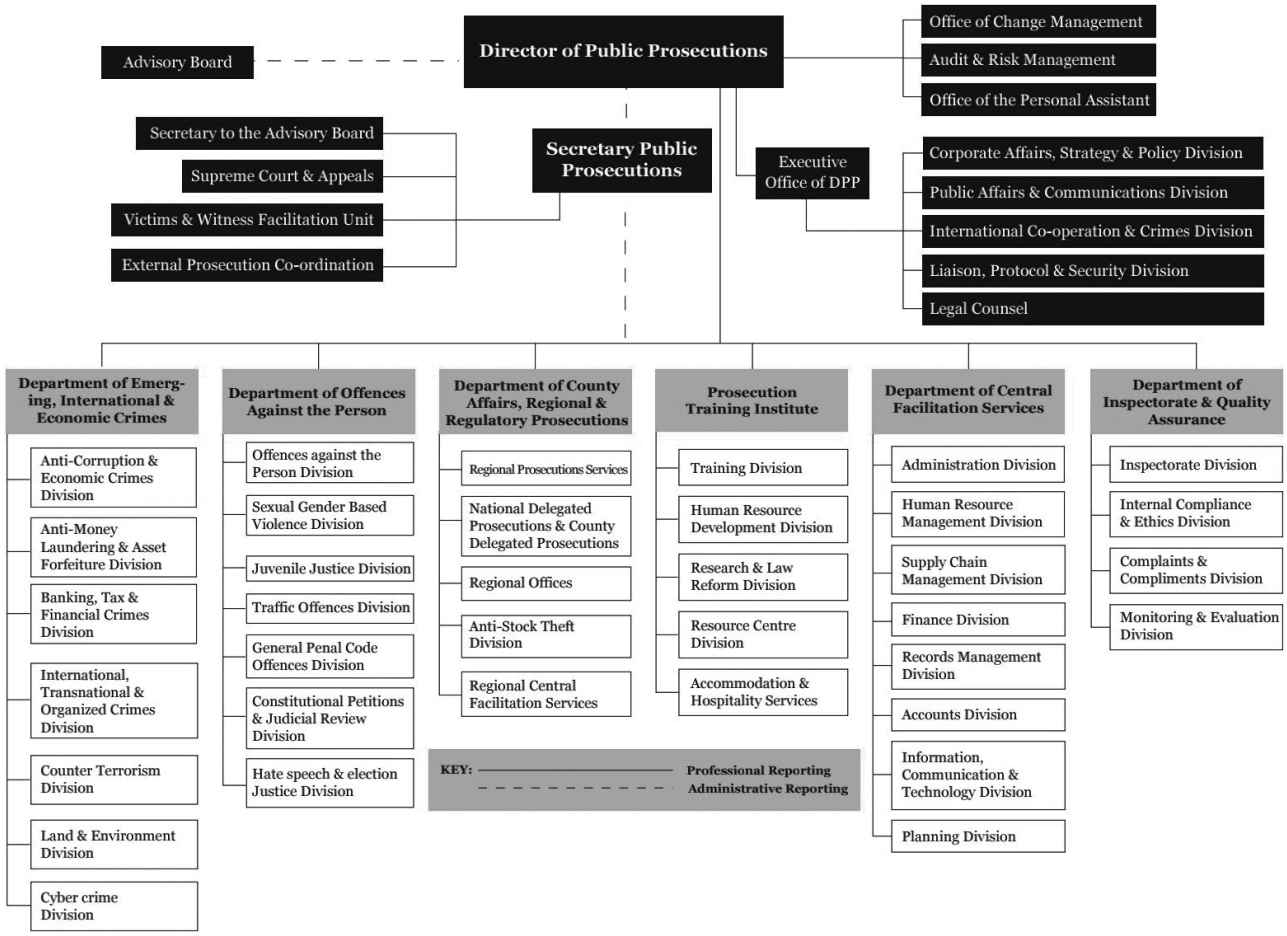
[6] Anti- Corruption and Economic Crimes Act, Act No. 3 of 2003.
[7] Mutual Legal Assistance Act, Act No. 36 of 2011.
[8] Extradition (Contiguous and Foreign Countries) Act, Chapter 76 of Laws of Kenya, 1987 (Revised 2012).
[9] Extradition (Commonwealth Countries) Act, Chapter 77 of the Laws of Kenya, 1985 (Revised 2012).
[10] Criminal Procedure Code, Chapter 75 of the Laws of Kenya (Revised 2012).
[11] Evidence Act, Chapter 80 of the Laws of Kenya (Revised 2014).
[12] Narcotic Drugs and Psychotropic Substances (Control) Act, No. 4 of 1994 (Revised 2012).
[13] Food, Drugs and Chemical Substances Act, Chapter 254 of Laws of Kenya (Revised 2013).
[14] Wildlife Conservation and Management Act, 2013.
[15] Firearms Act, Chapter 114 of the Laws of Kenya (Revised 2012).
[16] Counter-Trafficking in Persons Act, Act No. 8 of 2010 (Revised 2012).
[17] The Office of the Director of Public Prosecutions Act, Act No. 2 of 2013.
[18] Article 157 (2) and (5) respectively, of the Constitution.
[19] Article 157(11) of the Constitution.

permission, other than court martial matters;
- Discontinue a criminal proceeding at any stage before judgment is entered;
- Advise the State, Government Ministries, Departments and State Corporations on all matters relating to the administration of criminal justice in the country;
- Direct and supervise criminal and anti-corruption investigations;
- Handle matters relating to Mutual Legal Assistance and Extradition;
- Appointing, training and gazetting public prosecutors;
- Facilitate victims of crime and witnesses during prosecution; and
- Contributing, developing and implementing policy, procedure and law reform.

C. ODPP's Organizational Structure

ODPP's organizational structure is divided into six main departments headed by Deputy Directors of Public Prosecution (DDPPs) who are responsible for overseeing the thematic areas under the Office's mandate. The Departments are further divided into thematic divisions and units to further enhance service delivery to members of the public. The table below shows the Office's structure.[20]

Table 1: ODPP's Organizational Structure



There are two departments responsible in relation to this research paper which are the Department of Emerging, International & Economic Crimes (EI & EC) and the Department of Offences Against Persons (OAP) with the specific divisions as indicated in Table 1 above.

D. Strategies Adopted by the ODPP in Combating Transnational Organized Crime

The Office's thematic departments and divisions are manned by specialized prosecution counsel with skills and knowledge to prosecute various offences. Other than this, the Office has also adopted the following

[20] ODPP's Organisational Structure as published in the ODPP Annual Report 2020/2021.

strategies:

1. Prosecution Guided Focus on Investigations

In recognition of various talents and skills of both investigators and prosecutors, the Office has adopted this strategy where prosecutors guide investigators before a criminal charge is instituted. The investigating officer avails their file for periodic review by the prosecutor to ensure that all evidence is covered and that all procedures such as chain of custody are also well documented. This has been instrumental in ensuring that criminal charges brought in court are successfully prosecuted and not withdrawn or dismissed on technicalities.

2. Teamwork and Prosecution Teams

The Office has set up prosecution teams led by senior prosecution counsel to guide the team while undertaking prosecution. Under this, prosecutors are assigned a specific role such as researchers, legal drafting and presentation of witnesses in court. This is particularly with regard to complex cases involving numerous pieces of evidence and many witnesses.

3. Conducting Advocacy and Trainings

The ODPP is also involved in sensitizing criminal justice actors such as members of the judiciary, investigative agencies, prisons, probation and even the members of the public at large on various strategies developed by the office in the fight against transnational organized crime, and in particular terrorism.

The sensitizations are done through joint trainings with the criminal justice actors or can take the form of community outreach initiatives where members of the public attend and can ask questions in an interactive session. Joint trainings have led to enhanced inter-agency cooperation more so as the officers share experiences and challenges with the colleagues in the other agencies.

The Office also conducts social media sensitizations through the ODPP's YouTube,[21] Facebook[22] and Twitter Accounts,[23] where it publishes various programmes, booklets or online interactions with various topics covered for the public's consumption. The Office through its various officers also attend the national television shows and radio shows, including the dialect ones to sensitize members of the public on its mandate and the various offences as prosecuted in the country.

All these programmes and trainings have been instrumental in making the public aware of the effects of organized crime, particularly on the effects of terrorism and radicalization of the youth, thus making the community take steps to prevent the youth from joining crime and also how to spot the ones already influenced and address the same. This has led to enhanced social cohesion and cooperation with the community where the sensitizations are conducted.

4. Establishment of a Specialized Court to Handle Terrorism and Organized Crime in Nairobi

The Judiciary through support of its partners and in consultation with other agencies like the ODPP spearheaded the establishment of *Kahawa Law Courts* on 1 April 2020.[24] The decision to establish the specialized court was brought about by the increase of organized crime, particularly terrorism cases occurring in the country.

The officers, both magistrates and prosecutors working in this court are well trained in handling organized criminal offences. The courts are also well secured for safety of all personnel working there.

Prior to the establishment of the court, there was a high risk in moving terror suspects in high security trials from custody to Milimani Courts within the Nairobi Central Business District. This Court has therefore facilitated the efficiency of disposal of serious crime offences as well as the ease of the transportation of high-profile suspects. High profile is due to the magnitude of the offence committed (in terms of casualties and/or fatalities and level of damage occasioned).

[21] https://www.youtube.com/@officeofthedirectorofpubli276
[22] https://web.facebook.com/ODPPKenya
[23] https://twitter.com/ODPP_KE/
[24] The Court is established vide Gazette Notice Number 374 of 16 January 2020.

IV. CASE STUDIES

This part examines four court cases that have provided lessons to actors in transnational organized crime, particularly countering violent extremism and terrorism and Online Child Sexual Exploitation and Abuse (OSCEA).

A. Edda Wakesho

Edda Wakesho had been hired as a house help (nanny) to look after a minor in the minor's home where she defiled the minor she was taking care of as well as filmed the minor while engaging in the act. She was arrested and later charged with the offence of defilement as well filming the act. The minor was 4 years old at the time.

Senior Resident Magistrate Florence Macharia handed Edda Wakesho a life sentence for defiling the minor and an additional ten years for filming the act and posting it online between June and October 2021. Wakesho, in her defence, said she committed the crime after being promised good money by a Facebook user whom she said introduced her to a page where people post explicit images and videos.

From the investigations conducted by the Anti Human Trafficking Child Protection Unit (AHTCPU) of the DCI however, found Wakesho to be part of a racket that uses house help to expose children in the abusive acts. The video which was played in court was sent to the minor's mother who was threatened to send money or have the video shared online.

B. Republic versus Ibrein Issack Robow[25]

The Criminal Court at Milimani in Nairobi convicted and sentenced the accused person, Ibrein Issack Robov, to life imprisonment for the commission of a terrorist act, kidnapping and hostage taking, among others. The accused person was the driver of the motor vehicle ferrying two Cuban doctors, Assel Herrera Correa and Landy Rodriguez Hernanded. The two doctors were part of a 100-member Cuban medical team brought to Kenya in 2019 under an agreement between the two countries. The two had been abducted on 12 April 2019 in Mandera, North Eastern part of Kenya for ransom. The accused person was found to have conspired with terrorists in committing the said offences which led to the death of one Administration Police Constable (APC) Mutundo Katambo. The APC had been assigned security duty to the Cuban doctors at the time of the incident.

C. Thomas Scheller

Thomas Scheller, a 71-year-old German male was charged with the offence of Child Pornography, Defilement and Child trafficking in 2020. At the time of his arrest, the court was informed that he was arrested for sodomizing four teenagers aged between 10 and 13 years old in Kenya. Scheller, a retired engineer, committed these offences in Kisumu and Nairobi counties. The court heard that Scheller, who is in the country illegally, was said to be a habitual paedophile who targets young boys.

The prosecution team told the court that Scheller had a pending case at Ukunda Police Station in Kwale County, Coast Province, before he fled to Kisumu, Nyanza Province, where he lured young boys to his rented apartment in Nyalenda and exposed them to pornography before defiling them. Scheller had been on the police radar since he was linked to a German-based child abuser, to whom he allegedly sent pornographic materials video-taped in Kwale County and its environs. During his arrest, the accused was in the company of a boy suspected to have been a victim of child trafficking and defilement. His case is pending before court.

D. Salim Mohamed Rashid

In 2016, Salim Mohamed Rashid left Kenya for Turkey allegedly to join a Turkish university for undergraduate studies. In the same year, he was deported by Turkish authorities back to Kenya after he was arrested while trying to cross over to Syria. Salim was later acquitted for lack of sufficient evidence (e.g. lack of cooperation from Turkish authorities – MLA).

On 4 December 2020, Salim went missing. His family reported that their son was missing. This was

[25] Milimani criminal case no. 813 of 2019.

followed by protests by the family and civil society. A habeus corpus application was filed and security agencies were blamed for his disappearance.

Sometime in the year 2021 a video went viral showing Salim slaughtering a person who appeared like a Democratic Republic of Congo (DRC) security officer. On 29 January 2022, Salim was arrested in DRC by DRC forces.

In 2017 Salim narrowly escaped a police raid in Kwale area from a house where explosive making materials were recovered. A few days later he was intercepted at the Moi International Airport, Mombasa Kenya while attempting to travel to Sudan. He was charged with terrorism offences before Mombasa Law Courts. On 28 August 2019, Salim was granted a Kshs. 3 million bond despite the prosecution's objection to the same. He was thereafter ordered to deposit his passport to the court. At least eight witnesses had testified in the case as of the time of his disappearance in October 2020. His arrest in DRC is the last his family heard of him and the matter is still pending before court.

V. CHALLENGES ENCOUNTERED IN PROSECUTION OF TRANSNATIONAL ORGANIZED CRIME AND RECOMMENDATIONS

A. Challenges Encountered in Prosecution of Transnational Organized Crime

Despite the good laws and well-set structures to combat transnational organized crime, the fight against these crimes still continues sometimes to the detriment of the country. Therefore, the challenges encountered in the prosecution of these offences include, inter alia, the following:

1. Kenya's Porous Borders

Access to Kenya's coastal area as well as its porous borders makes it easy for transborder crimes such as drug trafficking, terrorism and illegal wildlife trafficking to thrive. Unchecked illegal immigration and lack of proper manning of the border points make room for terrorism and other crimes to thrive. An example being the Garissa University terror attack assailants were reported to have escaped to a neighbouring country.

2. Bureaucracy and Red Tape in Investigation Agencies

Most of the top leadership of the agencies in the country are rigid in their thought processes insisting on formal rules and standards in their operations. This may be detrimental, especially in instances where quick action is needed such as in detaining flight risk suspects engaged in trans-border criminal activities. Quick thinking and adoption of technology in government process is key in combating these crimes, especially those touching on suspicious online criminal activities.

3. Lack of Cooperation and Coordination among Agencies

Many agencies ranging from the investigative agencies, law enforcement agencies, prosecution services and the judiciary operate in silos or under the guise of "independence in their operations". This hinders collaboration efforts in combating crime which when well tapped can bring a lot of good. This is because each of these agencies are equipped differently and all have a common goal of combating crime both locally and internationally. Without proper cooperation, collaboration and coordination, it is unlikely that the war against transnational organized crime can be won.

4. Advances in Technology

Advances in technology have given rise to new frontiers of doing trade such as virtual currencies (bitcoins and crypto currencies). The increase in the use of unregulated virtual currencies has led to increased financing of organized crimes such as terrorism and piracy. Further, terrorists are, for example, now utilizing new undetected technologies and developing sophisticated networks making cyberterrorism a real threat.

Similarly, the advance in technology means that prosecution has to rely on digital evidence to prove such cases. Such evidence is easy to modify, remove or hide and in some cases without leaving tracks that might identify the criminals and their intent, e.g. by encryption, evidence stored on Google Drive or Drop Box become non-compatible with the gadgets being utilized for forensic analysis.

5. Interference with Witnesses

Most of the offenders in these offences are persons/entities with the means to bribe their way through the judicial process (in investigation, prosecution or even the judiciary), thus delaying the trial process thereby frustrating the witnesses or some, in a worst case scenario, may end up intimidating the witnesses, resulting in acquittals in cases that would have had strong convictions.

6. Sabotage among Agencies

We have instances where some agencies frustrate the other by not providing what is needed for successful prosecution, an example being if investigative agencies fail to provide well investigated files, despite several reminders by the prosecution.

7. Conversion of Intelligence to Evidence

Most of the information obtained touching on these cases is in the form of intelligence which is inadmissible in court. This information needs to be corroborated for purposes of converting it to evidence which in cases of witness threatening and intimidation may not be possible, leading to the collapse of very strong cases.

8. Other Challenges

- Lack of a centralized data/ information management system of cases touching on transnational organized crime
- Mistrust between the community and law enforcement agencies
- Limited capacity in human resources and equipment/ technology for forensic analysis of these offences
- Inadequate translators especially in serious transborder offences such as terrorism, piracy and human trafficking. There are very few certified interpreters willing to come to court for the purpose of providing interpretation services. Without a thorough and accurate interpretation of the facts and evidence in a trial process, a lot can be lost in translation leading to a miscarriage of justice.

B. Recommendations and Way Forward

In recognition that each state agency and criminal justice actor has a role to play, whether nationally, regionally or internationally in combating these crimes, I recommend the following:

1. Increased Cooperation, Collaboration and Coordination on All Fronts

Collaboration between the different arms of government, the private sector and the international community will go a long way in strengthening the surveillance of these offences and will thus also become a prevention and detection measure as well as aid recovery procedures of any assets derived from these offences.

Increased cooperation and coordination may be achieved through:

- Negotiating and signing of bilateral treaties for extradition and MLA
- Ratifying relevant universal instruments
- Nationally entering into MOUs for investigation and prosecution of these offences

2. Increased Capacity-Building of Investigative Agencies to Handle These Crimes

Investigations are the core process for successful prosecution. It is not possible to gain a conviction on a file that has not met the evidentiary threshold. In this regard, it is important to empower the investigators by increasing the number of:

- Specialized trainings for investigators, which should include the basics and evolution of transnational organized crimes; and
- Joint trainings for all criminal justice actors

These trainings will empower the officers with requisite skills to detect and identify questionable transactions and activities.

3. Conduct Public Sensitization by All Criminal Justice Actors

It is important for all the actors in the justice sector to take part in public sensitization on the magnitude of these offences and the need to combat them. This way the public understands that the whole law enforcement agency is keen on combating these offences, and they also need to be roped in.

4. Create a Database for Information

The government of Kenya through the relevant agencies and ministries should create a database or repository for sharing of data and information on transnational organized crime. This database can include information on key offenders and previous conviction records, if any that will help in the objection of bond and bail terms in case of reoffending. This information can also be used to track the money trail of key suspects in relation to various offences.

5. Adopt a Naming and Shaming Strategy

This is a mode of social punishment as it has been noted that public shame and ridicule are powerful tools that a State can use to reign in organizations or institutions engaging in illicit activities such as fraud and money-laundering. The blacklisting of such institutions, corporations or individuals denies them contracts and investment opportunities.

6. Other Relevant Strategies

Other strategies that can be adopted include:

- Policy measures to strengthen institutions to enhance the rule of law
- Research to identify the strengths and weaknesses of existing methods being used to combat the crime
- Amnesty to offenders so as to give them a second chance to start life with a clean slate as well as amnesty to institutions/organizations as an incentive for investors and offenders to provide correct tax disclosures and proper bank records/statements.

TRANSNATIONAL ORGANIZED CRIME IN MALDIVES

*Umar Mamdhooh**

I. INTRODUCTION

Transnational crime is a global issue that threatens the security and stability of nations around the world. With the advancement of technology and the progress of globalization, these crimes have become more complex and difficult to combat. The Maldives, a strategically located island nation in the Indian Ocean, has not been immune to the impact of transnational crime. Terrorism, drug smuggling and human trafficking are significant challenges that the Maldivian government must address to maintain law and order in the country. In this paper, we discuss the challenges and shortcomings of Maldives' approach to combating these transnational crimes, with special emphasis on terrorism, and analyse the countermeasures that can be implemented to address them.

II. OVERVIEW

The vulnerability of Maldives to different types of transnational crimes can be attributed to its relatively small population of 515,122[1] and archipelagic nature, which makes it easier for international criminals to operate within the country. Among the transnational crimes discussed in this paper, drug smuggling is most prevalent. The archipelagic nature and location of Maldives in the Indian Ocean, where drug trafficking is prevalent, make it a transit point for drug smuggling. Drugs are smuggled into Maldives via fishing vessels operating within and outside of Maldivian territory where the waters are not effectively monitored.

Terrorist incidents are relatively less prevalent in the Maldives, with the most recent attack being on former President Mr. Mohamed Nasheed on 6 May 2021. Another recent terrorist attack occurred with a small group of individuals operating on an island called Thimarafushi, in Thaa Atoll, who conspired with support and motivation from the terrorist organization Islamic State to carry out an attack in the capital city of Maldives, Male', on 11 November 2020. However, the plans were disrupted and the perpetrators were captured by the Maldives Police Service (MPS) before it materialized. In March 2020, two individuals were charged with terrorism offences in relation to an arson attack on a police speedboat in Laamu Gan, who were found to have been conspiring with foreign terrorist organizations. This followed knife attacks against three foreigners in Hulhumale' in February 2020, which were claimed by Daesh (also known as ISIL, Islamic State, or ISIS) supporters. The Maldives police made a number of arrests in relation to the knife attacks.

Maldives recorded no terrorism-related fatalities in recent years. The abduction and killing of blogger Yameen Rasheed by local affiliate of Al-Qaeda in April 2017, was the last fatal incident of terrorism recorded in the country, although the materials used in the attack on former President Mohamed Nasheed suggest it too was intended for the same result. Despite no fatality in recent years, recruitment and radicalization still persist. Many argue this may be because there is a strong overlap between gang-related activities and extremist groups.[2]

Human trafficking is another transnational crime prevalent in the Maldives. Since 2012, when the Maldives became a member of the International Organization for Migration (IOM), the government has increased

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[1] https://census.gov.mv/2022/wp-content/uploads/2023/04/Provisional-Result-Publication-amnded-2423.pdf

[2] Transparency Maldives, "Prison Radicalization Study," August 2022, https://transparency.mv/v17/wp-content/uploads/2022/08/Prison-Radicalisation-Study.pdf.

efforts to meet international standards in eliminating human trafficking in the Maldives. In 2013, Maldives passed the Anti-Human Trafficking Act that criminalized human trafficking and identified fraudulent recruitment, forced labour and sex trafficking as human trafficking.

Census data collected in 2022 showed that approximately 26 per cent of the population are foreigners, meaning for every three Maldivians, there is one foreigner living in Maldives. Cases submitted to the Prosecutor General's Office (PGO) and recent regularization efforts[3] carried out by the Government shows many are undocumented and at risk of exploitation.

According to the US Department of State's 2021 Trafficking in Persons Report,[4] the Maldives is a Tier 2 Watch List country, meaning that it does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The report notes that the Maldives government has taken steps to address human trafficking, including the adoption of a national action plan and the establishment of a national referral mechanism. However, the report also highlights concerns about the lack of resources and capacity to fully address this issue.

III. LEGAL FRAMEWORK

To combat these transnational crimes, the Maldivian government has implemented a range of legal and regulatory measures. For instance, the country has signed a number of international instruments,[5] including the United Nations Convention against Transnational Organized Crime (UNTOC), the Convention on the Suppression of Financing of Terrorism, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

In order to implement the requirements by the international instruments and to combat these transnational crimes, Maldives has passed foundational national legislation in these areas. The Anti-Terrorism Act comprehensively criminalizes a wide range of terrorist activities while addressing the complex nature of terrorism cases by providing special procedures for investigation and prosecution. The Narcotic Drugs Act lists illicit substances that are prohibited in Maldives and provides that such offences carry the sentence of imprisonment for life for those who are found guilty of importing or exporting such substances. The Prevention of Human Trafficking Act criminalizes human trafficking and identifies fraudulent recruitment, forced labour and sex trafficking as human trafficking. While these laws have laid the foundational work in tackling these crimes and to most extent, has proven successful, yet remains practical challenges and underlying problems to be addressed.

A. Counter-Terrorism in Maldives

The Maldives has experienced a number of terrorist incidents in recent years, including the improvised explosive device (IED) attack on former President Mohamed Nasheed in May 2021, which injured him and several others. Investigation revealed that the attack was carried out by local religious extremists motivated and radicalized by ideologies of foreign terrorist organizations. Almost all suspects charged in relation to the case possessed extremist materials of foreign terrorist organizations.

In November 2020, MPS were successful in thwarting a plot to carry out another IED attack. Materials found in suspects' devices revealed they too possessed materials including IED manuals and extremist texts

[3] International Labour Organization (ILO), "ILO Country Office for Sri Lanka and the Maldives: Technical Assistance to the Maldives – Project Document," October 2020, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_776391.pdf.

[4] U.S. Department of State, Trafficking in Persons Report: Maldives 2022, June 2022, https://www.state.gov/reports/2022-trafficking-in-persons-report/maldives/.

[5] Ministry of Foreign Affairs, Republic of Maldives, "List of Treaties and International Agreements to which Maldives is a Party," December 2020, https://www.gov.mv/en/files/treaties-list-december-2020.pdf.

under the name of ISIS. The most recent fatal terrorist incident on blogger Yameen Rasheed was carried out by locals affiliated with Al-Qaeda. The transnational aspect of terrorist activities carried out in Maldives is indisputable.

The Anti-Terrorism Act that came into effect in 2015 defines a wide range of acts done with the purpose to promote political or religious or extremist ideology and to coerce or unduly influence the government or create fear among the public, as terrorism.[6] The act further criminalizes a range of acts associated with terrorism, including financing, encouraging, planning and carrying out terrorist acts.[7] The Act provides for special procedures in arrest, search, seizure and detention of suspects which effectively addresses and provides for investigation officers to deal with the imminent threat such cases pose. It also contains a special evidentiary burden, which has proved helpful in prosecution. The act recognizes and provides for the outflow of Maldivians to Syria and other warzones that occurred mainly during early 2000, by stipulating a special mechanism for detention, rehabilitation and reintegration of foreign fighters.

Additionally, the National Counter Terrorism Centre (NCTC) of Maldives was established. The NCTC is the primary agency responsible for preventing and countering terrorism in the country. It works in coordination with other national agencies, including the MPS, Maldives National Defence Force (MNDGF) and Maldives Immigration. NCTC's main functions include conducting research and analysis on terrorism trends and threats, coordinating with international partners on counter-terrorism initiatives, developing and implementing national counter-terrorism strategies and action plans, and providing training and support to other national agencies in areas related to counter-terrorism.

Therefore, it is fair to say sufficient and adequate measures have been put in place to counter terrorist activities. However, many who are radicalized and continue to spread extremist ideologies are free, as commented by Commissioner of Police Mohamed Hameed[8] as well, preventing a successful cease of such activity in Maldives. Moreover, in a number of cases, for instance in the case of the terrorist attack against former President Mohamed Nasheed, the prosecution has had to opt for less serious charges such as mere possession of terrorist materials against perpetrators because of insufficient evidence to support charges for the actual acts they committed.

The "Prison Radicalization in the Maldives" report published by Transparency Maldives in collaboration with the Maldives Ministry of Home Affairs, noted:

> *there is a great deal of overlap between gangs and militant jihadist groups. Maldivian gang members may be told that they can continue most of their gang activities, as stealing from kafirs (unbelievers), especially in order to finance militant jihad, is halal (permissible). Thus, the criminal/terrorist nexus is forged and the two support each other's activities.*

In the November 2020 case, witnesses informed the police that they had heard similar harmful teachings from the suspects of the case, who in fact had prior criminal records, indicating that although progress has been made in preventing terrorist incidents, the crime-terror nexus is still prevalent and active in the Maldives, which needs addressing.

B. Drug Smuggling in Maldives

The Narcotics Drugs Act of 2011 provides the legal framework for combating drug trafficking in Maldives. The act lists illicit substances that are prohibited in the country, and imposes harsh penalties for drug-related offences, including life imprisonment and fines of up to MVR 10 million (approximately USD 700,000) for those found guilty of trafficking and importing or exporting.

In recent years, there have been numerous cases where large quantities of narcotic drugs have been seized by MPS. Although there has not been any case involving drug smuggling through sea vessels presented to the Prosecutor General's Office for charging in 2023, reports suggest Maldives is most susceptible to drug trade happening at sea due to Maldives' geographical location and the country being an archipelago.

[6] Section 4, Anti-Terrorism Act.
[7] Section 5-17, Anti-Terrorism Act.
[8] https://www.aljazeera.com/news/2021/5/8/who-tried-to-kill-mohamed-nasheed

For instance, in October 2020, the police conducted an extensive operation and arrested individuals involved in the drug trade in Seenu Atoll, located near the southernmost point of Maldives' Exclusive Economic Zone (EEZ). A total of 61 kg of Diamorphine (heroin) and 17 kg of methamphetamine were seized. In March 2020, 60 kg of heroin was also seized from a fishing vessel near the capital city.

The next most prevalent method used to smuggle drugs into Maldives is through human couriers. Statistics published by MPS at a press briefing showed that 41 foreigners were caught smuggling drugs into the country in the past three years, with 40 of them caught in transit.

As reported by UNODC,[9] Maldives is not a drug cultivating or producing country. All illegal drugs are imported via neighbouring countries by air and sea. Maldives is located in a region where drug smuggling is prevalent, despite having proper national legislation and adequate policing capabilities, a collective effort, and assistance from neighbouring countries, is needed to combat the problem.

C. Human Trafficking in Maldives

Almost one-third of the population in the Maldives consists of migrant workers, primarily from Bangladesh and India, with many being undocumented. The problem of human trafficking in the Maldives is often linked to the exploitation of these vulnerable undocumented foreign workers. They are frequently subject to abuse and exploitation by their employers, who withhold their passports, force them to work in hazardous and unhealthy conditions, and pay them below minimum wage.

The high number of undocumented foreign workers is mainly due to fraudulent quota allocations for labour recruitment agencies and poor border control. PGO has dealt with numerous cases involving sexual exploitation of foreign nationals who were brought to the Maldives under the guise of employment or tourist visas and has successfully secured convictions in such cases. However, the challenge remains regarding foreigners brought to the Maldives primarily for construction purposes without proper documentation.

In 2019, the police initiated an investigation into 27 cases of labour recruitment agencies suspected of potential labour trafficking. However, due to the failure of victim identification, which is a requirement under the Prevention of Human Trafficking Act, the police determined that none of the cases contained trafficking offences.

The challenge of prosecuting labour trafficking cases lies in the lack of proper support mechanisms for vulnerable victims and their identification. Most victims are indebted to their employers, either monetarily or in other forms, and without proper support mechanisms, they are often unwilling to pursue legal action against their employer. This results in insufficient evidence to pursue human trafficking charges.

IV. CHALLENGES AND SHORTCOMINGS

As mentioned earlier, the Maldives now possesses the foundational legal frameworks and mechanisms necessary to combat transnational crimes such as terrorism, drug smuggling, or human trafficking. The challenge now, or the area of improvement that we must focus on, is improving the effectiveness of the current mechanisms in place.

Transnational crimes are a global issue, and the prevalence of extremism or drug smuggling in the Maldives is a threat to neighbouring countries such as Sri Lanka or India, and vice versa. As Martin Luther King Jr. noted, "Whatever affects one directly, affects all indirectly." Now more than ever, there is a need for international collaboration in combating these crimes, as technologies have evolved, and criminals are not bound by country borders.

Regarding terrorism, I have had firsthand experience with a suspect explaining how extremists are now

[9] UNODC. "Maldives." South Asia Regional Profile. September 2005. Accessed on 18 April 2023. https://www.unodc.org/pdf/india/publications/south_Asia_Regional_Profile_Sept_2005/11_maldives.pdf.

more focused on subtle infiltration into government as public officials, rather than carrying out terrorist attacks. They are now focused on spreading extremist ideology and increasing recruitment by getting such people elected into policy-level jobs. This, of course, would not be recorded in police or prosecution statistics.

With drug smuggling, the Maldives being a country with no cultivation or production of drugs but only receiving them from neighbouring countries through air and sea, the underlying problem seems to be inadequate monitoring of territorial waters and inadequate airport security. The geography of the Maldives adds to the problem, as being an archipelago consisting of thousands of islands makes it difficult to monitor the entire country's coastline, giving an advantage for drug smugglers to transport drugs by sea.

The Maldivian government has made progress regarding quota allocation for labour recruitment agencies. The 27 agencies and others suspected of labour trafficking in 2019 had been suspended, and stricter quota allocation rules have been put in place. However, the area of victim identification and protection still requires further investments.

V. COUNTERMEASURES

In order to effectively combat the transnational crimes highlighted above, there are several countermeasures that could be implemented. For instance, strengthening law enforcement capabilities through better trainings, resources and equipment can help to counter the spread of extremist ideology and improve border security and monitoring of territorial waters. Greater international collaboration on mutual legal assistance (MLA), extradition and information sharing from neighbouring countries, international organizations and intelligence bodies can help MPS, Customs and Immigration officials to disrupt terrorist activities, drug smuggling and trafficking in persons before they materialize. Advanced technological resources in border control can strengthen Maldives' efforts to prevent the entry of illegal drugs and human trafficking victims into the country.

Additionally, assistance from neighbouring countries in victim identification and protection for victims of human trafficking and drug smuggling, through cooperation, collaboration and investments can pave way for more successful prosecution of such cases. It is also important to address the underlying causes of transnational crimes such as socioeconomic factors, through investment in general social well-being, socioeconomic activities, sports and education.

VI. CONCLUSION

Maldives is a relatively peaceful country. Only about 300 cases are submitted to PGO for prosecution per month.[10] However, as a prosecutor working in the Maldives, I have seen firsthand the impact of transnational crimes on our country's national security and safety. The proliferation of recruitment for religious extremism, undocumented and unregulated foreign workers, and drug smuggling have created a significant challenge for law enforcement agencies.

In response to this challenge, it is imperative that we take a collective international approach. We must continue to develop and improve our legal framework to effectively prosecute and adjudicate transnational crimes. We must invest in the exchange of intelligence and knowledge to combat transnational crimes, as well as in technology and resources such as border control and surveillance. By working together, we can effectively combat transnational crimes in Maldives and worldwide.

[10] https://aamahi.pgo.mv/en/statistics/dp

RESOURCE MATERIAL SERIES
No. 116

APPENDIX

UNAFEI

PHOTOGRAPHS

THE 180TH INTERNATIONAL SENIOR SEMINAR

THE SECOND INTERNATIONAL TRAINING COURSE ON BUILDING INCLUSIVE SOCIETIES

THE 181ST INTERNATIONAL TRAINING COURSE

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