

**ANNUAL REPORT FOR 2002**

**and**

**RESOURCE MATERIAL  
SERIES No. 61**

**UNAFEI**

**Fuchu, Tokyo, Japan**

**September 2003**

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## INTRODUCTORY NOTE

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It is with pride that the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community Resource Material Series No. 61.

This volume contains the Annual Report for 2002 and the work produced in the 121<sup>st</sup> International Training Course that was conducted from 20 May to 12 July 2002. The main theme of this Course was, “Enhancement of Community-Based Alternatives to Incarceration at all Stages of the Criminal Justice Process.”

The 121<sup>st</sup> International Training Course considered community-based alternatives to incarceration, in particular ways in which they could be implemented or improved. The Vienna Declaration on Crime and Justice adopted by the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders stressed the importance of such alternatives; and was followed up by the United Nations Commission on Crime Prevention and Criminal Justice. It was hoped that the lack of success that most states had experienced in this regard could be studied and solutions found. Participants accomplished this primarily through comparative analysis of the current situation, the problems encountered, and an examination of the availability and utilization of such alternatives. At the end of the Training Course the participants were in a position to fully appreciate such alternatives to imprisonment and hopefully implement what they had learnt in their respective countries.

In this issue, papers contributed by visiting experts, selected individual presentation papers from among the Course participants, and the reports of the Course are published. I regret that not all the papers submitted by the Course participants could be published. Also, I must request the understanding of the selected authors for not having sufficient time to refer the manuscripts back to them before publication.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice and the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI’s international training programmes.

Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series; in particular the editor of Resource Material Series No. 61, Mr. Simon Cornell (Linguistic Adviser) who so tirelessly dedicated himself to this series.

September 2003



Kunihiko Sakai  
Director of UNAFEI



**PART ONE**

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FOR 2002**

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**UNAFEI**



# **MAIN ACTIVITIES OF UNAFEI**

## **(1 January 2002 – 31 December 2002)**

### **I. ROLE AND MANDATE**

The Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was established in Tokyo, Japan in 1961 pursuant to an agreement between the United Nations and the Government of Japan. Its goal is to contribute to sound social development in Asia and the Pacific region by promoting regional cooperation in the field of crime prevention and criminal justice, through training and research.

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

### **II. TRAINING**

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

Each year, UNAFEI now conducts two international training courses (two months duration) and one international seminar (one month duration). Approximately 70 government officials from various overseas countries receive fellowships from the Japan International Cooperation Agency (JICA; a governmental agency for ODA programmes) each year to participate in all UNAFEI training programmes.

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

During its 41 years of existence, UNAFEI has conducted a total of 122 international training courses and seminars, in which approximately 2976 criminal justice personnel have participated, representing 102 different countries. In their respective countries, UNAFEI alumni have been playing leading roles and holding important posts in the fields of crime prevention and the treatment of offenders, and in related organisations.

#### **A. The 120th International Seminar**

##### **1. Introduction**

From 15 January to 15 February 2002, 21 participants from 15 countries attended the 120th International Seminar to examine the main theme of "Effective Administration of the Police and the Prosecution in Criminal Justice."

##### **2. Methodology**

Firstly, the Seminar participants respectively introduced the current situation regarding the role and function of the police and prosecution in their respective countries. Secondly, General Discussion Sessions in the conference hall examined the subtopics of the main theme. In considering the issues of police and prosecution, discussion firstly focused on police structure and how this affects efficiency. One of the main problems that hinders effective investigations is arbitrary political influence and

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safeguards were examined to exclude such influence. Methods of improving cooperation between the police and the prosecution were also considered, as this is imperative to effective and successful investigations and prosecutions. The participants finally looked at ways of enhancing prosecutorial functions, especially case screening. To conduct each session efficiently, the UNAFEI faculty provided the following three topics for participant discussion:

- Topic 1: Effective Police Systems;
- Topic 2: Cooperation between the Police and Prosecutors;
- Topic 3: Effective Case Screening by Prosecutors or other Competent Agencies.

A chairperson, co-chairperson, rapporteur and co-rapporteur were elected for each topic and organised the discussions in relation to the above themes. In the conference hall, the participants and UNAFEI faculty seriously studied the designated subtopics and exchanged views. Final reports were compiled, based on the said discussions, and were ultimately adopted as the reports of the Seminar. These reports were printed in their entirety in UNAFEI Resource Material Series No. 60.

### 3. Outcome Summary

There is a growing determination in most countries around the world to introduce reforms in their respective criminal justice systems. For reforms in the criminal justice system to have a meaningful impact, police institutions must undergo reforms in order to render them more effective and efficient. Police systems throughout the world broadly fall into three classifications; centralized/national police system, semi-centralized (dual control) police system and decentralized police system. Problems identified in relation to the police system included; budgetary constraints, lack of training, lack of cooperation, corruption, arbitrary external influence and lack of personnel. Suggested solutions to such problems were as follows;

- (i) Countries should give special attention to sufficient and sustainable budgets for their police agencies,
- (ii) There must be mechanisms for enhancing the police's transparency and accountability,
- (iii) There must be structural safeguards in order to ensure the exercise of police functions is not arbitrarily interfered with,
- (iv) Governments should ensure that police agencies are independent from politics,
- (v) All police officers should receive training on ethical values,
- (vi) Adequate and continuous training should be given to police officers,
- (vii) The establishment of police associations should be considered as they can play an important role in raising professional standards.

Prosecutors are vested with the responsibility of checking police investigations against the due process of the law. It is apparent that the police and prosecutors are getting more and more mutually dependent due to the increasing complexity, magnitude and other challenges of crime emerging in modern societies. Certain problems were identified in the relationship between the police and prosecutors such as; different psychological traits between police officers and prosecutors, conflicting views over case dispositions, lack of shared common goals, lack of objectivity and a lack of discretion in police investigations. Measures that might assist cooperation between the police and prosecutors include;

- (i) Common goals should be determined and shared between the police and the prosecution service supported by a strong political will,
- (ii) Greater avenues of communication should be developed between the police and prosecutors (e.g. intensive early stage consultation, regular meetings, close liaison),
- (iii) Legislation should clearly define the distinct roles of the police and prosecutors,
- (iv) Cooperation models should be considered to simplify proceedings/diversion.

There are two types of case screening; one is the test of whether there is sufficient evidence to obtain a conviction and the other is whether, although there might be sufficient evidence, it does not appear to be prudent or in the public interest to prosecute. Case screening is performed by prosecutors in the following ways; the police alone investigate and then hand cases to the prosecutor for scrutiny,

## MAIN ACTIVITIES

prosecutors can suspend prosecution, prosecutors apply an evidentiary and public interest test to initiate a prosecution, plea bargaining, and at a victim's request. Case screening by the police can take the form of; non-recognition of an alleged offence, fine/discharge, insufficient evidence to proceed to charge. Recommendations to improve case screening included;

- (i) Ensuring sufficient budget for the police and prosecution,
- (ii) Ensuring the independence of the prosecution,
- (iii) Checks and controls on prosecutor's decisions,
- (iv) Time frames to complete investigations,
- (v) Adequate number of prosecutors,
- (vi) Consider a variety of proceedings other than trials,
- (vii) Proper cooperation between prosecutors, the police and other enforcement agencies.

### **B. The 121st International Training Course**

#### **1. Introduction**

UNAFEI conducted the 121st International Training Course from 20 May to 12 July 2002 with the main theme, "Enhancement of Community-Based Alternatives to Incarceration at all Stages of the Criminal Justice Process." This Course consisted of 25 participants from 14 countries. The United Nations has long recognized the necessity of formulating and implementing alternatives to imprisonment in order to ameliorate prison overcrowding and encourage the reintegration of offenders into the community. The manifestation of this concern was the adoption of the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) by the United Nations General Assembly in 1990. However, despite international efforts to develop the use of community-based alternatives to incarceration many countries throughout the world have seen their prison populations increase, particularly in the Asia-Pacific region. The need to enhance community-based alternatives to incarceration reflects increasingly accepted global wisdom that unless offenders need to be separated from society then they should be placed on community programmes that provide more effective rehabilitation and utilize available resources more efficiently.

#### **2. Methodology**

The participants examined measures to implement and improve community-based alternatives to incarceration at all stages of the criminal justice process. This was accomplished primarily through comparative analysis of the current situation, possibilities and problems encountered in community-based alternatives and an examination of the availability and utilization of such alternatives. In-depth discussions enabled the participants to fully appreciate the range of community-based alternatives to imprisonment and put forth effective and practical solutions to the problems faced by these alternatives.

The objectives of the Course were primarily realized through the Individual Presentations and Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of their country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussion, the participants were divided into the following three groups under the guidance of faculty advisers:

Group 1: Enhancement of Community-Based Alternatives at the Pre-Sentencing Stage

Group 2: Enhancement of Community-Based Alternatives at the Sentencing Stage of the Criminal Justice Process

Group 3: Enhancement of Community-Based Alternatives to Incarceration at the Post-Sentencing Stage

Each group elected chairpersons and rapporteurs to organise the discussions. The group members seriously studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth. Sessions were allocated for Group Discussion. During the course, Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the final Plenary Meetings in the seventh week, drafts of the Group Workshop reports were examined and critiqued by

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all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-Back Sessions, where they were endorsed as the reports of the Course. The full texts of the reports are published in UNAFEI Resource Material Series No. 61.

### 3. Outcome Summary

It was found that non-custodial measures are often being practiced at the pre-sentencing stage and that the most common measures were admonitions/warnings, which make it possible to release a petty offender from the criminal procedure at the earliest stage. Fines are also widely used measures particularly for traffic offenders. In each country, either prosecutors or the police are authorized to decide whether or not to prosecute cases, though there are differences as to at what point in the process this power is exercised.

Advantages of using non-custodial measures at the pre-sentencing stage were identified as follows; prison populations could be reduced, accruing cost benefits, stigma avoidance, avoidance of escalating criminal behaviour, timely bail and diversion can assist the maintenance of family linkages, employment and social status, victims' interests can be taken into consideration, offenders can contribute to the community. Alternatively the disadvantages of using non-custodial measures at the pre-sentencing stage were considered to be; recidivism risks if no rehabilitation programmes were provided, anxiety in the local community if offenders are not imprisoned, a perception of non-custodial measures being a 'soft option', a decrease in the general and individual deterrent effects of punishment, greater risk of revenge attacks by victims and/or their families.

Diversion programmes are often seen to be alternatives to the criminal justice process. It was noted that throughout the world, diversion programmes are primarily used for juvenile offenders although adults occasionally benefit from such programmes. Through the experiences of the participants' countries, common target groups are those who have committed minor offences, juvenile offenders, first time offenders and drug users. Generally, the implementation and enhancement of community-based alternatives at the pre-sentencing stage such as diversion programmes must be discussed based upon the following conditions;

- (i) The application of community-based alternatives to incarceration should be implemented based on a clear standard prescribed by the law or other regulations.
- (ii) Community based alternatives must only be applied when it is considered that there is no imperative to proceed with the case for the protection of society.
- (iii) Crime prevention and the promotion of respect for the law and the rights of victims should correctly be considered in the context of community-based alternatives.
- (iv) Discretion by a judicial or other competent independent authority must be exercised only in accordance with the rule of law and must never be abused.

The current use and administration of community-based alternatives at the sentencing stage was also analysed. They were identified as; verbal sanctions such as admonitions, reprimands and warnings, economic sanctions and monetary penalties such as fines, restitution or compensation orders, suspended sentences, probation and correctional supervision, community service orders, house arrest, referral to a treatment center, and banishment.

The correct use of community-based alternatives to incarceration for appropriate offenders offers the following general advantages; reduces upward pressure on prison populations and costs, protects public safety as effectively as prison, reduces stigmatization, promotes social reintegration of offenders, and prevents recidivism. To develop and maintain a successful system of community-based alternatives, a criminal justice system should have; a wide array of community-based alternative programmes available in the community, a wide array of flexible sentencing options available to the court, a system to assess offenders and available community-based sentences to assist the court matching appropriate offenders with appropriate sentencing options and community-based alternatives, a system to effectively coordinate, administer and supervise the sentences of offenders in the community.

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As regards community-based alternatives to incarceration at the post-sentencing stage, such alternatives were seen to be broadly based into two types; early release measures (such as parole, pardons and remission) and temporary release measures (such as furloughs and temporary leave programmes). It was found that, for temporary release measures, an effective classification system should be established and there should be a standard scale for risk and needs assessment for offenders. Further, parole systems among participating countries were not being fully utilized due to various reasons: e.g., conflicting provisions in laws, shortage of budget and/or manpower and there is a need for the introduction of objective screening processes and allocation of appropriate resources in terms of offenders' needs and risks, establishment of an independent authority which incorporates accountability and transparency in decision-making. Temporary release measures can be the primary means of bridging institutional treatment and community-based treatment by enhancing privileges for inmates and opportunities to prepare for the through care process. These measures should always be closely monitored and evaluated in order to achieve and continue effective results that are based on evidence-based practices. The enlargement of community-based options also depends upon the support and trust of the general public who need to be well informed by reliable evidence.

### C. The 122nd International Training Course

#### 1. Introduction

From 2 September to 25 October 2002, UNAFEI conducted the 122nd International Training Course with the main theme, "The Effective Administration of Criminal Justice to Tackle Trafficking in Human Beings and Smuggling of Migrants". This Course consisted of 24 participants from 11 countries. It is generally accepted that human trafficking and the smuggling of migrants has become a modern scourge of a rapidly globalising world. Trafficking and smuggling abuses the basic human rights of trafficked/smuggled persons, upsets the balance of immigration policies around the globe and provides vast profits for transnational organised criminal groups that view such activities as central to their nefarious operations. It is apparent that the causes of the increasing scale of human trafficking and smuggling are numerous mainly due to the great disparities in the economic situations between developing and developed countries and the unstable political situations in various states.

#### 2. Methodology

The participants examined the overall situation of trafficking and smuggling, including the *modus operandi* and routes of trafficking and smuggling and forms of exploitation of trafficked and smuggled persons. They also analysed the cause of trafficking and smuggling. Further, the components and legal frameworks for tackling trafficking and smuggling and their best practices were considered especially in relation to; border control and travel documents, law enforcement, prosecution, court, legislative issues (e.g., criminalisation of trafficking and smuggling) and international cooperation.

The objectives were primarily realized through the Individual Presentations and the Group Workshop sessions. In the former, each participant presented the actual situation, problems and future prospects of their country with respect to the main theme of the Course. The Group Workshops further examined the subtopics of the main theme. To facilitate discussions, the participants were divided into the following three groups:

Group 1: Trafficking in Human Beings, Especially Women and Children

Group 2: The Effective Administration of Criminal Justice to Tackle the Smuggling of Migrants

Group 3: International Cooperation against Human Trafficking and Smuggling of Migrants

Each group elected a chairperson(s) and rapporteur(s) to organise the discussions. The group members seriously studied the designated subtopics and exchanged their views based on information obtained through personal experience, the Individual Presentations, lectures and so forth.

In weeks six and seven Plenary Meetings were held to discuss the interim outline of the Group Workshop reports and to offer suggestions and comments. During the Plenary Meetings, drafts of the Group Workshop reports were examined and critiqued by all the participants and the UNAFEI faculty. Based on these discussions, the Groups further refined their reports and presented them in the Report-

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Back Sessions, where they were endorsed as the reports of the Course. The reports will be published in full in the UNAFEI Resource Material Series No. 62.

### 3. Outcome Summary

One of the most difficult realities facing persons trafficked into forced labour, slavery, or servitude is the propensity of governments worldwide to treat trafficked persons as criminals or unwanted undocumented workers rather than as rights-bearing human beings. "Trafficking in Persons" shall mean the recruitment, transportation, transfer, harbouring or receipt, of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. (Art. 3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children).

The causes of trafficking can be seen to fall into two categories: "push factors" such as; poverty, lack of education prospects, chronic unemployment, the low status of women and girls in social and economic aspects, lack of economic opportunities, political instability, traditional social and cultural practices, corruption and others (i.e., militarism, civil unrest, internal armed conflict and natural disasters) and also "pull" factors such as; high demands of the sex industry, high profits for traffickers, lenient punishment, inefficient law enforcement, deficient legislative laws and corruption. There are two main types of trafficking; one type is trafficking for sexual exploitation and the other is for labour exploitation.

Trafficking is a multi-dimensional issue. Therefore, the legislative issue can be tackled as both a criminal and a human rights issue. Trafficking as a criminal issue should encompass; adequate provisions of the law to address the special needs of children, protection of the victim as well as his/her relatives, guarantee victims the right to compensation. States are the protectors of human rights of the people living in their territory and must be held responsible for the fight against trafficking.

As regards the problems of detection, investigation, prosecution and punishment of the crime of human smuggling the following recommendations are suggested; promotion of high technology for passports or visas to prevent forgery of documents, develop or promote the use of advanced technology for the detection of forged documents, strengthening of international cooperation and exchange of information between and among the countries Recommendations to effectively tackle the smuggling of migrants should include the following; improving coast watch with customs and navy capabilities and tightening border controls, special task forces against human smuggling should be created, a system for peoples' participation in the combat against human smuggling should be developed, special training for investigators, prosecutors, judges and other concerned government officials should be conducted, the system of information and exchange between and among the agencies concerned with human smuggling should be strengthened, witnesses (illegal migrants) need to be secured to prosecute smugglers effectively, legislative measures against human smuggling should be enacted and information and education campaigns should be intensified.

Problems emerging from rapid globalisation are posing challenges to the criminal justice system of the individual countries and the world as a whole. Challenges such as human trafficking and smuggling of migrants operate beyond the boundaries of individual countries. The existence of the present strict MLA and extradition framework, judicial boundaries, geographical limitations in investigation and prosecution are no match for the kind of international crime that is being committed today. International efforts towards the elimination of human trafficking and smuggling of migrants should be further enhanced. At the same time, efforts at the national level to develop appropriate measures to safeguard the human rights of the trafficked victims should be continued. The UN TOC Convention and its two Protocols must be ratified by every country and put into effect in order to eradicate human trafficking and smuggling of migrants.

## MAIN ACTIVITIES

### D. Special Seminars and Courses

1. Seventh Special Seminar for Senior Criminal Justice Officials of the People's Republic of China

The Seventh Special Seminar for Senior Officials of Criminal Justice in the People's Republic of China, entitled "Criminal Justice Reform", was held from 25 February to 15 March 2002. Fourteen senior criminal justice officials and the UNAFEI faculty comparatively discussed contemporary problems faced by China and Japan in the realization of criminal justice.

2. Third Special Seminar for Kenya on Juvenile Delinquent Treatment Systems

UNAFEI conducted the Third Special Seminar for Kenyan criminal justice officials who are working for the prevention of delinquency and the treatment of juvenile delinquents in their country. The Seminar, entitled "Juvenile Delinquent Treatment Systems", was held from 28 October to 22 November 2002. The Seminar exposed nine Kenyan officials to the workings of the Japanese juvenile justice and treatment system through lectures and observation visits to relevant agencies. As a result of this comparative study, the officials successfully developed action plans for the implementation and development of institutional and community-based treatment systems for juvenile delinquents in Kenya.

3. Fifth Special Training Course on Corruption Control in Criminal Justice

UNAFEI conducted the Fifth Special Training Course entitled "Corruption Control in Criminal Justice" from 28 October to 22 November 2002. In this course, thirteen foreign and three Japanese officials engaged in corruption control comparatively analysed the current situation of corruption, methods of corruption prevention, and measures to enhance international cooperation in this regard. During this course there was a joint programme between the International Association of Penal Law and UNAFEI.

4. First Seminar on the Judicial System for Tajikistan

The First Special Seminar for officials involved in criminal justice from Tajikistan was held from 4 March to 21 March at UNAFEI. The Tajikistan criminal justice system was viewed from a comparative perspective and the ten participants were given an overview of the Japanese criminal justice system.

5. UN Center for International Crime Prevention (CICP)-UNAFEI Pre-Ratification Expert Group Seminar for the UN Convention Against Transnational Organised Crime and its Protocols

Senior criminal justice officials from 21 countries in the Asia-Pacific region and visiting experts from all over the world were invited to this seminar that was held at the Osaka branch of UNAFEI on 22 and 23 August 2002. The purpose of the seminar was to support the ratification of the TOC Convention and it was jointly organised by the CICP and UNAFEI.

6. UNAFEI's Fortieth Anniversary Ceremony and Commemorative Symposium

UNAFEI celebrated its fortieth anniversary since its establishment in 1962. As the ACPF also celebrated its twentieth anniversary, a joint ceremony and symposium was held from 2 to 4 October 2002 at the Ministry of Justice and the Institute for International Cooperation, Tokyo. Senior criminal justice officials, experts and many UNAFEI alumni attended this event.

## III. TECHNICAL COOPERATION

### A. Joint Seminars

Since 1981, UNAFEI has conducted 23 joint seminars under the auspices of JICA and in collaboration with host governments in Asia and the Pacific. With the participation of policy-makers and high-ranking administrators, including members of academia, the joint seminars attempt to provide a discussion forum in which participants can share their views and jointly seek solutions to various problems currently facing criminal justice administration in both the host country and Japan.

1. Indonesia-UNAFEI Joint Seminar

The Indonesia-UNAFEI Joint Seminar was held in Jakarta with the theme of "Criminal Justice Reform" from 18 to 20 December 2002. The Government of Indonesia, JICA and UNAFEI organised the Joint Seminar. Over 200 local participants including lawyers, government officials, non-governmental

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representatives and members of the judiciary and the police attended the Seminar. The UNAFEI delegation consisted of the Director, the Deputy Director, three professors, the Linguistic Advisor, two members of the Secretariat and an official from the National Police Agency of Japan. The Seminar concluded with the adoption of recommendations on criminal justice reform in Indonesia.

### **B. Regional Training Programmes**

#### 1. Costa Rica

In July 2002, UNAFEI dispatched two professors to Costa Rica to attend the Fourth International Training Course on the "Improvement of Prison Conditions and Correctional Programmes", organised and hosted by the Government of Costa Rica through the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD).

### **C. Others**

In July and August 2002, two UNAFEI professors were dispatched to Kenya to assist the Children's Department of the Ministry of Home Affairs and National Heritage in a project to develop nationwide standards for the treatment of juvenile offenders.

## **IV. COMPARATIVE RESEARCH PROJECT**

Reflecting its emphasis on the systematic relevance of training activities and priority themes identified by the UN Commission, the research activities of the Institute are designed to meet practical needs, including those for training materials for criminal justice personnel.

## **V. INFORMATION AND DOCUMENTATION SERVICES**

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

## **VI. PUBLICATIONS**

Reports on training courses and seminars are published regularly by the Institute. Since 1971, the Institute has issued the Resource Material Series, which contains contributions by the faculty members, visiting experts and participants of UNAFEI courses and seminars. In 2002, the 59th edition of the Resource Material Series was published. In March 2002 the results of the Philippines-UNAFEI Joint Seminar on "Community Involvement in the Criminal Justice Administration" (held in Manila, the Philippines in December 2001) were published. The results of the Kenya-UNAFEI Joint Seminar on, "Effective Coordination and Cooperation of Criminal Justice Agencies in the Administration of Juvenile Justice" (held in Nairobi, Kenya in August 2001) were also published in March 2002. Additionally, issues 107 to 109 of the UNAFEI Newsletter were published, including a brief report on each course and seminar (from the 120th to the 122nd respectively) and providing other timely information.

## **VII. OTHER ACTIVITIES**

### **A. Public Lecture Programme**

On 1 February 2002, the Public Lecture Programme was conducted in the Grand Conference Hall of the Ministry of Justice. In attendance were many distinguished guests, UNAFEI alumni and the 120th International Seminar participants. This Programme was jointly sponsored by the Asia Crime Prevention Foundation (ACPF), the Japan Criminal Policy Society (JCPS) and UNAFEI.

Public Lecture Programmes increase the public's awareness of criminal justice issues, through comparative international study, by inviting distinguished speakers from abroad. This year, Mr. Peter

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Beouf (Chief Crown Prosecutor of London, Crown Prosecution Service, England) and Mr. Eberhard Siegismund (Deputy Director General in the Judicial System Division, Germany) were invited as speakers to the Programme. They delivered lectures respectively entitled “The Crown Prosecution Service” and “The Function of Honorary Judges in Criminal Proceedings in Germany.”

### **B. Assisting UNAFEI Alumni Activities**

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

### **C. Overseas Missions**

Mr. Yuichiro Tachi visited Indonesia from 6 January to 19 January 2002 where he conducted research on behalf of UNAFEI into judicial reform in Indonesia.

Mr. Kei Someda (Professor) and Mr. Kimihiro Suga (Staff) visited Thailand from 18 to 23 February 2002 to consider the necessity of establishing a training course for Thai probation officers in Japan. During the time in Thailand Mr. Someda delivered a lecture at the headquarters of the Department of Probation, Thai Ministry of Justice.

Mr. Yasuhiro Tanabe (Professor) attended the Experts Meeting for the United Nations Global Programme Against Trafficking in Human Beings. This Meeting was held in Manila, the Philippines from 18 to 19 March 2002.

Mr. Toru Miura (Professor) and Ms. Sue Takasu (Professor) visited various government agencies in Hanoi, Vietnam in order to study the situation and needs regarding the criminal justice system in Vietnam from 21 March to 26 March 2002.

Mr. Kunihiko Sakai (Director) and Mr. Yasuhiro Tanabe (Professor) attended the Eleventh Session of the United Nations Commission on Crime Prevention and Criminal Justice held in Vienna, Austria from 15 to 27 April 2002.

Ms. Tomoko Akane (Deputy Director) attended a Sino-Finnish Seminar on the United Nations Convention against Transnational Organised Crime in Beijing, China from 12 May to 16 May 2002. Ms. Akane presented a lecture at this Seminar.

Mr. Yuichiro Tachi (Professor) attended the Conference on the New Global Security Agenda in Asia and Europe: Transnational Crimes and prospects for Asia-European Cooperation. The Conference was held from 26 May to 30 May 2002 in Copenhagen, Denmark.

Mr. Toru Miura (Professor) and Mr. Ryuji Kuwayama (Professor) visited Costa Rica from 13 to 27 July 2002 where they presented lectures on behalf of UNAFEI at the Fourth International Training Course on the Improvement of Prison Conditions and Correctional Programmes.

Mr. Kunihiko Sakai (Director), Ms. Sue Takasu (Professor), Mr. Yasuhiro Tanabe (Professor) and Mr. Masuo Tanaka (Staff) visited the People’s Republic of China from 21 to 28 July 2002 for the purpose of fostering international exchange between the respective criminal justice administrations.

Mr. Kei Someda (Professor) and Mr. Kenji Teramura visited Kenya as short-term experts, as part of a JICA international assistance scheme providing special support to the Children’s Department of Kenya from 24 July to 25 August 2002.

Ms. Tomoko Akane (Deputy Director) participated in the Twentieth Cambridge International Symposium on Economic Crime and the Seventh Annual Conference and General Meeting of the International Association of Prosecutors in Cambridge and London respectively from 7 to 16 September 2002.

## ANNUAL REPORT FOR 2002

Mr. Yasuhiro Tanabe (Professor) attended the Fifth International Conference on Computer Crime organised by the ICPO-INTERPOL in Seoul, Korea from 13 to 16 October 2002 where he gave a presentation on UNAFEI's activities in the fight against computer-related crime.

Mr. Ryuji Kuwayama (Professor) acted as an observer at the 22nd Asian and Pacific Conference of Correctional Administrators which was held in Bali, Indonesia from 12 to 20 October 2002.

Ms. Mikiko Kakihara (Professor) and Mr. Kenji Teramura (Professor) attended an international conference on "Offender Rehabilitation in the 21st Century" in Hong Kong as speakers from 1 to 6 December 2002.

Mr. Kunihiro Sakai (Director) attended the Coordination Meeting of the United Nations Crime Prevention and Criminal Justice Programme Network in Turin, Italy from 3 to 10 December 2002.

Ms. Sue Takasu (Professor) gave a lecture at a symposium on "Preventing Organised Crime" in Abu Dhabi, the United Arab Emirates, which was held by the Ministry of the Interior, UAE from 12 to 19 December 2002.

Mr. Kunihiro Sakai (Director), Ms. Tomoko Akane (Deputy Director), Mr. Toru Miura (Professor), Mr. Yuichiro Tachi (Professor), Mr. Kei Someda (Professor), Mr. Sean Eratt (Linguistic Adviser), Mr. Makoto Nakayama and Mr. Takahiro Ihara (Staff) represented UNAFEI at the Indonesia-UNAFEI Joint Seminar on "Criminal Justice Reform" held from 18 to 20 December 2002 in Jakarta, Indonesia.

### **D. Assisting ACPF Activities**

UNAFEI cooperates and corroborates with the ACPF to further improve crime prevention and criminal justice administration in the region. Since UNAFEI and the ACPF have many similar goals, and a large part of ACPF's membership consist of UNAFEI alumni, the relationship between the two is very strong. An example of this cooperation can be seen in the 9th ACPF International World Conference, which was held in Tokyo in October 2002.

## VIII. HUMAN RESOURCES

### **A. Staff**

In 1970, the Government of Japan assumed full financial and administrative responsibility for running the Institute. The Director, Deputy Director and seven professors are selected from among public prosecutors, the judiciary, corrections and probation. UNAFEI also has approximately 20 administrative staff members, who are appointed from among officials of the Government of Japan, and a linguistic adviser. Moreover, the Ministry of Justice invites visiting experts from abroad to each training course and seminar. The Institute has also received valuable assistance from various experts, volunteers and related agencies in conducting its training programmes.

### **B. Faculty Changes**

Mr. Mikinao Kitada, formerly Director of UNAFEI, was transferred to become Director General for Inspection at the Ministry of Foreign Affairs on 1 April 2002.

Mr. Keiichi Aizawa, formerly Deputy Director of UNAFEI, was transferred to the Chiba District Prosecutors Office on 1 April 2002.

Mr. Hiroshi Tsutomi, formerly Professor of UNAFEI, left UNAFEI to become an associate professor at Shizuoka University on 1 April 2002.

Mr. Kunihiro Sakai, formerly a Prosecutor with the Tokyo District Prosecutors Office, joined UNAFEI as Director on 1 April 2002.

Ms. Tomoko Akane, formerly a Prosecutor with the Sapporo District Prosecutors Office, joined UNAFEI as Deputy Director on 1 April 2002.

## MAIN ACTIVITIES

Mr. Ryuji Kuwayama, formerly Director of the Finance Division at Mito Juvenile Prison, joined UNAFEI as a Professor on 1 April 2002.

## IX. FINANCES

The Ministry of Justice primarily provides the Institute's budget. The total amount of the UNAFEI budget is approximately ¥319 million per year. Additionally, JICA and the ACPF provides assistance for the Institute's international training courses and seminars.

# UNAFEI WORK PROGRAMME FOR 2003

## I. TRAINING

### **A. 123rd International Seminar**

The 123rd International Seminar, “The Protection of Victims of Crime and the Active Participation of Victims in the Criminal Justice Process specifically considering Restorative Justice Approaches” is to be held from 14 January to 14 February 2003. The 123rd International Seminar will examine the current situation and problems in relation to the protection of victims of crime and the active participation of victims in the criminal justice process specifically considering the possibilities and problems that exist in restorative justice approaches.

### **B. 124th International Training Course**

The 124th International Training Course, “Effective Prevention and Enhancement of Treatment for Drug Abusers in the Criminal Justice Process”, is scheduled to be held from 21 April to 13 June 2003. This Course will examine the current situation of drug abuse, consider the practices concerning prevention of drug abuse and explore measures for improving the treatment of drug abusers at each stage of the criminal justice process.

### **C. 125th International Training Course**

The theme of the 125th International Training Course is, as yet, undecided. It is scheduled to be held from 8 September to 31 October 2003.

### **D. Eighth Special Seminar for Senior Criminal Justice Officials of the People’s Republic of China**

The Eighth Special Seminar for Senior Criminal Justice Officials in the People’s Republic of China, “International Cooperation in Crime Prevention and Criminal Justice — to Focus on the Implementation of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance, 1988 and the UN Convention against Transnational Organised Crime”, is scheduled to be held at UNAFEI from 24 February to 14 March 2003. Twelve senior criminal justice officials and members of the UNAFEI faculty will discuss contemporary problems faced by China and Japan in relation to the above theme.

### **E. Second Seminar on the Judicial System for Tajikistan**

UNAFEI will hold the Second Special Seminar for officials involved in criminal justice from Tajikistan. The Seminar, entitled “Transnational Organised Crime and International Cooperation — to Focus on the Implementation of the UN Convention against Transnational Organised Crime”, will be held from 3 March until 21 March 2003.

### **F. Fourth Special Seminar for Kenya on Juvenile Delinquent Treatment Systems**

UNAFEI will hold the Fourth Special Seminar for Kenyan criminal justice officials who are working for the prevention of delinquency and the treatment of juvenile delinquents in their country. The Seminar, entitled “Juvenile Delinquent Treatment Systems”, will be held in November 2003. The Seminar will expose Kenyan officials to the workings of the Japanese juvenile justice and treatment systems through lectures and observation visits to relevant agencies.

### **G. Sixth Special Training Course on Corruption Control in Criminal Justice**

UNAFEI will conduct the Sixth Special Training Course entitled “Corruption Control in Criminal Justice” in November 2003. In this course, foreign and Japanese officials engaged in corruption control will comparatively analyse the current situation of corruption, methods of corruption prevention, and measures to enhance international cooperation in this regard.

### **H. Ad-Hoc Seminar on the Revitalization of the Volunteer Probation Aid System for the Philippines**

This seminar will expose the Parole and Probation Officers from the Philippines to the administration of the Japanese Volunteer Probation officer System, in order for them to improve their own volunteer programme. The first part of this seminar will be conducted from March 10 to 12, 2003

## WORK PROGRAMME

through a teleconferencing system for 40 Parole and Probation Officers and the second part will be conducted from March 17 to 24, 2003 at UNAFEI for five Parole and Probation officers.

### II. TECHNICAL COOPERATION

#### A. Joint Seminars

Currently the venue and the theme of UNAFEI's joint seminar for 2003 are undecided.

#### B. Regional Training Programmes

##### 1. Costa Rica

In July 2003, two UNAFEI professors will represent the Institute at the Fifth International Training Course on the Improvement of Prison Conditions and Correctional Programmes, San Jose, Costa Rica.

## APPENDIX

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### MAIN STAFF OF UNAFEI

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Mr. Kunihiko Sakai	Director
Ms. Tomoko Akane	Deputy Director
<b>Faculty</b>	
Mr. Toru Miura	Chief of Training Division, Professor
Mr. Kenji Teramura	Chief of Research Division, Professor
Mr. Kei Someda	Chief of Information & Library Service Division, Professor
Mr. Yuichiro Tachi	Professor
Mr. Yasuhiro Tanabe	Professor
Ms. Sue Takasu	Professor
Mr. Ryuji Kuwayama	Professor
Ms. Mikiko Kakihara	Professor
Mr. Sean Brian Eratt	Linguistic Adviser
<b>Secretariat</b>	
Mr. Kiyoshi Ezura	Chief of Secretariat
Mr. Yoshiyuki Fukushima	Deputy Chief of Secretariat
Mr. Takahiro Ihara	Chief of General and Financial Affairs Section Affairs Section
Mr. Takuma Kai	Chief of Training and Hostel Management
Mr. Masuo Tanaka	Chief of International Research Affairs Section

<AS OF 31 DECEMBER 2002>

APPENDIX

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**2002 VISITING EXPERTS**

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**THE 120TH INTERNATIONAL SEMINAR**

Mr. Eberhard Siegismund	Deputy Director General, Judicial System Division, Federal Ministry of Justice, Berlin, Germany
Mr. Young Chul Kim	Senior Prosecutor and Professor, Judicial Research and Training Institute, Goyang, Korea
Dr. Muhammad Shoaib Suddle	Inspector General of Police, Balochistan, Pakistan
Dr. Kittipong Kittayarak	Director General Department of Probation, Ministry of Justice, Bangkok, Thailand
Mr. Peter Boeuf	Chief Crown Prosecutor of London, Crown Prosecution Service, London, England, United Kingdom
Prof. Anthony Didrick Castberg	Professor of Political Science, University of Hawaii at Hilo, United States of America

**THE 121ST INTERNATIONAL TRAINING COURSE**

Mr. Stephan Vaughan	Executive Liaison Officer, National Drug Strategy Unit, Department of Health and Aging, Canberra City, Australia
Prof. Tony Peters	Professor, Department of Criminal Law & Criminology, Catholic University Leuven, Belgium
Mr. Richard Zubrycki	Director General, Corrections, Ministry of the Solicitor General Ottawa, Canada
Dr. Tappio Lappi-Seppala	Director, National Research Institute of Legal Policy, Helsinki, Finland
Dr. Woo Sik Chung	Professor of Social Work, Sogang University, Seoul, Republic of Korea
Ms. Bee Lian Ang	Director, Rehabilitation and Protection Division, Ministry of Community Development & Sports, Singapore

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**THE 122ND INTERNATIONAL TRAINING COURSE**

Ms. Natalia Ollus	Senior Programme Officer, HEUNI, Helsinki, Finland
Dr. Deepa Mehta	Inspector General of Police, Chief Vigilance Officer, Delhi Metro Rail Corporation, India
Mr. Farooq Azam	Chief of Mission/Regional Representative, International Organisation for Migration, Bangkok, Thailand
Mr. Severino H. Gana, Jr.	Assistant Chief State Prosecutor, Department of Justice, Manila, the Republic of the Philippines
Mr. Hamish McCulloch	Assistant Director, Trafficking in Human Beings, INTERPOL, Lyon, France
Mr. Richard Hoffman	Assistant U.S. Attorney, Department of Justice, Boston, U.S.A.
Dr. Diego Rosero	Senior Legal Officer, United Nations High Commissioner for Refugees, Regional Office for Japan and the Republic of Korea, Tokyo, Japan

APPENDIX

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**2002 AD HOC LECTURES**

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**THE 120TH INTERNATIONAL SEMINAR**

Mr. Yuuki Furuta	Director General of the Criminal Affairs Bureau, Ministry of Justice
Mr. Hayato Takagi	Deputy Director, Legal and Planning Affairs, Division of Commissioner General's Secretariat, National Police Agency

**THE 121ST INTERNATIONAL TRAINING COURSE**

Mr. Kenji Higashikawa	Chief Liaison Officer, International Affairs Department, National Police Agency
Dr. Tetsuya Fujimoto	Professor, Department of Law, Chuo University
Dr. Shinji Hirai	Doctor, National Shimofusa Mental Hospital, Chiba

**THE 122ND INTERNATIONAL TRAINING COURSE**

Mr. Kenji Higashikawa	Chief Liaison Officer, International Affairs Department, National Police Agency
Mr. Toshihiko Itami	Director, General Affairs Division, Immigration Bureau, Ministry of Justice
Mr. Michio Kitamura	Director, Internal Security Department of Tokyo District Prosecutors Office
Mr. Yasuro Morita	Non-fiction Writer
Mr. Yozo Yokata	Professor of International Law, Chuo University, Special Adviser to the Rector, United Nations University, Tokyo
Mr. Hisashi Horiuchi	Assistant Director, Second Organised Crime Control Division, National Police Agency
Mr. Shoichiro Yamada	Senior Executive Director, Osaka International House Foundation
Ms. Yoko Hosoi	Professor, Toyo University

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**2002 UNAFEI PARTICIPANTS**

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**THE 120TH INTERNATIONAL SEMINAR**

***Overseas Participants***

Mr. Marcos Aurelio Matias	Major, Federal District Police Department, Brasilia-DF, Brazil
Mr. Sergio Andres Munoz	Lieutenant Colonel, Chilean Police, Santiago, Chile
Mr. Rosendo Armado Vasquez Bonilla	Police Chief, Civil National Police of El Salvador, San Salvador, El Salvador
Mr. Maninder Singh Sandhu	Joint Secretary, National Foundation for Communal Harmony, Ministry of Home Affairs, Delhi, India
Ms. Titiek Syamsiar Mokodompit	Assistant to Civil and State Administration, North Sulawesi High Public Prosecution Office, Manado, Indonesia
Mr. Gaguk Harijanto	Head of Community Policing Section, Department of Community Policing, Police Headquarters, South Jakarta, Indonesia
Mr. Daniel Kenduiywa Chesimet	Assistant Commissioner of Police, Criminal Investigation Department, Eastern Province, Embu, Kenya
Mr. Azmi Bin Ariffin	Deputy Public Prosecutor, State Legal Advisor's Office, Kelantan, Malaysia
Mr. Lok Jung Shah	Under Secretary/Prosecutor, Commission for the Investigation of Abuse of Authority, Kathmandu, Nepal
Mr. Ejaz Husain Malik	Director, Federal Investigation Agency, Rawalpindi, Pakistan
Mr. John Haroro Maru	Director, Police Prosecution, Royal Papua New Guinea Constabulary, Konedobu, Papua New Guinea
Mr. Merton Meredith Charles	Head of Criminal Investigations Department, Royal St. Christopher and Nevis Police Force, Basseterre, St. Christopher and Nevis
Mr. Laurean Mutahunwa Tibasana	Commissioner of Police, Operations and Training, Tanzania Police Force, Dar-Es-Salaam, Tanzania

## APPENDIX

Mr. Seni Pimolsiri  
Superintendent, Staff Subdivision,  
Nongkhai Provincial Police,  
Nongkhai, Thailand

Ms. Nassuna Juliet  
Secretary/Prosecutor,  
Law Council Disciplinary Committee,  
Ministry of Justice and Correctional Affairs,  
Kampala, Uganda

### *Japanese Participants*

Mr. Mitsuru Itaya  
Chief of 1st Region Inquiry Section,  
Kinki Regional Parole Board,  
Osaka, Japan

Mr. Hiromichi Iwakura  
Judge,  
Osaka District Court,  
Osaka, Japan

Mr. Nobuyuki Kawai  
Deputy Director,  
Firearms Division, Community Safety Bureau,  
National Police Agency,  
Tokyo, Japan

Mr. Masahiro Takeishi  
Chief of the Medical Care And Classification Section,  
Tokyo Regional Correction Headquarters,  
Tokyo, Japan

Mr. Takashi Yamashita  
Public Prosecutor,  
Chiba District Public Prosecutors Office,  
Chiba, Japan

Mr. Hideotsugu Yamane  
Professor,  
Research and Training Institute,  
Ministry of Justice,  
Tokyo, Japan

## **THE 121ST INTERNATIONAL TRAINING COURSE**

### *Overseas Participants*

Mr. Abdel Dominique Millet  
Commissioner/Head of Anti-Kidnapping  
Task Force,  
Central Office, Judiciary Police,  
Haiti

Mr. Baljit Singh Sandhu  
Deputy Inspector General of  
Police Training,  
Police Headquarters,  
Panchkula, Haryana, India

Mr. Hermawansyah  
Judge,  
Serang District Court,  
Indonesia

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Mr. Lee Joung Jun	Correctional Supervisor Security Division Daejeon Correctional Institution Ministry of Justice, Korea
Mr. Haleem Mohammed	Investigation Officer, Police Headquarters, National Security Service, Maldives
Mr. Muzaffer Ali Sheikh	Senior Superintendent of Police/ Principal, Police Training College, Police Service of Pakistan, Karachi, Pakistan
Mr. Bassam M. Nasser	Director, Family Service Programme, Palestinian Centre for Helping Resolve Community Disputes, Palestine
Mr. Angelio Ecube Malacad	Probation and Parole Officer/ Programme Coordinator, The Philippines-Japan Halfway House, Muntinlupa City, Philippines
Mr. Bertie Keith Butt Pompey	Court Prosecutor, Royal Saint Vincent and the Grenadines Police Force, Saint Vincent and the Grenadines
Mr. Mpuru Ronald Ntuli	Deputy Director, Community Involvement, Department of Correctional Services, South Africa
Mr. Sonwabo Victor Dlula	Deputy Director, Development Programmes, Department of Correctional Services, South Africa
Ms. Atchara Suriyawong	Senior Officer, Operation Division, Medical Correctional Institution, Department of Corrections, Ministry of Interior, Thailand
Ms. Kanokpun Kalayanasuta	Senior Probation Officer, Research and System Development Group, Department of Probation, Ministry of Justice, Thailand
Mr. Gimball Milla Longopoa	Administration and Training Officer, Tonga Prisons, Prisons Department, Kingdom of Tonga

## APPENDIX

Mr. Nguyen Minh Tuan

Assistant Director General Officer of  
Department of Correctional Services,  
Ministry of Public Security,  
Vietnam

### *Japanese Participants*

Ms. Miho Akada

Officer,  
General Affairs Division,  
Correction Bureau,  
Ministry of Justice,  
Tokyo, Japan

Mr. Makoto Hashizume

Assistant Judge,  
Tokyo District Court,  
Tokyo, Japan

Mr. Akihiko Hoshino

Family Court Probation Officer,  
Okazaki Branch,  
Nagoya Family Court,  
Nagoya, Japan

Mr. Masahiko Kawase

Public Prosecutor,  
Tokyo District Public Prosecutors Office,  
Tokyo, Japan

Mr. Koichi Nozawa

Assistant Judge,  
Tokyo District Court,  
Tokyo, Japan

Mr. Yujiro Oki

Narcotics Control Officer,  
Kokura Branch,  
Narcotics Control Department,  
Kyushu Regional Bureau of Health and Welfare,  
Fukuoka, Japan

Mr. Hidenori Takahashi

Probation Officer,  
Toyama Probation Office,  
Toyama, Japan

Ms. Kiyoko Uda

Chief Specialist in Charge of Psychological Assessment,  
Classification and Observation Unit,  
Niigata Juvenile Classification Home,  
Niigata, Japan

Ms. Sayoko Yamamoto

Public Prosecutor,  
District Public Prosecutors Office,  
Kumamoto, Japan

Mr. Kazuhito Watanabe

Probation Officer,  
Tohoku Regional Parole Board,  
Tohoku, Japan

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**THE 122ND INTERNATIONAL TRAINING COURSE**

***Overseas Participants***

Mr. Man Ju-Yo	Deputy Chief, Beijing Exit and Control Department, Beijing, China
Mr. Ahmed Mohamed Youssef Wahdan	Head of Crime Research Department, National Centre for Social And Criminological Research, Giza, Egypt
Mr. Lambok Marisi Jakobus Sidabutar	Public Prosecutor, Siak Sri Indrapura District Public Prosecution Office, Riau, Indonesia
Mr. Dzainal Syarief	Senior Detective, Criminal Investigation Corps, Indonesia National Police, Jakarta, Indonesia
Mr. Coulibaly Souleymane Kafana	Juvenile Judge, Court of First Instance, Abengourou, Ivory Coast
Mr. Rajvong Xaysana	Investigator/Technical Officer, General Inspection Department, Office of the Public Prosecutor, Vientian Pre., Laos
Ms. Radziah Basir	Section Head, Corruption Prevention Department, Anti-Corruption Agency, Putrajaya, Malaysia
Mr. Kiran Paudel	Undersecretary, Commission for the Investigation of Abuse of Authority, Kathmandu, Nepal
Ms. Narcisa Holgado Guevarra	Committee Secretary, Committee on Justice, House of Representatives, Manila, Philippines
Ms. Jeorgette Ceniza Paderanga	Chief Probation and Parole Officer, Parole and Probation Administration Region VII, Cebu City, Philippines
Mr. Pongson Kongtreekaew	Head, Public Service Section, Academic Division, Police Cadet Academy, Bangkok, Thailand
Mr. Pattanachai Yodpayung	Senior Judge, Southern Bangkok Civil Court, Bangkok, Thailand

## APPENDIX

Mr. Juan Antonio Becerra Nino  
Commissary Chief/Researcher,  
Scientific, Penal and  
Crime Investigation Department,  
Tachia, Venezuela

### *Japanese Participants*

Mr. Tadashi Asano  
Chief Specialist in Charge of  
Psychological Assessment,  
Kofu Juvenile Classification Home  
Kofu, Japan

Mr. Shinji Miyamoto  
Deputy Director of Guard Division,  
Guard and Rescue Department,  
5th Regional Coast Guard Headquarters,  
Hyogo, Japan

Mr. Kunio Morita  
Public Prosecutor,  
Sapporo District Public Prosecutors Office  
Sapporo, Japan

Mr. Kyosuke Nagao  
Immigration Inspector,  
Tokyo Regional Immigration Bureau  
Tokyo, Japan

Mr. Takehiko Okada  
Assistant Judge,  
Tokyo District Court,  
Tokyo, Japan

Mr. Satoshi Onodera  
Chief Investigator of Public Relation Office,  
General Affairs Department,  
Public Security Investigation Agency,  
Tokyo, Japan

Mr. Takeru Sato  
Assistant Judge,  
Osaka District Court,  
Osaka, Japan

Mr. Takeo Shiohara  
Immigration Control Officer,  
Tokyo Regional Immigration Bureau,  
Tokyo, Japan

Ms. Mika Shiraki  
Probation Officer,  
Fukuoka Probation Office,  
Kitakyusyu Branch Office,  
Fukuoka, Japan

Mr. Masato Takahashi  
Public Prosecutor,  
Tokyo District Public Prosecutors Office,  
Hachioji, Japan

Mr. Shigeru Uchiyama  
General Instructor,  
National Police Academy,  
Tokyo, Japan

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**SEVENTH SPECIAL SEMINAR FOR SENIOR CRIMINAL  
JUSTICE OFFICIALS OF THE PEOPLE'S REPUBLIC OF CHINA**

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Mr. Li, Ning	Deputy Director, Research Division, Prison Administration Bureau Ministry of Justice
Ms. Shi, Jin-Lan	Deputy Division Chief, Department of Foreign Affairs and Judicial Assistance, Ministry of Justice
Mr. Wang, Yan-Lin	Division Director, The General Office, Ministry of Justice
Mr. Ren, Xian-Cheng	Senior Judge, First Criminal Division, Supreme People's Court Deputy Director of Teaching Management
Mr. Tan, Jing-Sheng	President, Criminal Tribunal, Beijing High People's Court
Mr. Huang, Wei-Ping	Prosecutor, The Supreme People's Procuratorate
Ms. Liu, Hui-Ling	Deputy Division Chief, The Supreme People's Procuratorate
Mr. Zhang, Zhi-Jie	Director, Procuritorial Department on Crimes of Power Abuse and Infringement on Citizen's Civil and Political Rights, The Supreme People's Procuratorate
Ms. Li, Zhu-Hong	Chief, Public Petition Division, General Office, Ministry of Public Security
Ms. Liu, Xiao-Li	Deputy Division Chief, Legal Affairs Department, Ministry of Public Security
Mr. Xia, De-Hu	Chief, Policemen Management Division, Ministry of Public Security
Mr. Huang, Tai-Yun	Deputy Director and Research Fellow, Legislative Affairs Commission, Standing Committee, National People's Congress
Mr. Wang, Ai-Li	Director, Division of Criminal Law, Department of Criminal Law, Commission of Legislative Affairs, National People's Congress

APPENDIX

Mr. Jiang, Xiu-Yuan

Division Chief  
Legislative Affairs Office,  
State Council Police

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**THIRD SPECIAL SEMINAR FOR KENYAN OFFICIALS  
ON JUVENILE DELINQUENT TREATMENT SYSTEMS**

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Ms. Rose Awuor Odoyo	Assistant Director, Children's Department Headquarters, Ministry of Home Affairs
Mr. Hussein Abdirizak Abdi	Province Children's Officer/Chief Children's Officer, Coast Province
Ms. Jane Nzisa Kitili	Province Children's Officer/Senior Children's Officer, Eastern Province
Mr. Aggrey Shigunzi Litali	Manager, Kericho Rehabilitation School/Children's Remand Home
Mr. Stanley Waweru Nguthah	Manager, Getathuru Rehabilitation School/Reception Centre
Mr. Denis Nyambogo Moriasi	Children's Officer, Children's Court, Nairobi
Ms. Charity Kathini Mailu	Children's Officer, Mombasa
Mr. Wambua Nzioka	Senior Education Officer, Children's Department Headquarters, Ministry of Home Affairs
Mr. Charles Okemwa Ondogo	Province Children's Officer/Senior Children's Officer, Nakuru Province

APPENDIX

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**FIRST SPECIAL SEMINAR FOR TAJIKISTAN  
OFFICIALS ON CRIMINAL JUSTICE SYSTEMS**

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Mr. Mirzoev Khursandmurod	Head of Law Project Preparation and Legal Data Base Division, President's Office Legal Department
Mr. Baratov Dilovar Saidmurodovich	Senior Preliminary Investigator of Tajik Transport Prosecutor's House
Mr. Olimov Rustam Olimkhodjaevich	Senior Public Prosecutor of Prosecutor's Office
Mr. Karimov Faizimad	First Vice-Prosecutor of Dushanbe City
Mr. Hisoriev Makhmadamin Ismatovich	Public Prosecutor of Prosecutor's House
Mr. Mirzoev Ishandarsho Tivonshoevich	Public Prosecutor of Prosecutor's House
Mr. Rahmimov Abdukholikovich	Public Prosecutor of Prosecutor's House
Mr. Makhsiddinov Saifuddin Sirojovich	Public Prosecutor of Prosecutor's House
Mr. Muhiddinov Bobokhon	Chief of Investigation Department of the Ministry of Interior
Mr. Rahmonov Abdusamadovich	Deputy Chairman of Criminal Investigation, Department of the Ministry of Interior

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**FIFTH SPECIAL TRAINING COURSE ON CORRUPTION CONTROL**

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***Overseas Participants***

Mr. Fakhriyar Jabbarov	Chief Specialist, International Legal Cooperation Department, Ministry of Justice, Azerbaijan
Ms. Nasreen Begum	Joint Secretary and Director, National Legal Aid Services Organisation, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh
Mr. Wang Gyeltshen	Government Prosecutor, Office of Legal Affairs, Bhutan
Mr. Lomjaria Levan	Head of Division for International Treaties, Ministry of Justice, Georgia
Mr. Amanbaev Anarkul	Senior Investigator, Ministry of Internal Affairs, Kyrgyz
Mr. Sonesavanh Seng Aphy	Investigator, The Office of Public Prosecutor, Laos
Ms. Fariza Binti Hamzah	Deputy Public Prosecutor, Legal and Prosecution Division of the Anti-Corruption Agency, Malaysia
Mr. Mohamed Naeem	Judge, Criminal Court, Male', Maldives
Mr. Mansoor Qadir	Assistant Director, Directorate of Anti-Corruption Establishment, Punjab, Pakistan
Ms. Mirta Rika Miyasaki Miyamae	Attorney's Assistant, State Attorney General's Office, Paraguay
Ms. Alina Dorobant	Head of Public Law Division, Department of Drafting Legislation, Ministry of Justice, Romania
Mr. Sakulyouth Horpibulsuk	Senior State Attorney, Office of the Attorney General, Thailand

## APPENDIX

Mr. Guerrero Cabrera Julio Cesar

Inspector,  
Homicide Department,  
Police Criminal of Venezuela,  
Venezuela

### *Japanese Participants*

Mr. Mitsuru Horiuchi

Judge,  
Nagoya High Court,  
Japan

Mr. Isao Shimamura

Public Prosecutor,  
Yamagata District Public Prosecutors Office,  
Sakata Branch,  
Japan

Mr. Masafumi Tsuji

Public Prosecutor,  
Mito District Public Prosecutors Office,  
Tsuchiura Branch,  
Japan

ANNUAL REPORT FOR 2002

**DISTRIBUTION OF PARTICIPANTS BY  
PROFESSIONAL BACKGROUNDS AND COUNTRIES**

*(1st International Training Course — 123rd International Senior Seminar, U.N. Human Rights Courses and 1 Special Course)*

	Professional Background	Judicial and Other Administration	Judges	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation Parole Officers	Family Court Investigation Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
1	Afghanistan	7	8	5	3									23
2	Bangladesh	20	11		12	5		4			5		2	59
3	Bhutan				4									4
4	Brunei	4				2								6
5	Myanmar	3			2									5
6	China	13	3	5	10							7		38
7	Hong Kong	14			11	24	3	9		1	3	1		66
8	India	14	10		51	7	1	1			2	6	3	95
9	Indonesia	21	21	21	22	14		3			6		1	109
10	Iran	5	11	8	8	6						2	1	41
11	Iraq	5	3	3	5	5	5					2		28
12	Jordan				4									4
13	Cambodia	1	2	1	5	1								10
14	Oman				3									3
15	Korea	12	3	53	6	20	4					3		101
16	Kyrgyz	1			1									2
17	Laos	6	5	5	10									26
18	Malaysia	20	2	5	42	31	8	3		1	5	3		120
19	Maldives			1	1									2
20	Mongolia	1			1									2
21	Nepal	28	13	9	31								3	84
22	Pakistan	18	10	2	32	8	1	2				2	1	76
23	Palestine	1			1			1			1			4
24	Philippines	17	9	22	33	8	3	11	3	1	6	3	6	122
25	Saudi Arabia	4			6	3						1	1	15
26	Singapore	10	18	5	12	10	3	10			3	1	1	73
27	Sri Lanka	21	20	12	20	18	1	11		1	2		1	107
28	Taiwan	12	4	2	2	1								21
29	Thailand	22	32	37	16	15	8	11	1		8	4	1	155
30	Turkey	2	1	1	2							1		7
31	United Arab Emirates	1												1
32	Uzbekistan												1	1
33	Vietnam	10	5	2	7	1					4	1		30
	<b>A S I A</b>	<b>293</b>	<b>191</b>	<b>199</b>	<b>363</b>	<b>179</b>	<b>37</b>	<b>66</b>	<b>4</b>	<b>4</b>	<b>45</b>	<b>37</b>	<b>22</b>	<b>1,440</b>
1	Algeria		3	2										5
2	Botswana	1			2									3
3	Cameroon	3												3
4	Cote d'Ivoire		2		1									3
5	Egypt	1	1		1							3	1	7
6	Ethiopia	3			1									4
7	Gambia				2									2
8	Ghana	1			3	1								5
9	Guinea			1	2									3
10	Kenya	6	4	1	12	7		6				2		38
11	Lesotho				1			2						3
12	Liberia											1		1
13	Madagascar				1									1
14	Mauritius		1											1
15	Morocco			1	4									5
16	Mozambique	1			1	1								3
17	Nigeria	1			5	5							1	12
18	South Africa				2	3						1		6
19	Seychelles				3			1						4

APPENDIX

	Professional Background	Judicial and Other Administration	Judges	Public Prosecutors	Police Officials	Correctional Officials (Adult)	Correctional Officials (Juvenile)	Probation Parole Officers	Family Court Investigation Officers	Child Welfare Officers	Social Welfare Officers	Training & Research Officers	Others	Total
20	Sudan	2		1	13	1						2		19
21	Swaziland				2									2
22	Tanzania	4	3	4	5	1								17
23	Tunisia				1									1
24	Zambia		1		6									7
25	Uganda			1	5								1	7
26	Zimbabwe	1			2									3
	<b>A F R I C A</b>	<b>24</b>	<b>15</b>	<b>11</b>	<b>75</b>	<b>19</b>	<b>0</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>9</b>	<b>3</b>	<b>165</b>
1	Australia			1				1			1			3
2	Vanuatu				1									1
3	Fiji	6	1	9	20	14					1			51
4	Kiribati	1												1
5	Marshall Island	1			3									4
6	Micronesia							1						1
7	Nauru				1									1
8	New Zealand	1			1									2
9	Papua New Guinea	10	1	4	12	10		3			1		2	43
10	Solomon Islands	3			2									5
11	Tonga	2	1		6	3						1		13
12	Western Samoa	1			1			1					1	4
	<b>THE PACIFIC</b>	<b>25</b>	<b>3</b>	<b>14</b>	<b>47</b>	<b>27</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>129</b>
1	Argentina	2	2		2									6
2	Barbados				1			1						2
3	Belize	1			1									2
4	Bolivia		1										1	2
5	Brazil	2		3	15					1	1			22
6	Chile	1			4	2								7
7	Colombia	3	1	2	3					1			1	11
8	Costa Rica	3	4	4								1	2	14
9	Ecuador			1	4		1							6
10	El Salvador	1			2									3
11	Grenada				1									1
12	Guatemala					1								1
13	Haiti				1									1
14	Honduras			1	3									4
15	Jamaica	3				1								4
16	Mexico	1												1
17	Nicaragua		1											1
18	Panama			1	2								1	4
19	Paraguay				9		1							10
20	Peru	4	10	4	2	1						1	2	24
21	Saint Christopher and Nevis			1										1
22	Saint Lucia	1				1								2
23	Saint Vincent				2									2
24	Trinidad and Tobago	1				1								2
25	Venezuela	1		1	9							1		12
26	U.S.A.(Hawaii)								1					1
	<b>NORTH &amp; SOUTH AMERICA</b>	<b>24</b>	<b>19</b>	<b>18</b>	<b>61</b>	<b>7</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>7</b>	<b>146</b>
1	Bulgaria				1									1
2	Hungary	1												1
3	Macedonia	1												1
4	Poland				1									1
5	Lithuania				1									1
	<b>EUROPE</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>
1	JAPAN	109	144	234	89	82	74	174	58	38	2	48	61	1,113
103	<b>TOTAL</b>	<b>477</b>	<b>372</b>	<b>476</b>	<b>638</b>	<b>314</b>	<b>113</b>	<b>256</b>	<b>63</b>	<b>44</b>	<b>51</b>	<b>98</b>	<b>96</b>	<b>2,998</b>

ANNUAL REPORT FOR 2002

**PART TWO**

**RESOURCE MATERIAL SERIES**

**No. 61**

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**Work Product of the 121st International Training Course**  
**“ENHANCEMENT OF COMMUNITY-BASED**  
**ALTERNATIVES TO INCARCERATION AT ALL STAGES**  
**OF THE CRIMINAL JUSTICE PROCESS”**

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**UNAFEI**



# VISITING EXPERTS' PAPERS

## PRISONER RATES: GLOBAL TRENDS AND LOCAL EXCEPTIONS

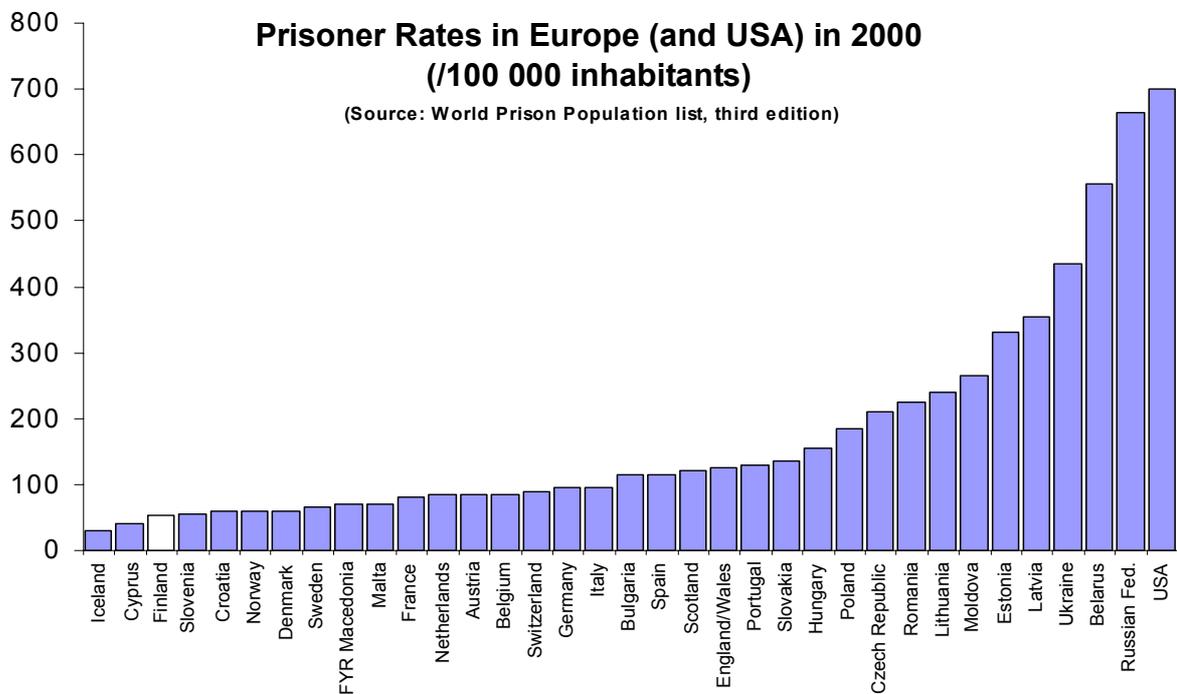
*Tapio Lappi-Seppälä\**

### I. THE GROWTH OF PRISON POPULATIONS

#### A. World Prison Populations Today

##### 1. The Highest Prisoner Rates

The third edition (2001) of the World Prison Population List, published by the British Home Office<sup>1</sup> shows that over 8.75 million people are held in penal institutions throughout the world, either as pre-trial detainees (remand prisoners) or as having been convicted and sentenced. Half of these are in the United States, Russia and China, and the first two countries also exhibit the highest prison population rates.



**Figure I.1. Europe and USA 2000**

At the beginning of the year 2000, USA had the highest prison population rate in the world, some 700 per 100,000 of the national population, followed by Russia (665). After these two countries come Belarus and Kazakhstan, and four small territories in the central America/Caribbean region whose high rates owe much to the imprisonment of drug smugglers who are not nationals of the countries in question (see Walmsley 2002). All these countries have rates of at least 460 per 100,000. On the other hand, 63% of all countries have rates of 150 per 100 000 or below.

##### 2. Local Variations

Prison population rates vary considerably between different regions of the world, and between different parts of the same continent. In Africa the median rate for Southern African countries is 260

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<sup>1</sup> Walmsley, Roy: World Prison Population List (third edition), Home Office, Research Findings 166/2002. See also Walmsley Roy, World Prison Populations: Facts, Trends and Solutions. United Nations Programme Network Institutes Technical Assistance Workshop. Vienna Austria - May 10, 2001. <http://www.ojp.usdoj.gov/nij/international/unworld.doc>

whereas in Central and West Africa the rate is 50/55; in the Americas the median rate for the Caribbean countries is 295 but in South America 115.

In Europe, the median rate for Central and Eastern European countries is more than three times that for Southern European countries. In northern Europe the most striking difference is to be found between the Scandinavian countries and the neighbouring Baltic countries. In Scandinavia (Finland, Sweden, Denmark, Norway and Iceland) the rate is 55, in the three Baltic countries (Estonia, Lithuania and Latvia) it is six times higher (310).

### Prisoner Rates in Different European Regions 2000

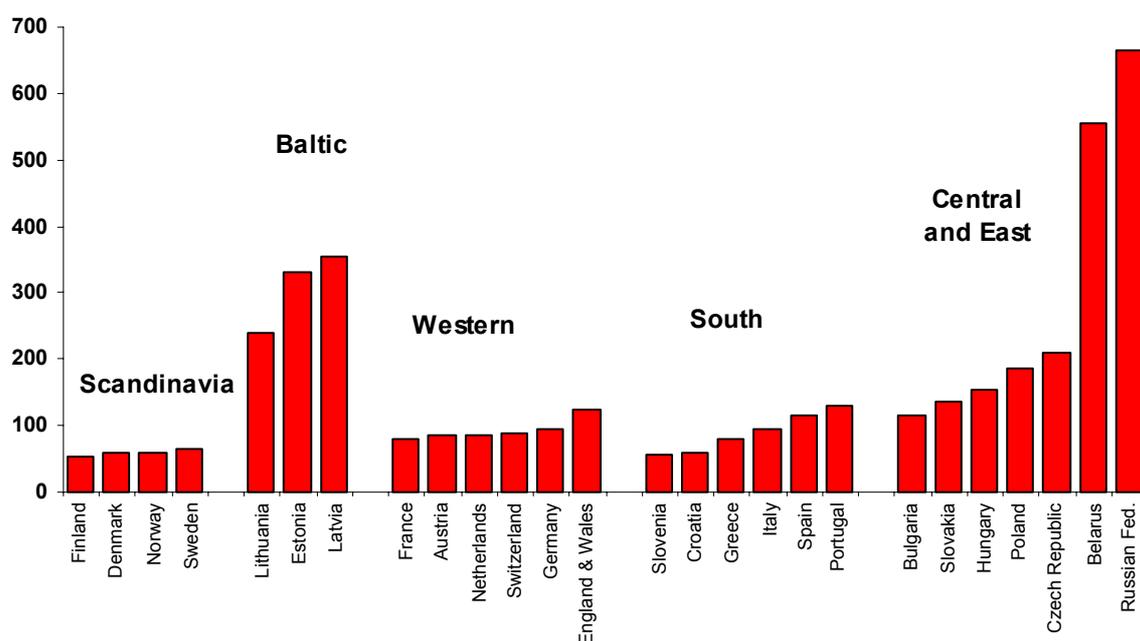


Figure I.2. Europe, Different Regions 2000

Similar differences are to be found in the Asian region. In Asia the median rate for the South Central Asian countries is 55 whereas for (ex-Soviet) Central Asian it is nine times higher (425).<sup>2</sup>

<sup>2</sup> See in more detail *Kitada, Mikinao, Prison Population in Asian Countries. United Nations Programme Network Institutes Technical Assistance Workshop. Vienna Austria - May 10, 2001. <http://www.ojp.usdoj.gov/nij/international/ridraft.doc>. Prisoner rates in Latin America and the Caribbean are described in *Carranza Elias, Prison Overcrowding in Latin America and the Caribbean: Situation and Possible Responses. United Nations Programme Network Institutes Technical Assistance Workshop. Vienna Austria - May 10, 2001. <http://www.ojp.usdoj.gov/nij/international/caribbean.doc>**

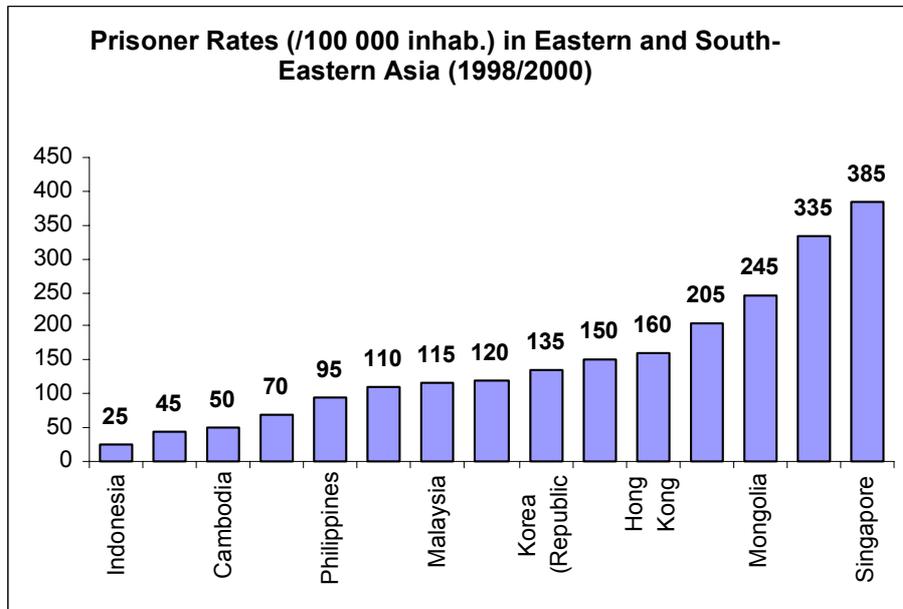


Figure I.3. Eastern and South Eastern Asia

**B. Growth and Trends in Prison Population Rates**

Prison population rates are not only high - they are constantly growing in most parts of the world. In many of the developed countries, there has been a rise in prisoner rates, often with a 40% growth over the decade.

1. Growth in Europe



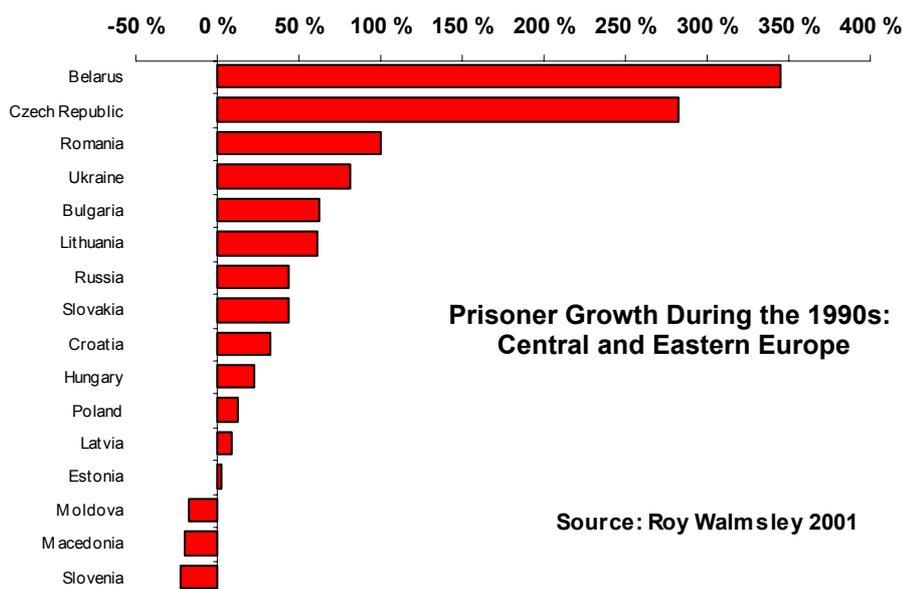
Figure I.4. Western Europe in the 1990s (%)

In Europe the growth has been over 20% almost everywhere during the last decade, and at least 40% in half of the countries. Out of the 33 European countries (leaving aside the very small states)

there has been growth in 28. During the last three years, there has been growth in 24 of the European countries, and growth of over 10% in more than half of these.

Only in two of the 43 countries observed in the 3rd World Prison Population survey (Home Office 166/2002) – Sweden and Finland – has there been a consistent downward trend in the last three years. Finland is the only country that has had a downward trend throughout the decade.

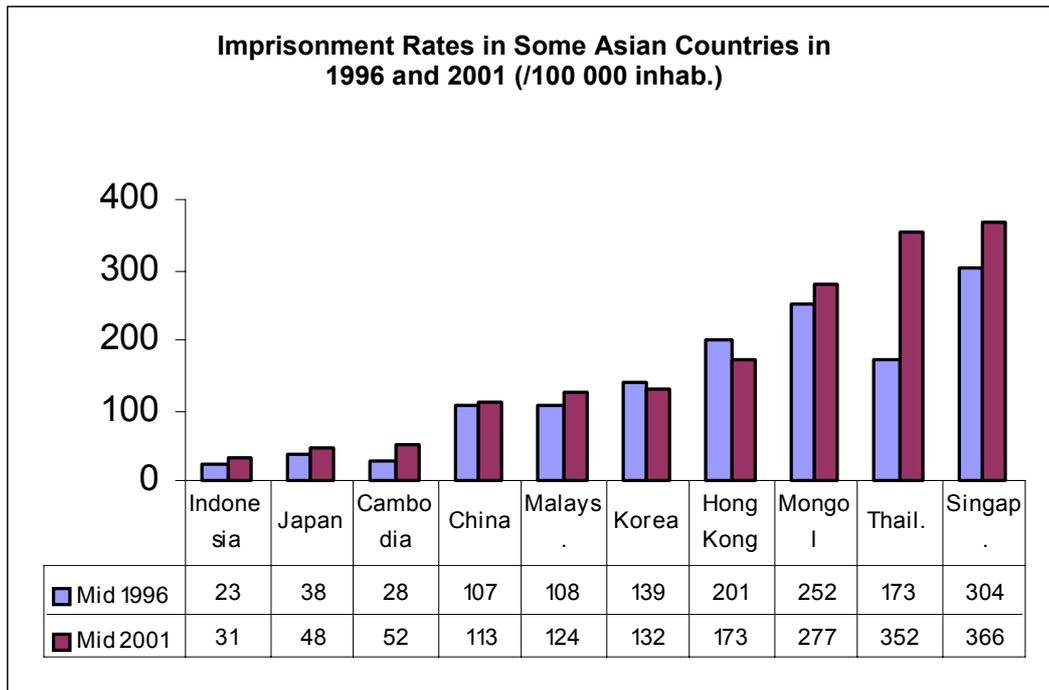
In the Eastern parts of the Europe, the growth has been especially rapid.



**Figure I.5. Central and Eastern Europe in the 1990s (%)**

2. Growth in Asia

Figure I.5. shows the changes in the imprisonment rate per 100,000 residents in some Asian countries from 1996 to 2000.



**Figure I.6. Asia 1996-2000**

The figures account for both convicted and not convicted prisoners. Japan had a relatively low imprisonment rate among the listed countries, showing around 45 per 100,000 in mid 2000. Other countries like China, Korea and Malaysia maintained stable figures at around 100 to 200 per 100,000. Singapore and Thailand recorded relatively large increments in their imprisonment rates, exceeding 300 per 100,000 in mid 2000. In particular, a very rapid increase in the imprisonment rate in Thailand has been quite remarkable.

### C. Reasons for Prison Population Growth: General Overview

Possible explanations for these changes may be found in several sources:

#### 1. Increase in Crime?

One obvious explanation would be the *growth of crime*. However, it is evident that crime rates alone cannot explain the changes in prison population rates. In many countries crime rates, including rates for the more serious crimes, have been stable or even decreasing while prison population has grown steadily. In the US prisoner rates are now five to six times higher than in the mid 1970s, but only 12% of this change can be explained with reference to the growth of crime (Tonry 1999).

One type of crime, however, seems to be closely connected to the raising number of prisoners. In many countries the increase in prison population goes together with the number of detected drug offenders. Or, at least, the most rapidly growing category of prisoners are those convicted of drug offences (or drug related crimes). But this is not only a question of criminality. Rather, it is a question of the deliberate changes in governments' drug policies and sentencing practices.

#### 2. Technical Explanation: Increased Use of Prison

An even more obvious explanation is simply the *increased use of prison*: More people have been sentenced to prisons and they have received longer sentences than before and, moreover, the use of parole or conditional release has become more restricted. Examples of changed penal practices can be found almost everywhere.

Most notorious example of this is the US – a country that started the movement towards higher prisoner rates simply by using more and longer custodial sentences from the mid-1970s onwards.

Examples can also be found in Western Europe. The Netherlands had long been renowned for its low prison population rate. In the 1990s, it has had sharper rise than any other West European country, and its prison population has almost doubled. The increase is attributable to a rise in the use of custody and in the length of the sentences imposed. The same development can be seen in Portugal which now has the highest prisoner rate in Western Europe as a result of increased length of sentences. England and Wales holds the second place, partly due to the fact that the use of custodial sentences rose 40% during the 1990s.

### 3. Ideological Explanation: Changes in Sentencing Theory

The next question is *why* the practices have been changed. One answer could be found in the explicit policy orientations and changes in penal theory and crime policy. Since the mid 1970s – when prison population rates first started to rise in the US – the sentencing ideologies have undergone drastic changes. Treatment ideology and criminological correctionalism have been replaced by retributionist notions of just deserts and “common sense” policies based on incapacitation and deterrence. These retributionist philosophies can readily be translated into popular demands for longer, tougher sentences. Such factors do appear to have led to a change in attitudes especially in some parts of Europe and North America.

### 4. Political Explanation: Changes in Political Rhetoric and the Growth of “Punitive Populism”

1. Together with the new sentencing policies incurred other, more profound, policy changes, which marked the *overall politicisation of crime policy*. Criminal policy has more and more become a tool of general politics, a way to transmit “symbolic messages”, a way to “take a stand”, a way to “make strategic choices”. At the same time the language of criminal policy has changed into moral tones and moved towards expressive gestures. Instead of balanced reasoning and the weighting of different strategies, their pros and cons, criminal justice interventions are often determined by a simple political need to “do something”. Too often the rule of thumb seems to be that the higher the level of political authority is, the more simplistic the approaches advocated are.

The results can be seen in programmes and slogans that are compressed into two or three words, along the lines of “three strikes”, “prison works”, “truth in sentencing”, “war on drugs”, “zero - tolerance” and so on. This, in turn, leads to the tendency to offer simple solutions to complex problems and to pander to punitive (or presumably punitive) public opinion with harsh tough-on-crime campaigns. In concrete terms: The crime problem and the fears of the public have more and more been used for political purposes.

*According to Tonry (1999), “The anomaly that public receptivity to proposals for harsh crime and drug policies remained high in the late 1990s even in the face of substantial and long-term drops in crime rates and in drug use” is explained in the US by, first: “conservative politicians found it in their interest to keep voters’ attention focused on an issue about which liberals are reluctant to disagree”; second: “the mass media has learned that crime pays in terms of public fascination with the darker sides of life and that fears vicariously enjoyed in front of the television or the movie screen are generalised to life outside the home”; and third, “in the 1990s people don’t really care about the effectiveness of crime and drug abuse policies” but instead support harsh policies for ‘expressive’ reasons, because at this time they “value the denunciatory qualities of harsh laws”.*

2. In many countries this development is reinforced and supported by *the crime drama created in the mass media* and the *increasingly growing punitive demands of the public*. These two factors are interconnected, as the attitudes of the public are heavily (mis)guided by the sensational and selective way in which the mass media deals with crime and criminals. In fact, all of the three elements, that is populist politicians, mass media and punitive public opinion form a vicious, self-supporting circle where each component reinforces the other.

3. Attitudes can also be influenced in the short-term by *isolated highly publicized dramatic events* such as the 1993 Bulger incident in England (the killing of a young child by two other children). Since this dramatic event the use of custodial sentences rose by 40%, sentence lengths rose by more than 10%, and now seven or eight years later the prison population remains at the level that it reached after this event.

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Similar incidents have also occurred elsewhere, as the 1996 Dutroux case in Belgium (involving kidnapping, paedophilia and murder). The United States has seen an increase in random shootings of young people by strangers. Such events can generate public demands for a more punitive response to certain crimes and offenders, demands which may be accepted by policy makers and courts alike. Even after the focus in the media has moved on to other matters, more punitive policy responses tend to remain in place.

5. Social and Structural Reasons

But the roots of these political changes may be even deeper. Behind these changes are also more profound economic and social uncertainties, first brought to the western world by the 1970s oil crisis, and then again by the economic crises of the 1990s. Rising unemployment figures, together with increasing crime rates fuel these feelings of insecurity (portrayed also in the growing fear of crime).

This leaves less and less room for the feelings of tolerance and solidarity for socially marginalised groups. Punitive policies also reflect deeper changes in our social values. In the western world, the growth of penal populism goes together with the decline of the values of welfare state, replaced by market economy and neo-liberal social policies. If the world of the 1960s was the world of “economic control and social freedom”, the world of the 1990s became the world of “economic freedom and social control”.

*This change is well characterized by David Garland (2001 p.199): “In the middle decades of the last century, the criminal justice system formed part of a broader solidarity project. Its programmatic response to crime was part of the welfare state's programmatic response to poverty and destitution. Criminal justice was shaped by the politics of social democracy, and its ideals were the re-integrative ideals of an inclusive welfare state society. ... But that solidarity project no longer dominates the rhetoric of policy or the logic of decision-making. The high ideals of solidarity have been eclipsed by the more basic imperatives of security, economy, and control. Crime control and criminal justice have come to be disconnected from the broader themes of social justice and social reconstruction. Their social function is now the more reactionary, less ambitious one of re-imposing control on those who fall outside the world of consumerist freedom.”*

Of course these social and structural background reasons vary in different parts of the world, – as also vary the respective social and economic conditions. In Eastern Europe a part of the prison population growth is explainable by the collapse of the communist and socialist regime, followed by a marked rise in criminality at least until 1992/3, as the barriers of the previous repressive regimes were removed. This seems to have been reflected in the increasing use of imprisonment. But the question is *why*, then, the rise continued for the following four or five years when crime rates were generally fairly stable?

Also in Eastern Europe, although the overall crime rates were not rising, the public, the media and the politicians were all alarmed by the changes in the nature of crime, with the emergence of new and previously unheard of forms of criminality, such as transnational organised crime, economic crime and, in some countries, contract killings. This climate of fear led to the increased use of pre-trial detention, subsequent imprisonment, longer terms of imprisonment as well as conditional release being more sparingly allowed (Walmsley 2001).

6. In Conclusion

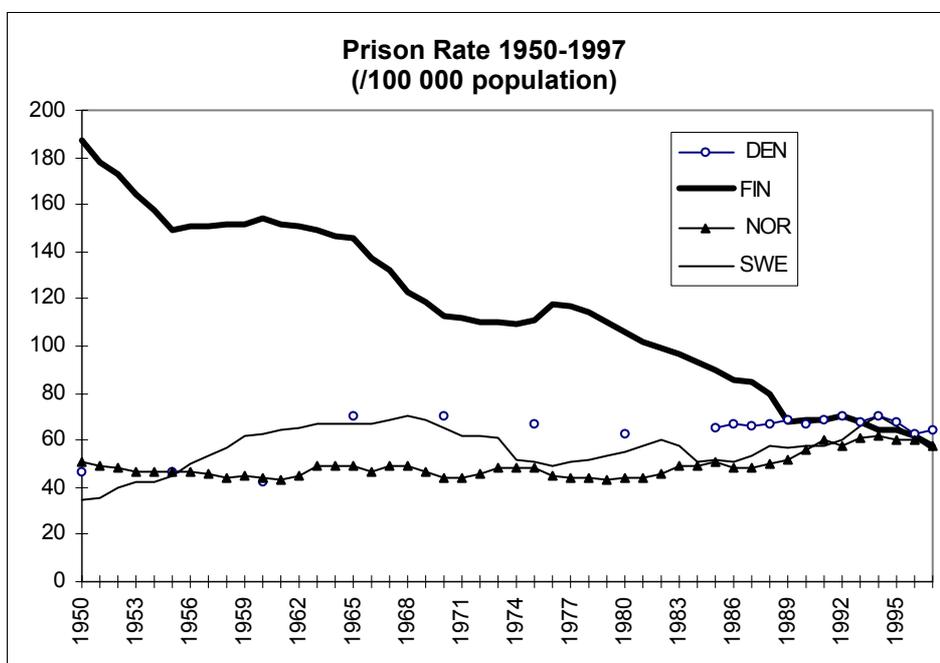
The growth of prisoner rates has explanations at many levels. In *technical* terms this has been the result of more and longer sentences. *Ideologically* the change is connected with new sentencing theories and policies. The adoption of these policies was influenced by the *increased fear of crime* and the *impact of mass media*. Both of these factors also contribute to the *changes in the general political discourse*: Crime policy became more and more politicized, and cool and rational arguments were replaced by expressive and symbolic gestures, directed to calm down the anxieties of the public (and the voters). But, when we look deep enough, these policies did not come “out of nowhere”. They were reflections of the *social, economical and cultural transformations* of the era of “late modernity”, as well as answers to social needs and political pressures (which does not mean that there could not have been other – better – answers).

Basically this all means that the growth in prison population rates in the European and North American countries is mainly policy-driven – not an inevitable result of an increase in crime (see also *Walmsley 2001*). The issue, then, is whether things could have been different, and whether the present state of affairs could be changed? To answer these questions, we should look at those countries that did not follow this general trend. These include, among others, Japan and Finland.

## II. REDUCING THE PRISON POPULATION IN FINLAND

### A. The Change

1. At the beginning of the 1950s, the prisoner rate in Finland was four times higher than in the other Nordic countries. Finland had some 200 prisoners per 100,000 inhabitants, while the figures in Sweden, Denmark and Norway were around 50. Even during the 1970s, Finland's prisoner rate continued to be among the highest in Western Europe. However, the steady decrease that started soon after the Second World War continued. Even during the 1970s and 1980s, when most European countries experienced rising prison population rates, the Finnish one kept going down and by the beginning of the 1990s Finland had reached the Nordic level (figure II.1).



**Figure II.1. Prisoner Rates in Four Scandinavian Countries 1950-1997**  
(Source: *Lappi-Seppälä 2001*)

2. This long-term change - covering almost a half of a century - cannot be explained with reference to one or two simple factors. The change has been affected both by macro level structural factors and ideological changes in penal theory, as well as legal reforms and changing practices of sentencing and of prison enforcement. Also the role of these different background reasons varies over time. This paper discusses some these key factors.<sup>3</sup>

### B. The Ideology

1. In the 1960's, the Nordic countries experienced heated social debate on the results and justifications of involuntary treatment in institutions, both penal and otherwise (such as in health care and in the treatment of alcoholics). In Finland the criticism of the treatment ideology was in a sense merged with another liberal social movement which was directed against our outdated and overly severe Criminal Code and the excessive use of custodial sentences. Not only was there a decline of the rehabilitative ideal, but also a reaction against old repressive policies. The outcome of all this was a

<sup>3</sup> The subject has been dealt with in more detail by the author in *Lappi-Seppälä 1998* and *2001*, see also *Törnudd 1993*.

criminal political ideology — “humane neo-classicism” — which stressed both legal safeguards against coercive care as well as the objective of less repressive measures in general.

2. During this ideological turn, the theoretical aim and the justification of punishment was subjected to re-evaluation. The shift was once again towards *general prevention*. However, it is important to stress that in Scandinavian criminological theory, the mechanism of general prevention has been given a broad interpretation. Instead of direct or simple deterrence, the theory speaks of indirect general prevention or more often the *moral-creating and value-shaping effect* of punishment. And this is something different than obeying the law because of the simple fear of punishment. According to this idea, the disapproval expressed in punishment is assumed to influence the values and moral views of individuals. As a result of this process, the norms of criminal law and the values they reflect are internalized; people refrain from illegal behaviour not because such behaviour would be followed by an unpleasant punishment, but because the behaviour itself is regarded as morally blameworthy.<sup>4</sup>

This mechanism of indirect general prevention poses some central demands on the penal system. The aim of indirect prevention is best served by sanctions that maintain their moral character. Punishments must be regarded as expressions of the society's disapproval, and they must be directed towards the act (in other words to demonstrate the blameworthiness of the act). Furthermore, it is required that the citizens perceive the system to be reasonably efficient and legitimate. Principles of proportionality and perceived procedural fairness are key factors that influence the willingness of the people to conform to the law (see in more detail *Lappi-Seppälä* 2001 with references).

3. Also the more general aims of criminal policy underwent a process of re-definition (see especially *Törnudd* 1969/1996, 14(15)). Cost-benefit analysis was introduced into criminal political thinking requiring that in making choices between different strategies and means, the probable policy effects and costs should be carefully assessed. One of the practical consequences was that the arsenal of possible means of criminal policy became larger in comparison with the traditional (repression or rehabilitation orientated) penal system. Strategies such as environmental planning and situational crime prevention in controlling crime were discussed in Finland as early as in the late 1960s. Another slogan was: “Good social development policy is the best criminal policy”. One result of this new line of thought was that the *role of punishment came to be seen as relative*. Once the primary means of criminal policy, it came to be regarded as only one option among many.

4. The policy conclusions drawn from these ideological changes can be briefly summarized. In crime prevention, criminal law is only one means among many. These other means are often far more important. This does not mean that we could do without criminal law. It still is of vital importance, but its mechanisms are more subtle and indirect than one usually thinks. All in all, we should not overestimate its potential. We should be realistic with regard to the possibilities of achieving short-term effects in crime control by tinkering with our penal system. And what is most important, we should always weigh the costs and benefits of applied or suggested strategies of criminal policy. And this, indeed, was the test that our earlier prison politics failed to pass. It was difficult to answer convincingly the question of why we should have three to four times more prisoners than our neighbours do.

### C. Law Reforms and Sentencing Policies

Since the early 1970s the main parts of the Finnish criminal legislation have been reformed from these neo-classical “anti-treatment and anti-repressive” starting points. There has been a purposeful movement towards a more lenient system of sanctions, and especially towards a reduction in the use of custodial sentences.<sup>5</sup> Together with legislative reforms one has to stress also the independent role of the

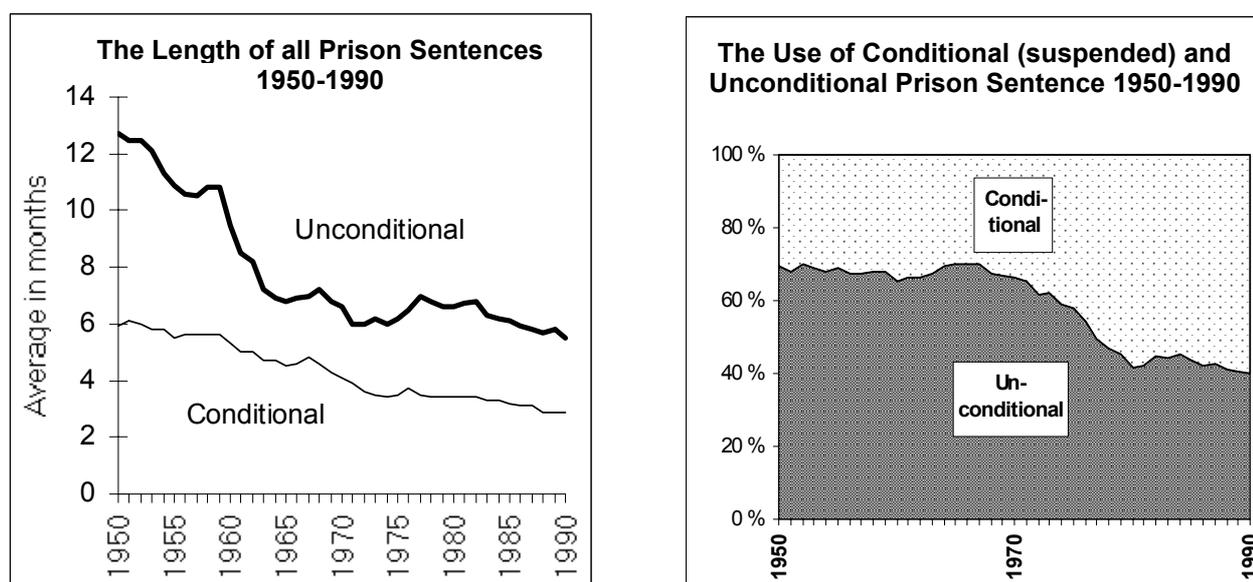
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<sup>4</sup> In a closer analysis, this concept contains several distinct hypothesis which are based on different assumptions on why, how and through what kind of mechanisms various features of the legal system influence social values and compliance with the law. *Andenaes* (1974 p. 113 ff) classifies the influence of criminal law on morality as follows. *Direct influence*: (1) respect for the formal authority (no change in the individual's view of morality), (2) criminal law as a moral eye-opener (a change in moral attitude as a result of personal thinking) and (3) punishment as an authoritative statement (a change in moral attitude as a result of the suggestive influence of laws). *Indirect influence*: (4) punishment's effect in reducing and neutralizing bad examples (the working mechanism is supposed to be simple deterrence) and (5) criminal law as a framework of moral education.

judiciary. In several cases the courts had taken the initiative towards more lenient sentencing levels even before the legislator had reached its decision. The major reforms and sentencing changes can be summarized as follows.

1. General Trends in Sentencing

The Finnish judge has traditionally had quite a limited number of options in sentencing. The three basic alternatives have been unconditional imprisonment, conditional imprisonment and a fine. The *fine* has been the principal punishment throughout the present century. Still, the most effective alternative to imprisonment has been *conditional sentence*. The popularity of this sentencing option has increased steadily. From 1950 to 1990 the number of conditional sentences has increased from some 3,000 to 18,000 sentences per year. The growth was especially rapid between 1970 and 1980. A closer look at the sentencing patterns of the courts would reveal two consecutive changes between 1950 and 1990. Both are illustrated in figure II.2.



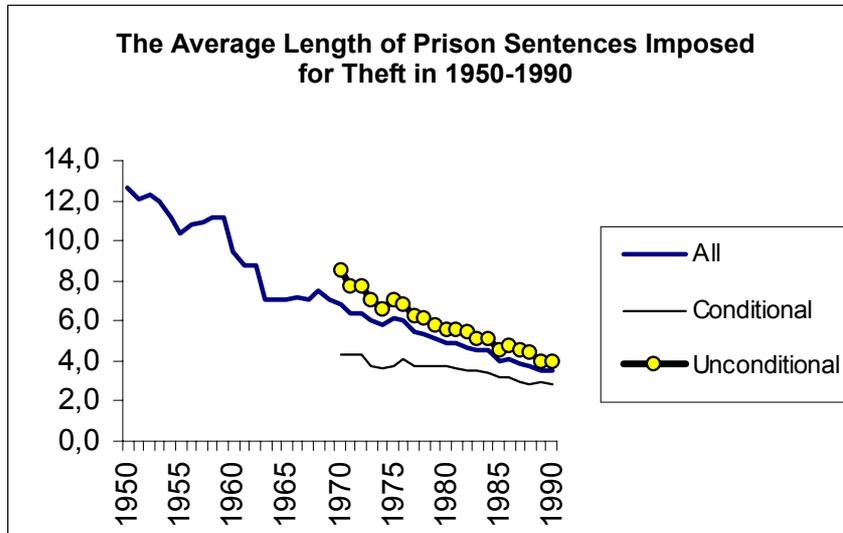
**Figure II.2. The Length of Sentences of Imprisonment Imposed by the Courts and the Choice Between Conditional and Unconditional Sentences, 1950 to 1990**

Between 1950 and 1965 the average length of unconditional imprisonment fell from 13 months to 7 months (left part). The right part reveals another change. Up to the mid-1960s, two out of three sentences of imprisonment were imposed unconditionally. From the late 1960s onwards the proportion of unconditional sentences fell from 70% (1966) to 42% (1980). These two changes can be explained primarily by changes in sentencing in two distinct crime categories: theft and drunk driving.

2. Penalties for Theft Offences

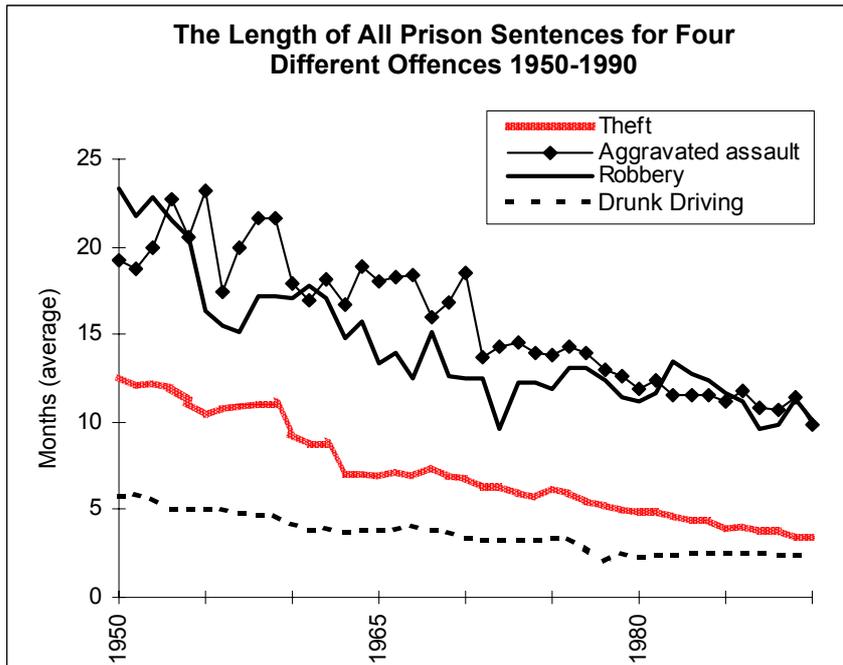
Long custodial sentences imposed for traditional property crimes kept the prison population at its peak level during the early 1950s. During the 1950s the courts had started to mitigate the sentences, but high minimum penalties and rigid offence definitions for aggravated forms imposed strict limits to these efforts. However, in 1972 new definitions and new punishment latitudes for larceny were introduced. Again, in 1991 the latitude for the basic form of theft was reduced. As a result, there was a clear change in sentencing practice. In 1971, 38% of offenders sentenced for larceny received a custodial sentence. Twenty years later, in 1991, this proportion had decreased to 11% (for more detail see *Lappi-Seppälä* 1998 and *Törnudd* 1993). Figure II.3. below illustrates the length of prison sentences in 1950-1990 in the case of theft.

<sup>5</sup> A more complete list of the legislative reforms that have been carried out in Finland since 1967 can be found in *Törnudd* 1993 and *Lappi-Seppälä* 1998.



**Figure II.3. The Average Length of Sentences of Imprisonment for Theft, 1950 to 1991**

The changes are rather dramatic. For example in 1950 the average length of all sentences of imprisonment imposed for theft was 12 months. In 1971 the sentence was still 7.4 months, but in 1991 it was only 2.6 months.<sup>6</sup> Similar type of changes can be detected also in other crime categories (see figure II.4).



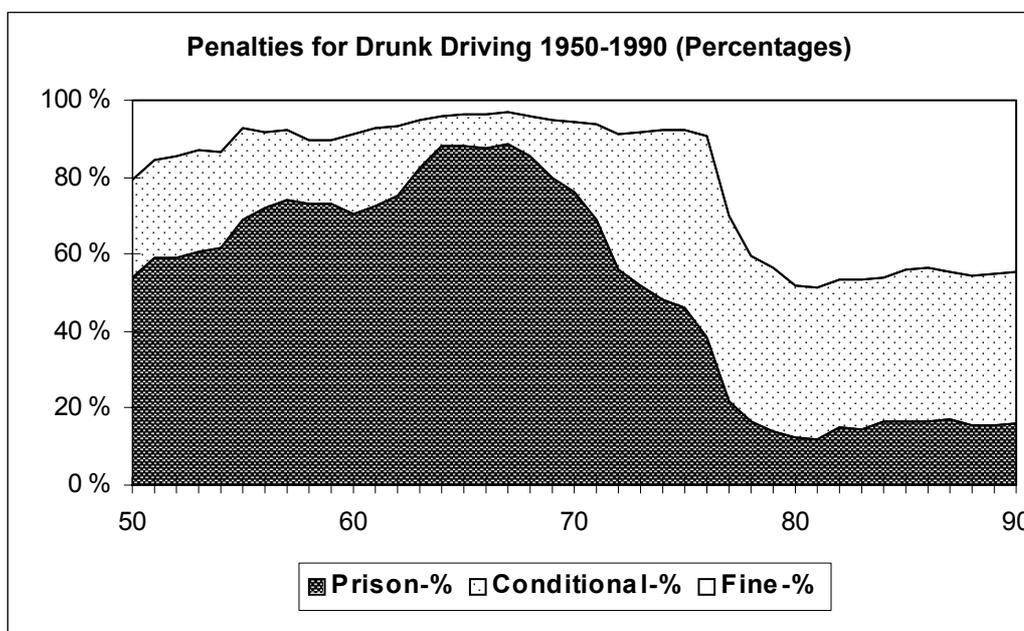
**Figure II.4. The Average Length of Sentences of Imprisonment for Four Different Offences 1950 to 1990**

<sup>6</sup> Of course, one has to take into account that in the long run the typical forms of theft have changed. Crimes against individual victims and households have been replaced in part by, for example, petty shoplifting.

### 3. Drunk Driving

Drunk driving plays a special role in Nordic criminal policy. The combination of hard drinking habits and a very restrictive and intolerant attitude towards drinking-and-driving has kept drunk driving among the key issues in debates on criminal policy. A substantial part of the Finnish prison problem during the 1960s resulted from fairly long unconditional sentences of imprisonment imposed for drunk driving. During the 1970s this practice was changed in favour of non-custodial alternatives. The movement was started by the courts themselves, but the development was reinforced by separate legislative acts. The definition of drunk driving was modernized by an amendment of the law in 1977. In this connection, the legislator took a definite stand in favour of conditional sentence and fines.

On the same occasion, three other bills were passed in order to increase the use of conditional sentences and fines in general (and particularly in the case of drunk driving). The *reform of the conditional sentence act* created the opportunity for combining a fine with a conditional sentence. The *reform of the day-fine system* raised the amount of day-fines, thus encouraging the court to use fines also in more serious cases. The most important 1977 reform from the point of view of the principle was, however, the *enactment of general sentencing rules*. These provisions in Chapter 6 of the Criminal Code gave the courts general guidance in meting out punishments for all offences. They also provided a framework for a further debate concerning the proper sentencing level. The first target of such a debate was drunk driving. These discussions were, in fact, run by the judges, with only organisational help from the Ministry of Justice. These efforts to change sentencing practice regarding drunk driving proved to be a success, as figure II.5. below verifies.



**Figure II.5. Sanctions for Drunk Driving, 1950 to 1990 (Percentages)**

In 1971, 70% of drunk drivers received an unconditional sentence. Ten years later, in 1981, this proportion had dropped to 12%. Since the reform in 1977, the normal punishment for aggravated drunk driving has been conditional imprisonment together with an unconditional supplementary fine, while “ordinary” drunk driving cases (BAC under 0.12%) are dealt with by fines.

The sentencing reforms of the 1970s have turned out to be a success in terms of criminal policy. One reason is that these reforms constituted a coherent and consistent entity with clear aims and systematic strategy. The case of drunk driving serves as a good example. The legislator first created the opportunity for combining a fine with a conditional sentence, then raised the amount of day-fines. After passing a bill on drunk driving, new provisions on sentencing were also enacted, and these provided the

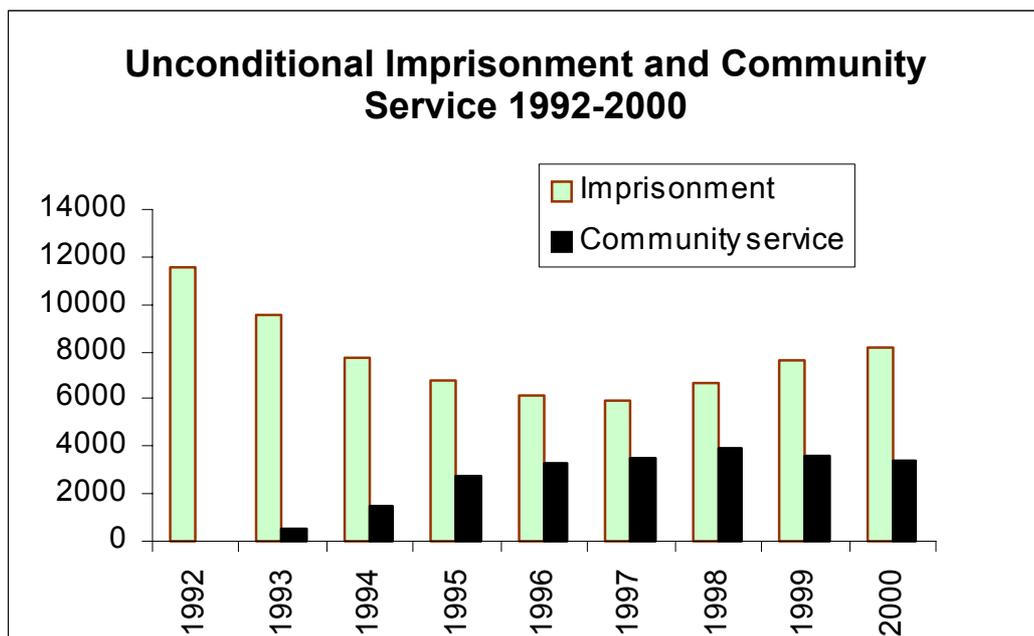
framework for discussions on the sentencing levels and normal punishment. In a way, all these reforms were a part of one well planned “big package”.

#### 4. New Sentencing Alternatives: Community Service

The basic structure of the sentencing system has remained relatively stable during the last decades. The only major amendment in this structure has been the introduction of community service. This took place first on an experimental basis in 1991. In 1994 the system was extended to cover the entire country and community service became a permanent part of the Finnish system of sanctions.

Community service is imposed instead of unconditional imprisonment for up to 8 months. In order to ensure that community service will really be used in lieu of unconditional sentences of imprisonment, a *two-step procedure* was adopted. First the court is supposed to make its sentencing decision in accordance with the normal principles and criteria of sentencing, without even considering the possibility of community service. *If* the result is unconditional imprisonment, *then* the court may commute the sentence into community service under the following conditions. First, the convicted person must consent to the sanction. Second, the offender must also be capable of carrying out the community service order. Third, recidivism and prior convictions may prevent the use of this sanction. The duration of community service varies between 20 and 200 hours. In commuting imprisonment into community service, one day in prison equals one hour of community service. Thus, two months of custodial sentence should be commuted into roughly 60 hours of community service. If the conditions of the community service order are violated, the court normally imposes a new unconditional sentence of imprisonment. Community service does not contain any extra supervision aimed, for example, at controlling the offender's behaviour in general. The supervision is strictly confined to his or her working obligations.

The legislator's idea was, thus, that community service should be used only in those cases where the offender would otherwise have received an unconditional sentence of imprisonment. As figure II.6. shows, this aim was well achieved.



**Figure II.6. Imprisonment and Community Service in the Finnish Court Practice**

Along with the increase in the number of community service orders, the number of unconditional sentences of imprisonment has decreased. In 1998, the average daily number of offenders serving a community service order was about 1200 and the corresponding prison rate was 2800. It is therefore reasonable to argue that, within a short period of time, community service has proved to be an

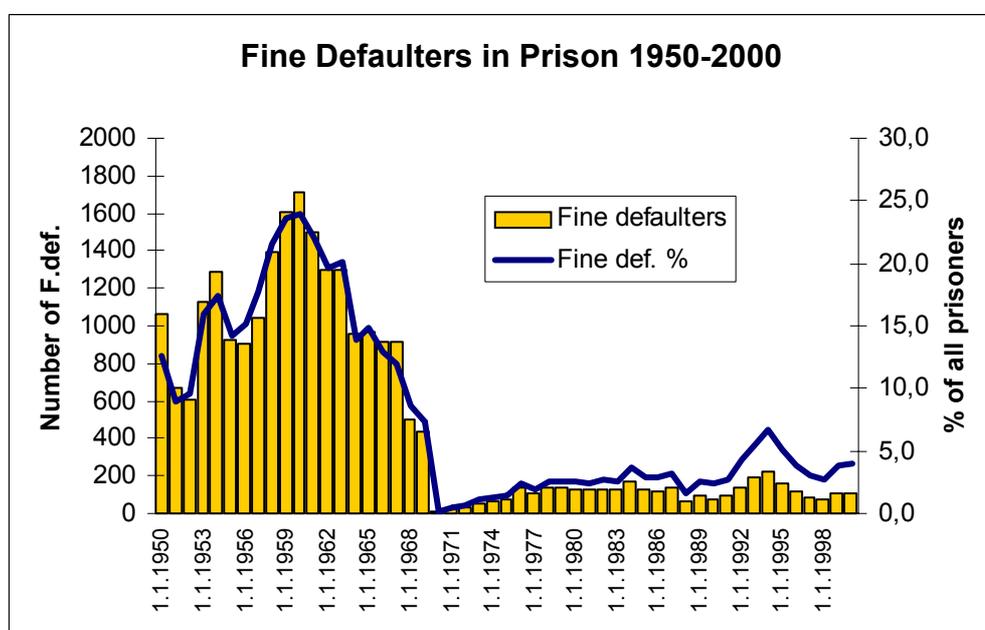
important alternative to imprisonment. As the figure shows, the use of community service seems to have reached its peak in 1998-1999.

5. Specific Prisoners Groups

In the course of time, different prisoner groups have received different degrees of attention. During the 1960s and 1970s the focus was on fine defaulters and recidivists in preventive detention. In the 1970s and 1980s the use of imprisonment for young offenders has been restricted.

(i) *Fine defaulters*

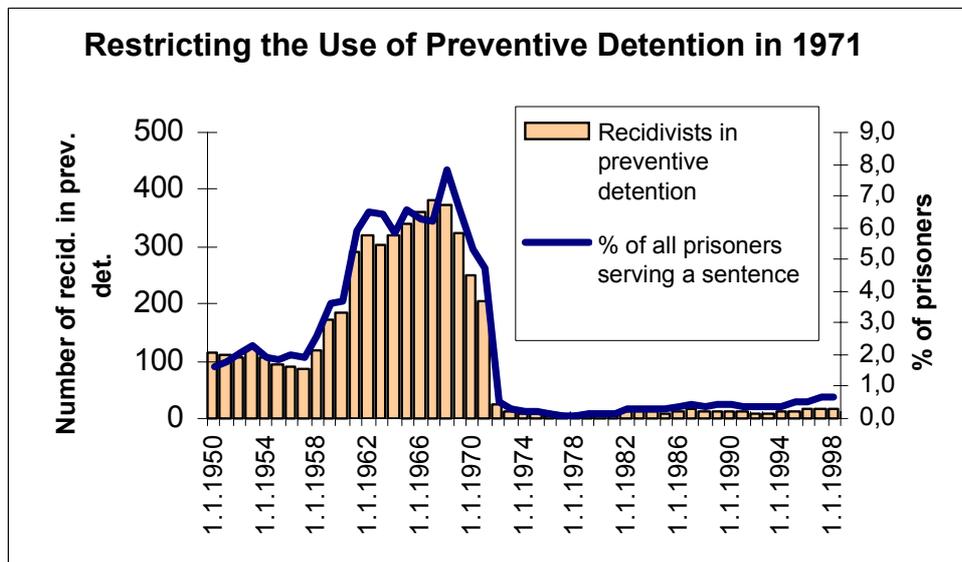
In the 1950s and 1960s fine defaulters constituted a substantial part of the Finnish prison population (sometimes exceeding 25% of the total prison population). In the late 1960s the number of default prisoners was reduced through two consecutive law reforms: By decriminalising public drunkenness (which led to fewer default sentences since public drunkenness was one of the major offences leading to a default fine) and by raising the amount of day-fines and decreasing the number of day-fines (which led to shorter default sentences, on the day-fine system, see below part II chapter II.A.2).



**Figure II.7. The Number of Fine Defaulters in Prison 1950-2000**

(ii) *Preventive detention*

The Finnish criminal justice system includes a provision for holding chronic recidivists in preventive detention after the completion of the sentence, if both the sentencing court and a special court so decide. During the 1960s, the large majority of detainees had been found guilty of repeat property crimes. On the basis of an amendment passed in 1971, the option of preventive detention was restricted only to dangerous violent offenders. The number of persons held in detention as recidivists dropped by 90% in one year, from 206 to 24. Since then, the annual average has been between 10 and 20 prisoners.



**Figure II.8. Restricting the Number of Prisoners in Preventive Detention**

(iii) *Juveniles*

There is no special juvenile criminal system in Finland, in the sense that this concept is understood in the Continental legal systems: there are no juvenile courts and the number of specific penalties only applicable to juveniles has been quite restricted. However, offenders aged 15 to 17 receive a mitigated sentence. In addition, the conditions for waiver of sanctions (for example non-prosecution) are much less restrictive for young offenders. Young offenders under the age of 21 who are sentenced to imprisonment are usually released on parole after 1/3 of the sentence has been served, instead of the normal 1/2. Despite the lack of specific measures for juveniles, there has also been a deliberate policy against the use of imprisonment for the youngest age groups. This has been done mainly by relying on the traditional alternatives. The willingness of the courts to impose custodial sentences on young offenders has decreased throughout the 1970s and the 80s. In addition, the Conditional Sentence Act was amended in 1989 by including a provision which allows the use of unconditional sentences for young offenders only if there are extraordinary reasons calling for this. All of this has had a clear impact on the practice (figure II.9.). At the moment there are about one hundred prisoners between the ages of 18 and 20 and less than ten in the 15 to 17 age group, while as recently as the 1960s the numbers were ten times higher.



**Figure II.9. The Number of Young Prisoners (15-17 years, Annual Average)**

6. Parole

The system of parole (early release) has also proved to be a very powerful tool in controlling prisoner rates. Any changes in the basic structure of this system will have visible effects on prison figures. In Finland all prisoners except those few serving their sentence in preventive detention or serving a life sentence will be released on parole. At the moment, the minimum time to be served before the prisoner is eligible for parole is 14 days. A series of reforms has brought it down to this. During the mid-1960s this period was shortened from six to four months, during the mid-1970s from four to three months, and finally in 1989 from three months to 14 days.

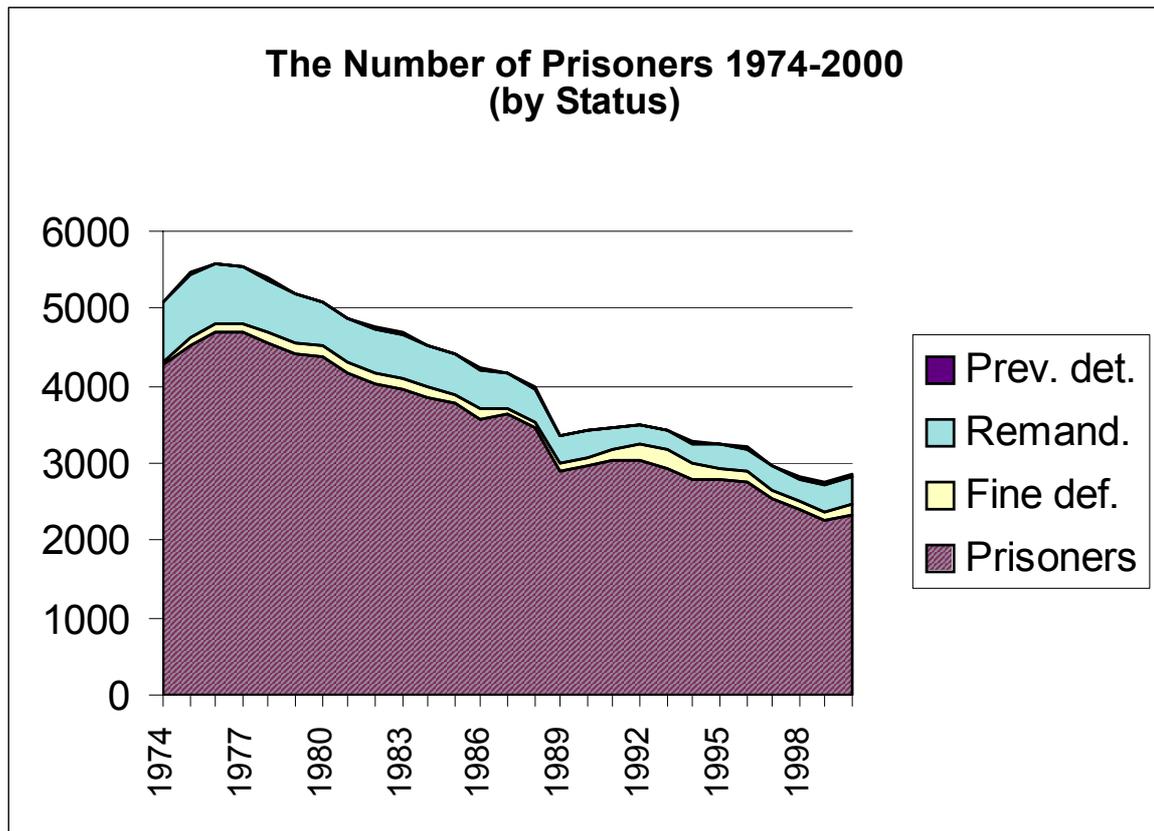
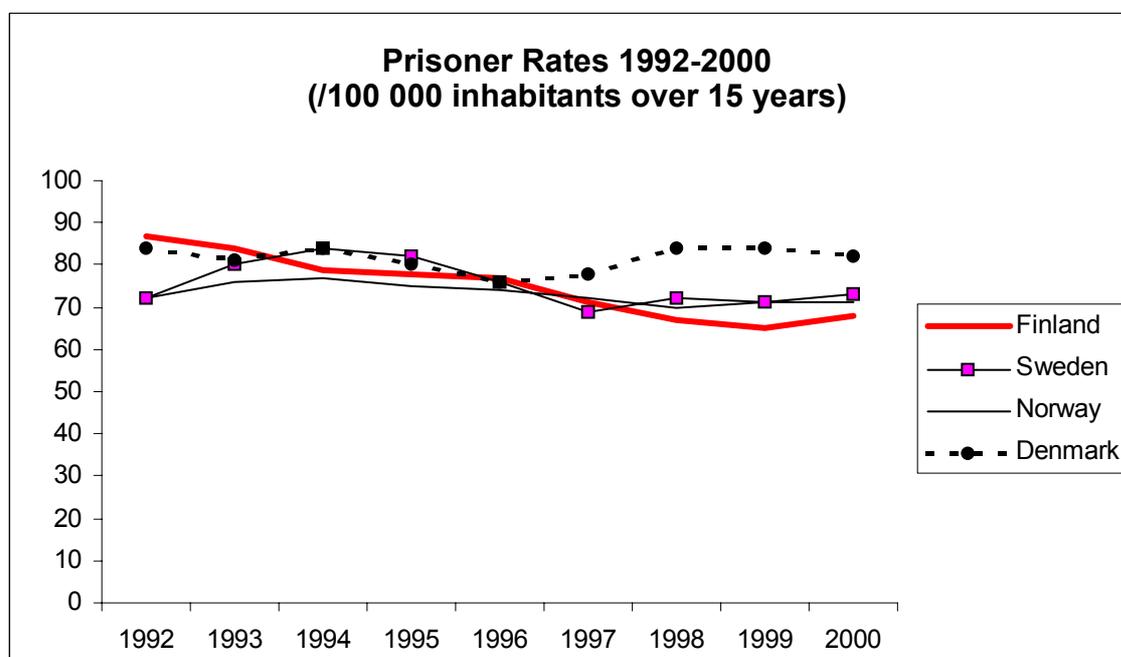


Figure II.10. The Number of Prisoners 1974-2000 (by Status)

#### 7. Sentencing Practice and Prison Rates in the 1990s

During the 1990s, the court practice has been quite stable (leaving aside changes caused by the community service order). The overall level of sanctions and the relative use of basic sentencing alternatives have remained at the same level. Of all criminal cases brought before the court, a clear majority result in fines (60%) or a conditional sentence (20%). About 10% are sentenced to imprisonment (usually between 3-6 months) and some 6-7% to community service. In less than 2% of the cases the court waives further sanctions. Non-prosecution is not included in these figures. In Finland non-prosecution has traditionally had a relatively restricted role. However, in the early 1990s the conditions for non-prosecution were relaxed. As a result, the use of non-prosecution was doubled (this also reduced the use of the waiver of the sentence in the court level, as seen in table 1).

Figure II.11 gives a more detailed picture of the prison rates in 1992-2000 in four Nordic countries (note: /100 000 inhabitants over 15 years of age).

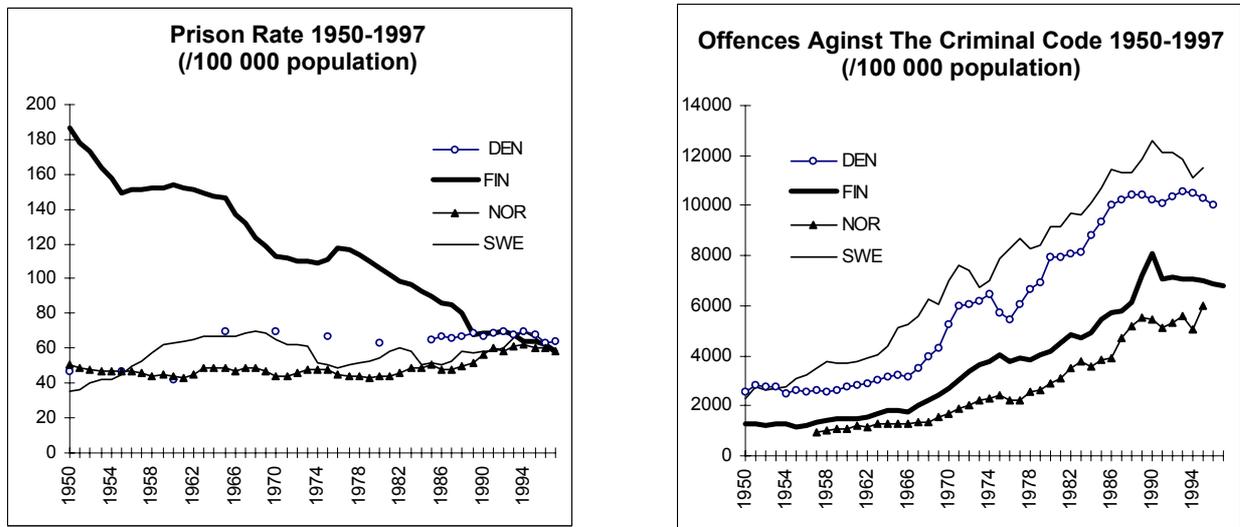


**Figure II.11. Prison Rates in Four Nordic Countries in 1992-2000**

In Finland the prison rate was at its lowest in 1999. Since the year 1999 the number of prisoners has grown over 20% (mainly due to the increase in sentences imposed for drug offences and foreign remand prisoners).

### III. PRISON RATES AND CRIME RATES

A fundamental change in the use of imprisonment naturally leads to the question about the effects on crime rates. Time and time again, research confirms the fact that the use of imprisonment is relatively unrelated to the number of crimes committed or reported. There are, of course, several well-known methodological difficulties in comparing crime rates with prison rates. However, the possibility of comparing countries which share strong social and structural similarities but have a very different penal history gives an exceptional perspective to the matter. In fact, the Nordic experiences provide an interesting opportunity to test how drastic changes in the penal practices in one country have been reflected in the crime rates, as compared to countries which have kept their penal system more or less stable. Figure III.1 provides information on prisoner rates and reported crime in Finland, Sweden, Denmark and Norway from 1950 to 1997.



**Figure III.1. Prison Rates and Crime Rates 1950-1997 (Source: Lappi-Seppälä 2001)**

A simple comparison between the Nordic countries reveals a striking difference in the use of imprisonment, as well as a striking similarity in the trends in recorded criminality. The fact that Finland has heavily reduced its prisoner rate has not disturbed the symmetry of Nordic crime rates. The figures also confirm, once again, the general criminological conclusion that crime rates rise and fall according to laws and dynamics of their own, and sentencing policies in turn develop and change according to dynamics of their own; these two systems are fairly independent of one another.

#### IV. DISCUSSION

1. The decrease in the Finnish prison population has been the result of a conscious, long term and systematic criminal policy.<sup>7</sup> The legislative reforms turned to this direction already during the mid-1960s. Even before that, during the 1950s, the courts had began to reduce their sentences. In many cases the legislator was strongly supported by the judiciary and especially by the courts of first instance. Quite often the courts had changed their practice even before the legislator had changed the law. Still, the critical question remains: What made all this possible, and what made it possible to carry out these law reforms? Describing the techniques used was easy. Explaining why they were adopted and accepted is harder.<sup>8</sup>

2. A part of the answer could be found in the structure of our political culture. The Finnish criminologist Patrik Törnudd has stressed the importance of the *political will and consensus* to bring down the prisoner rate. As he summarises, “those experts who were in charge of planning the reforms and research shared an almost unanimous conviction that Finland’s internationally high prisoner rate was a disgrace and that it would be possible to significantly reduce the amount and length of prison sentences without serious repercussions on the crime situation.” (Törnudd 1993 p. 12). This conviction was shared also by civil servants, the judiciary and prison authorities and, what was equally important, also by politicians.<sup>9</sup>

Another and closely related way for characterizing the Finnish criminal policy would be to describe it as *exceptionally expert-oriented*: Reforms have been prepared and conducted by a relatively small

<sup>7</sup> A short presentation cannot capture all the factors that have influenced this development. For example, one should not forget structural and demographic factors: The aging of the large birth cohorts born after the war (cf. Aho 1997) have also contributed to the reduction of the prison population.

<sup>8</sup> In order to put things in perspective, it should be stressed that instead of a massive move towards decarceration one could also describe the change merely as a “normalisation” of prison rates: a move from a level that was totally absurd to a level that can be considered to be a fair Nordic level - albeit ten times lower than the present U.S. level.

<sup>9</sup> At least to the extent that they did not oppose the reform proposals prepared by the Ministry of Justice.

group of experts whose opinions on criminal policy, at least on the basic points, has followed similar lines. The impact of these professionals was, furthermore, reinforced by *close personal and professional contacts* with senior politicians and with academic researchers.<sup>10</sup> Consequently, and unlike in many other countries, crime control has never been a central political issue in election campaigns in Finland. At least the “heavyweight” politicians have not relied on populist policies, such as “three strikes” and “truth in sentencing”.

3. This takes us to another element in the Finnish criminal policy composition – *the role of the media*. In Finland the media have retained quite a sober and reasonable attitude towards issues of criminal policy. The Finns have largely been saved from low-level populism. But things may be changing. The emergence of a rival in the tabloid paper market over a decade ago, as well as the increase in TV channels and the resulting intensified competition for viewers have brought crime reports onto Finnish TV as well.

4. “*Attitudinal readiness*” among the judiciary can also be identified as one relevant factor over the last decades. It would, indeed, be a misinterpretation to conclude that what happened in Finland during the last decades was just a skilful manoeuvre of a small group of experts. Collaboration with and assistance from the judiciary was clearly a necessary prerequisite for the change to happen. As noted above, in many cases the legislator received the essential support of the judiciary. Of course, the fact that criminology and criminal policy are taught in the university law schools to lawyers – those who will later implement the laws – is also a part of the larger picture. The majority of the Finnish local court judges and prosecutors are relatively young, having received their university degrees during the 1970s and the 1980s in the spirit of liberal criminal policy. In addition, different training courses and seminars arranged for judges (and prosecutors) on a regular basis by judicial authorities – in cooperation with the universities – have also had an impact on sentencing and prosecutorial practices.

5. Also the *crime scene* matters. The fact that Finland has been - and still is - a peaceful and safe society with a low level of crime has made it easier to adopt liberal policies in crime control. Even so, it may be argued that this factor has a rather restricted explanatory force. In fact, over a period of approximately 20 years, and especially during the 1960’s, Finland experienced severe social and structural changes while developing from a rural/agricultural economy into an industrial urban welfare state. This rapid development had its impact on our crime rate. There was a steep increase in recorded crime from the mid-1960’s to the mid-1970’s, and again during the 1980’s. However, this did not prevent the prisoner numbers from falling (and neither is there any reason to conclude that this fall had any significant effect on the growth of crime, as discussed above).

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The Finnish criminal policy may well be characterized as both rational and humane. Whether this will be the case also in the future, is open to question. The growing international aspect of crime and crime control, the increased pressure to harmonise criminal law within the European Union, as well as the general tendency to politicise criminal policy, all this includes a greater risk of increased repression also in Finland.

Unfortunately, increasing signs of the populist punitive approach can be seen also in the Finnish debate. Our prison rates may well have now “hit the bottom”, and we may anticipate an increase in the prisoner numbers in the future. In fact, the number of prison sentences, as well as the number of prisoners has increased over 20% between 1999-2002 (but still is among the lowest in the EU). Counter-measures – to be discussed in the following two chapters – are needed to resist these tendencies, also in Finland.

<sup>10</sup> Several Finnish Ministers of Justice during the 1970’s and 1980’s have had direct contact with research work; indeed, one of them, *Inkeri Anttila*, was a professor of criminal law and the director of the National Research Institute of Legal Policy at the time of her appointment as Minister.

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**APPENDIX: Prisoner Trends in the 1990s**

Growth during the 1990s

<u>Western Europe</u>		<u>Central and Eastern Europe</u>	
Netherlands	89%	Belarus	345%
Italy	53%	Czech Republic	282% (since 1991)
Greece	47%	Romania	100% (since 1991)
Portugal	46%	Ukraine	81% (since 1991)
Germany	40%	Bulgaria	62% (since 1991)
Turkey	40%	Lithuania	61%
UK	40%	Russia	44%
Ireland	39%	Slovakia	44% (since 1991)
Spain	34%	Croatia	32%
Belgium	27%	Hungary	23% (since 1991)
Switzerland	24%	Poland	13% (since 1991)
Norway	19%	Latvia	9%
France	13%	Estonia	3%
Austria	12%	Moldova	-17%
Denmark	8%	Macedonia (FYROM)	-20% (since 1991)
Sweden	0%	Slovenia	-23%
Finland	-17%		

<u>Americas</u>		<u>Other regions</u>		
Argentina	83%	(since 1992)	Australia	51%
Brazil	70%	(since 1992)	New Zealand	38%
Colombia	70%	(since 1992)	South Africa	33%
U.S.A.	62%		Japan	9%
Mexico	60%	(since 1992)		
Canada	13%			

RESOURCE MATERIAL SERIES No. 61

Current trends: recent growth

<u>Africa</u>	Ghana	35% rise	(1996 to 1999)
	Benin	26% rise	(1999 to 2000)
	Tanzania	20% rise	(1998 to 1999)
	South Africa	14% rise	(1997 to 1999)
<u>Americas</u>	Costa Rica	55% rise	(1996 to 1999)
	Mexico	35% rise	(1996 to 1999)
	Dominican Republic	28% rise	(1997 to 1999)
	Brazil	16% rise	(1997 to 1999)
	United States	12% rise	(1997 to 2000)
<u>Asia</u>	Thailand	57% rise	(1997 to 2000)
	Cambodia	32% rise	(1997 to 1999)
	Sri Lanka	32% rise	(1997 to 1999)
	Indonesia	28% rise	(1997 to 2000)
	Japan	14% rise	(1997 to 2000)
<u>Europe</u>	Slovenia	51% rise	(1997 to 2000)
	Greece	44% rise	(1997 to 2000)
	Macedonia (FYROM)	44% rise	(1997 to 2000)
	Poland	25% rise	(1999 to 2000)
	Croatia	24% rise	(1997 to 2000)
	Ireland	22% rise	(1997 to 2000)
	Turkey	21% rise	(1997 to 2000)
<u>Oceania</u>	Australia	17% rise	(1997 to 2000)
	Guam (US)	109% rise	(1997 to 1999)

Sources Roy *Walmsley*; World Prison Population List, World Prison Brief, Council of Europe Annual Penal Statistics, United Nations Latin American Institute (ILANUD), information from various countries' prison administrations and statistics departments.

# TECHNIQUES IN ENHANCING COMMUNITY-BASED ALTERNATIVES TO INCARCERATION — A EUROPEAN PERSPECTIVE

*Tapio Lappi-Seppälä\**

The techniques in enhancing community-based alternatives to incarceration are often divided into “front door policies” and “back door policies”. Another way would be to distinguish measures to be applied (1) before, (2) during and (3) after the court proceedings. This presentation follows the latter logic, however, with some reservations: Firstly, measures which have similar names may be placed in *different phases in different jurisdictions* (for example community service). Secondly, many of the newly developed community sanctions fail to follow the logic of these three phases, because they can be applied *either before, during or after the trial* (for example restitution).

## I. PRE-TRIAL PHASE

### A. Prosecutorial Discretion

#### 1. The Changing Role of the Prosecutor

The role and powers of prosecutor vary in different jurisdictions. In some countries the prosecutor is given a wide discretion over the consequences of an offence; in other jurisdictions his/her main task is to bring the offenders before the court. The trend in many European countries leads to the widening of the prosecutorial powers, giving the prosecutor in many respects a position similar to that of the judge.

*The types of prosecutorial decisions.* - The prosecutor’s traditional role as an agency providing alternatives to custody has been to act as a “filter” in diverting the cases out of the formal flow of criminal justice by means of *non-prosecution*. This is the case when the prosecution service decides to waive the case and not to proceed further with it (even if there was enough evidence to press charges against the defendant). The offence can also be *dealt with outside formal court procedures*. For example, the offence can be diverted to a settlement or a reconciliation between the victim and the offender, without the further involvement of the criminal justice system. Thirdly, the prosecutor may have the power to impose a *minor type of formal sanction*, such as a caution, an oral or a written admonition, a small fine and sometimes a compensation order (for example transaction in the Netherlands, see below). The fourth group of measures consist of other types of sanctions, such as supplementary conditions attached to non-prosecution, (agreement based) social training courses (for the juveniles) and sometimes even community service.

The following concentrates on non-prosecution as a means to divert cases from the court proceeding. Other measures are dealt with separately in chapter II below.

*Legality versus opportunity principle.* - Two separate principles provide the legal basis for diversionary policies: the legality principle and the opportunity (expediency) principle.

According to the *legality principle*, prosecution must take place in all cases in which sufficient evidence exists of the guilt of the suspect (and in which no legal hindrances prohibit prosecution). The *principle of opportunity* grants the prosecution service discretion over the prosecutorial decision, even when proof exists as to the occurrence of the criminal offence and the identity of the offender.

Even if the distinction is clear in principle, in practice the differences may remain smaller. In almost all countries, following the principle of legality, there are separate rules allowing exceptions, usually regulated in specific legislative grounds of non-prosecution. Two countries – the Netherlands and Finland – may serve as examples here.

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2. Prosecutorial Discretion under the Principle on Expediency (The Netherlands)

*The scope of non-prosecution.* - Netherlands is among the countries where prosecutors have traditionally had substantial powers to divert cases from the criminal justice system. The expediency principle, expressed in the Code of Criminal Procedure Section 167 subsection 2 of the Dutch Code of Criminal Procedure reads: “the public prosecutor shall decide to prosecute when prosecution seems to be necessary on the basis of the result of the investigations. Proceedings can be dropped on grounds of public interest”.

Non-prosecution may be unconditional or conditional. In the latter case (which has no foundation in the law) the prosecutor may impose conditions similar to those attached to a suspended sentence (*Tak* 2002 p.16 and below). Normally, however, the decision on non-prosecution is not accompanied by such conditions.

In the early 1980s, approximately 28% of all crimes were dealt with by non-prosecution. The general tightening of penal policy was reflected also in prosecutorial practice, and in 1997 only 5% of criminal cases received unconditional non-prosecution. However, a part of the previous cases of unconditional non-prosecution were replaced by conditional non-prosecution and a specific arrangement, called transaction (*Tak* 2002 p.18-19).

*Transaction.* - Transaction is a form of diversion in which the offender voluntarily pays a sum of money to the Treasury, or fulfils one or more (financial) conditions laid down by the prosecution service (*Tak* 2002 p.19 ff). The opportunity to settle criminal cases by way of a transaction has a long tradition in the Dutch criminal justice system. Earlier this opportunity to settle a case financially was reserved for misdemeanours in principle punishable only with a fine. In 1983 the scope of transactions was extended to crimes which carry a statutory prison sentence of less than six years. The conditions set by the prosecutor only concern the sum of money to be paid (see closer *Tak* 2002 p.20).

The acceptance of the prosecutor' s offer to settle a case is, as a rule, beneficial for the offender: he avoids a public trial, the transaction is not registered in the criminal record, and he/she no longer has to worry about the sentence. Transactions save the prosecution service and the offender time, energy and expenses, and protect the offender against stigmatisation. On the other hand, by accepting the transaction he gives up the right to be sentenced by an independent court with all legal guarantees.

The almost unlimited power given to the prosecution service to settle criminal cases by a transaction has also been criticised. According to the critics, the system increases opportunities for plea bargaining, it undermines the legal protection of the accused, favours certain social groups, and entrusts the prosecution service with powers which should remain reserved for the judiciary (see *Tak* 2002 p.20-21).

Despite the criticism, the introduction of the broadened transaction has been a great success. More than 35% of all crimes prosecuted by the prosecution service are now settled out of court by a transaction. The lack of uniformity in the practice has, however, caused some problems. The Board of prosecutor-generals has also issued guidelines for the common crimes. Despite this, there are considerable variations in the frequency of the application of transaction and the level of transaction sums (mainly because the guidelines offer such a broad latitude). Since 1993, the police may also offer transactions for certain categories of crimes (such as shoplifting or drunk driving, see *Tak* 2002 p.21)).

3. Prosecutorial Discretion under the Principle of Legality (Finland)

*The basic rules on prosecution.* - In Finland, violations against criminal law are divided in two categories as far as the right to prosecute is concerned. In *complainant offences* the prosecutor has the power to prosecute the offender only on the request of the complainant. However, the majority of offences are subject to public prosecution (non-complainant offences). In this group the prosecutor is obliged to bring the offender to justice (raise a charge) as soon as there are “probable reasons” to suspect that he or she is guilty of an offence.

The rigid requirements of the principle of legality are being softened through the provisions of non-prosecution. Traditionally, the scope of non-prosecution has been quite narrow, as compared to earlier

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Dutch figures. In the beginning of the 1980s, only about 2% of criminal cases led to non-prosecution. However, in 1991 the scope of non-prosecution was extended through a law reform which tripled the number of offences diverted from the court proceedings due to non-prosecution.

*General conditions for non-prosecution.* - The conditions for non-prosecution are strictly defined in the law. Major grounds for a waiver are the *petty nature of the offence* and the *young age* of the offender. The prosecutor can waive the prosecution (1) when a penalty no more severe than a fine is to be expected for the offence, when, assessed as a whole, considering the offence's harmfulness or the culpability of the offender, the offence is to be deemed petty; and (2) for an offence committed by a person under 18 years of age, when a penalty no more severe than a fine or a maximum six months imprisonment is to be expected for the offence, and the offence is deemed to be the result of thoughtlessness or imprudence rather than heedlessness at the prohibitions and commands of law.

Non-prosecution may also be based on *reasons of equity or criminal policy expediency*. According to the law, "unless an important public or private interest requires otherwise, the public prosecutor can waive the prosecution when trial and punishment are to be deemed unreasonable or pointless, considering the reconciliation between the offender and the complainant, or other action taken by the offender to prevent or remove the effects of his offence, his personal circumstances, other consequences of the offence to him, actions by the social security and health authorities, or other circumstances."

This section covers non-prosecution on the basis of reconciliation and mediation (as well as other reparative actions taken by the offender). Victim-offender-mediation was specifically added in the law in 1995. Since then it has quickly gained more and more importance as a grounds of non-prosecution.

*Non-prosecution on the basis of mediation.* - In complainant offences restitution will often put an end to the matter even before it gets into the court. In non-complainant offences the prosecutor can drop the charge, if prosecution would seem either unreasonable or pointless due to a reconciliation and non-prosecution does not violate "an important public or private interest." The latter condition excludes more serious offences from non-prosecution. If non-prosecuting would endanger the victim's right to get his/her damages compensated, this option would - in general - be out of the question.

There are no formal conditions as regards the form, content or fulfilment of the mediation agreement. Mediation may well serve as a reason for non-prosecution, even if the process is still unfinished. Neither does the law require that the offender has succeeded in his efforts of reconciliation: An honest and serious attempt by the offender will suffice. In practice, of course, completed and successful mediation has more weight in the decision.

Also in these cases, non-prosecution is always discretionary. Unlike in some other countries, mediation does not automatically divert the case from the criminal justice system. This may narrow the diversionary effect of mediation. On the other hand, it also prevents mediation from becoming restricted to trivial cases (the ones in which the prosecutors would be willing to drop the charges, if the case was mediated). Mediation as such will be dealt in more detail below (chapter II..H).

## **B. Pre-Trial Detention**

### **1. Means for Reducing the use of Pre-Trial Detention**

Among the key measures in the "front end" of the system is pre-trial (or remand) imprisonment. In many countries a large proportion (or even the majority) of those held in prison are on remand. The share of non-convicted prisoners as a proportion of the total prison population tends to be relatively high in many Asian countries (*Kitada 2001*).

Too often suspects are detained in prison almost automatically once they are arrested. Still, pre-trial imprisonment is often unnecessary. Legislative arrangements are needed:

1. to ensure that there are *appropriate restrictions on the circumstances in which pre-trial imprisonment can be used*,

2. to ensure that when a person is held in pre-trial imprisonment *the period is as short as possible*, and
3. to provide *other means* to fulfil the functions of pre-trial detention.

1. Pre-trial detention should not be an automatic option. Its use should be limited to cases *where offences are particularly serious* or where for some other reason *it is clearly contrary to the public interest to allow the suspect to remain in the community*. The simplest way of restricting the use of pre-trial detention would, thus, be to raise the minimum punishment stipulated and to loosen the other criteria and pre-conditions of pre-trial detention. Since pre-trial detention is generally tied to the seriousness of the charge, one way of reducing its use would be to restrict “over-charging” (charging for a more serious offence than the case at hand would justify).

2. The length of the pre-trial period should be kept as short as possible. The law should contain solid guarantees that the case is tried in due time. In a case where the process takes a longer time, the preconditions of pre-trial detention should be examined within short intervals by the court (and preferably not by the police). The overall use of pre-trial detention might also be decreased by stipulating a maximum period of detention after which the suspect must be released unless convicted.

In many countries, the investigation procedures are long and even when a decision has been taken to prosecute there are delays in arranging the court hearing because of a backlog of cases. Legislation can be introduced to shorten investigation procedures and can also be used to tackle the factors that create the backlog of cases. Since pre-trial detention is used also in order to ascertain the identity of the suspect, the length of the detention can be reduced by increasing administrative efficiency in the identification of suspects (i.e. through the use of mandatory identification documents or the computerisation of fingerprints and other identifying characteristics).

3. One of the basic functions of pre-trial detention is to *prevent the suspect from absconding, interfering with the investigation of the offence or continuing to commit offences*. This aim may also be served by *other means*, such as restrictions on movement, supervision, the payment of bail, and release on recognizance.

*Restriction of movement.* In this case the suspect is required to stay within a certain area or within certain premises, most commonly his or her home. (“Home arrest”). Another, a less restrictive form, would be to forbid the suspect from travelling from certain locations (MK). Observance of the conditions is generally enforced through constant monitoring by the local police. Such monitoring can also be carried out electronically.

*Supervision.* A less restrictive measure requires that the suspect awaiting trial submits to supervision primarily in order to ascertain that he or she is not going to disappear. The suspect may be required to report to the police or another agency (or even private citizens) at fixed intervals, or a representative of such an agency will make random checks on whether or not the suspect has adhered to the conditions.

*The payment of bail.* “Bail” is usually understood as the posting of property or money as a surety that a person released from custody will appear in court at the appointed time. Bail is in common use in most countries throughout the world. It is not used in the Scandinavian countries, but the use of bail has been reported in Asia in countries like Indonesia, Korea, Philippines and Thailand (Joutsen 1990), and the practice in the USA is well known. Bail’s primary drawback is that it can be discriminatory, since the poorer suspects cannot afford bail and often do not succeed in having a bondsman post the bail for them.

*Release on recognizance.* The most common measure used to avoid pre-trial detention is simply the release on recognizance, whereby the suspect agrees to appear before the court when the case comes to trial. Such simple release may be used even in more serious cases, when the suspect is an established member of the community.

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2. Pre-Trial Detention in Finland

In Finland the use of pre-trial detention consists of three steps:

1. A policeman may *apprehend* a person for whom an arrest or remand warrant has been issued, or if the conditions for an arrest (see below) are present and the measure does not bear delay. Such a measure must be reported to an authority with powers of arrest, who shall decide within 24 hours whether the suspect shall be released or arrested (Section 2 of the Coercive Means Act).

2. An authority with powers of arrest (generally the chief police officer) may *arrest* a person who is suspected with probable cause of having committed an offence under three sets of conditions.

I. If the *maximum sentence for the offence in question is imprisonment for at least one year and in addition* it is probable that the suspect shall

- (1) seek to escape or evade justice,
- (2) seek to tamper with the evidence or influence witnesses or other parties or
- (3) continue his or her criminal activity.

II. Furthermore, the suspect may be arrested even if the above conditions are not fulfilled, provided that

- (a) the *minimum sentence is imprisonment for two years or more*,<sup>1</sup>
- (b) the suspect refuses to identify himself or herself, or
- (c) the suspect is not domiciled in Finland and it is probable that he or she shall seek to evade justice by leaving Finland,

III. Even if there is no probable cause, a person may be arrested if the other conditions noted above are fulfilled and the arrest of the suspect for further investigations is deemed very important. However, no one may be arrested if this would be unreasonable in view of the nature of the case or of the age or other personal circumstances of the suspect (Section 3 of the Coercive Means Act). In all cases, the arrested person may not be held in custody for longer than is necessary.

3. If a person is suspected on probable grounds of having committed an offence, he or she may be remanded in custody. The conditions are the same as above (=arrest). However, this time the decision has to be made by the court (not the police).

The request for remand must be *presented to the court without delay, and in any case by noon on the third day* from the date of apprehension. The court must deal with the matter within four days of the apprehension. The four-day limit may be exceeded only on the request of the suspect.

When the suspect is put on remand, the court must confirm the day of the hearing. *The hearing should in principle take place within two weeks time*. If longer preparations are needed (which is often the case for example in large-scale drug offences and economic crime), the court must ensure fortnightly that the conditions for pre-trial detention are still present.

## II. NEW COMMUNITY SANCTIONS - POSSIBILITIES AND PITFALLS

In those countries where the range of community sanctions is limited to a number of "classical" sanctions, such as fines, suspension of imprisonment and probation, the first step is to *ensure that the law provides for an adequate range of community sanctions*.

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<sup>1</sup> Only a limited number of offences carry a minimum sentence of two years or more. Examples include, treason, certain offences against humanity, sabotage of air traffic, skyjacking, certain forms of arson, murder, manslaughter, aggravated counterfeiting, and aggravated rape and aggravated sexual offences against a child.

## A. The List of Possible Alternatives

### 1. Introduction

1. Some decades ago the selection of sanctions in the European penal codes looked quite similar: The core of any system consisted of imprisonment, fines, and suspended (or conditional) sentence – either with or without supervision (probation). Today the picture looks quite different. During the twenty to thirty years most European countries have amended their penal system by introducing a number of new community sanctions.

2. An important stimulus for this change has been the adoption by the Council of Europe Committee of Ministers of Resolution R(76)10 on some alternative penal measures to imprisonment in 1976. Since that decision almost all European countries have incorporated into their sanction system some form of new community measure. As many as 20 new kinds of alternatives under different labels have been counted (*Kalmthouth* 2000). In 1990, another important step was taken, as the United Nations General Assembly accepted the “United Nations Standard Minimum Rules for Non-custodial Measures” (“The Tokyo Rules”, resolution 45/110 of 14 December 1990, see in brief *Stern* 2002).

3. Today, the mere listing of all available alternatives used in different European jurisdictions would be a very burdensome (if not impossible) task. The Swedish law knows more than 20 different alternatives and their combinations. A recent listing of the French system provided as many as 47 different sentencing options!

4. The mere number of alternatives is not a guarantee of the new sanctions’ effective role as means to reduce the use of custody. Some alternatives may lack all practical relevance. In addition, too complicated a sentencing system endangers consistency in sentencing and leads to unwarranted disparities in sentencing. Too complicated a sentencing system is also incomprehensible to the public, which may weaken the general preventive effect of the criminal law.

Evidently, a well-planned and effectively implemented system of only a few non-custodial alternatives is a better arrangement than a system with a great variety of alternatives which are only randomly used and which are – more or less – unknown to the public at large.

### 2. The Classification of Alternatives

There are several ways of classifying criminal sanctions. As *criminal punishments* they infringe different values and interests (otherwise protected by the law), such as freedom of movement, privacy and economic security. As *means of crime prevention* (and of reducing crime damages) they may use different methods such as incapacitation, supervision, treatment, work in the community and formal warnings as well as restitution, reparation and community integration. In the following table traditional and new alternatives are classified according to their aims and contents (of a slightly different classification, see also Penological Information. Bulletin 22/2000 p.93-94).

<b>Community Sanctions: Some Classifications</b>		
<b>Aim and contents: emphasis is on...</b>	<b>Traditional alternatives</b>	<b>New alternatives</b>
<b>Warning</b>	- Diversion, non-prosecution - Warning and admonitions	
<b>Economy</b>	- Fines - Confiscation	- Administrative penalties - “Unite fines”
<b>Supervision and support</b>	- Probation - Conditional imprisonment - Suspended sentence	- Intensive probation

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<b>Community Sanctions: Some Classifications</b>		
<b>Restrictions of liberty in the community</b>		<ul style="list-style-type: none"> <li>- House arrest/electronic monitoring</li> <li>- Other restrictions of movement</li> </ul>
<b>Community-ties and integration (+ work)</b>	<ul style="list-style-type: none"> <li>- Public work</li> </ul>	<ul style="list-style-type: none"> <li>- Community service order</li> </ul>
<b>Social work/social training</b>	<ul style="list-style-type: none"> <li>- Probation</li> <li>- Juvenile corrections</li> </ul>	<ul style="list-style-type: none"> <li>- Social training courses</li> <li>- Juvenile corrections</li> </ul>
<b>Treatment (psychological/psychiatric/medical)</b>	<ul style="list-style-type: none"> <li>- Treatment orders</li> </ul>	<ul style="list-style-type: none"> <li>- Contract treatment</li> </ul>
<b>Restitution/compensation</b>	<ul style="list-style-type: none"> <li>- Criminal damages</li> </ul>	<ul style="list-style-type: none"> <li>- Compensation orders</li> </ul>
<b>Restitution/mediation/community involvement</b>	<ul style="list-style-type: none"> <li>- Different forms of informal out-of-court settlements</li> </ul>	<ul style="list-style-type: none"> <li>- Victim-offender mediation</li> <li>- Community mediation</li> <li>- Family group conferences</li> <li>- "Healing circles"</li> </ul>

3. Formal Sanctions

*Penal warnings.* - Mere warnings are customarily used where the offence is not grave and especially where the offender is of previously good character. They are called by a variety of names, including admonition, absolute discharge, conditional discharge, reprimand, warning and "final warning" (in the UK).

*An example: In the UK a new system of reprimands and final warnings has been implemented nationally from 1 June 2000. Reprimands can be given to first time offenders for minor offences. Further offending results in either a final warning or a charge. The final warning triggers referral to a local youth offending team which will assess the young person and, unless they consider it inappropriate, prepare a rehabilitation programme designed to tackle the reasons for the young person's offending behaviour and to prevent any future offending. This assessment will usually involve contacting the victim to assess whether victim/offender mediation or some form of reparation to the victim or community is appropriate (see <http://www.homeoffice.gov.uk/rds/caution1.html>).*

Conditional or suspended sentence with no supervision or control (below), may also be classified as a kind of warning. In some countries admonitions may also be public; for example, it may be published in a local newspaper, and – what is even worse – on the Internet (which comes very close to the ancient forms of shaming penalties, abandoned from the European Codes during the 19th century).

*Fines.* - Fines are the most commonly used monetary penalty. Fines are economical in terms of both money and labour, and practical in terms of management and administration. They are also humane, as they inflict a minimum of social harm.

The major problem with fines is that the same amount of money means different things to the rich and the poor in terms of the relative size of loss. This can be overcome through the use of the *day-fine* – a system developed by a Swedish criminalist, but first adopted in Finland in 1921. According to this, the severity of the offence determines the number of day-fines, while the income of the offender determines the size of each individual day-fine. Thus, the absolute amount of a fine for the same offence is heavier for the more affluent offender than for the poor – but the relative meaning of fine remains the same for each offender.<sup>2</sup>

<sup>2</sup> To take the common example of shoplifting: if both an unemployed person and a person with a monthly income of several thousand dollars are sentenced for the same shoplifting offence, the judge may set the number of day-fines at 20. The unemployed person would pay a fine of 20 day-fines of 5 dollars each (100 dollars in total), while the employed offender would pay 20 day-fines of 50 dollars each (1000 dollars).

Fines can create problems also in cases where they are not paid. They may even increase the use of custodial sanctions, if they are converted into imprisonment. This can be moderated by limitations on the conversion of unpaid fines into imprisonment, by granting reprieves of payments or the possibility of paying in instalments, by allowing the court discretion over whether or not conversion shall take place and by using other than custodial conversion penalties (such as community service).<sup>3</sup>

Finland reduced the number of imprisoned fine-defaulters in the late 60s. More recently, Germany has been successful in using community service as a default penalty. Sweden has been able to cut down the use of default imprisonment almost totally, despite the very widespread use of the day-fine.

#### 4. Focus on Supervision (and Support)

*Probation and suspended (conditional) imprisonment with supervision.* - Suspended sentence means that the offender is convicted, but exempted from serving a sentence (which may or may not be specified) under certain conditions and directions, most commonly on the condition that he or she does not commit a new offence during the probationary period. Supervision may also be ordered as an independent sanction under the title "probation". In all cases the offender must, generally, remain in contact with a probation officer, notify the probation officer of any change in address, and provide essential information on, e.g., employment, earnings and lifestyle. The supervision can range from intensive through moderate to minimum, and the conditions may relate, for example, to residence, work, education, treatment and the use of alcohol or drugs.

In Finland suspended sentence with supervision have been used successfully instead of imprisonment for juveniles.

*Suspended imprisonment without supervision.* - Some systems recognize the possibility of suspending a sentence of imprisonment without any supervision. The offender is thus not subjected to any control during the term of the sentence. However, if the offender commits a new offence during this term, the court may order that the conditional sentence be enforced.<sup>4</sup>

In Finland, a suspended sentence (conditional imprisonment) without supervision is quite a common punishment in most middle rank offences. A majority (60%) of all prison sentences are suspended. It is a clear presumption that all shorter prison sentences (less than one year) are suspended for first time offenders.

*House arrest and electronic monitoring.* - The common feature in these cases is that they all include some restrictions on liberty, but these restrictions are carried out in the community (not in institutions). In *house arrest*, the offender is required to stay at home for a certain period. The extent of the confinement may be limited to night-time, or to nights and other free time. It may also be full-time confinement for twenty-four hours a day. The conditions of home arrest may include full or partial abstinence from alcohol, or counselling or treatment for substance abuse. The offenders are generally subject to strict and random surveillance, either face-to-face or electronic monitoring.

Electronic monitoring and surveillance has been used successfully in Sweden and the UK. This option seems to enjoy a growing popularity among politicians – presumably due to its high profile as a means to protect the public. At the moment, the Commission of the European Union is planning a recommendation for all member states to include electronic monitoring as a part of their criminal justice system.

<sup>3</sup> E.g. in Australia, the Federal Republic of Germany, Italy, Norway, Portugal and Switzerland, non-payment can lead to community service.

<sup>4</sup> Among the Asian and Pacific countries responding to the U.N. Third Survey, this sanction was noted for Fiji, Hong Kong, Korea (both as a suspended sentence and as suspended execution of sentence), Papua New Guinea, Sri Lanka and Thailand. In Fiji, should the court find cause to consider enforcing the suspended sentence, it has the discretion to order that the suspended sentence shall take effect with the original term unaltered, substitute a lower term, or to extend the operational term by at most three years from the date of the new decision.

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5. Focus on Maintaining Community Ties and Community Integration: Community Service

In its present form community service was first introduced in England and Wales in 1975. The sanction involves the performance, during leisure-time and within a given period, of a certain number of hours of unpaid work for the good of the community. In most systems, there are specific provisions regarding the conditions under which a community service order can be made; these include, for example, the type of offence and the consent of the offender. Community service has spread to a number of countries. The current use of community service varies enormously. In the United Kingdom alone, almost 40 000 community service orders are imposed each year. The corresponding figure in the Netherlands is 16 000, in France 24 000, in Finland 4 000, in Sweden 3000, in Switzerland 2000, in Denmark 200, and in Portugal almost none. The frequency index per 100 prison sentences is highest in the Netherlands (59), England and Wales (51) and Finland (40, see Council of Europe, Penological Information Bulletin 22 December 2000 p.104-105 and Bulletin 23 & 24 2002).

6. Focus on Social Work and Social Training

Different forms of social work and social training courses have been an essential part of the juvenile justice systems. More recently similar programmes have entered into the adult criminal justice system as a part of the probation order. Programmes run by, for example, the UK probation service include courses like "Thinkfirst" (22 group sessions + 6 individual follow-up sessions; application of problem solving, self-management and social skills), "Reasoning and rehabilitation" (36 group sessions; target areas include problem solving, social skills, self-control, negotiation skills, assertiveness, critical reasoning) and "Enhanced Thinking Skills" (20 two-hour sessions focused on cognitive skills). In addition there are a number of programmes selectively focused on specific types of offence (such as "Aggression replacement Training", programmes for sex offenders, drunk drivers and substance abusers (see McGuire 2001 and Bottoms et al 2001).

7. Focus on Treatment

During the period of welfare treatment ideology (especially in the 50s and the 60s), several countries adopted treatment orders as a part of their criminal justice systems. In the late 60s and 70s criticism against coercive treatment decreased the popularity of these sanctions. However, in the course of the 90s, treatment has, again, undergone a gradual renaissance. Old, compulsory treatment orders have been replaced by different type of contract-based treatment programmes. Now treatment is based on *consent and co-operation*. This is an important principal change – even though the consent is often given in a situation where the offender's choice is between treatment and a prison sentence.

New rehabilitative measures are used especially in specific offender categories, where medical or psychiatric experts suggest that there is a connection between the offence and, for example, drug addiction or a drinking problem. Among the target groups are drunk drivers, drug addicts, those guilty of repeated domestic violence and sex offenders.

8. Focus on Restitution and Community Participation: Restorative Justice

*Compensation and restitution.* - All legal systems have arrangements to repair the victims' injuries and losses. However, relatively few define these compensation orders as independent sanctions. Often compensation can be mentioned as one of several conditions of a conditional sentence. Generally, however, compensation or restitution is a civil matter, even though in many jurisdictions it is often imposed by a criminal court.<sup>5</sup>

The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power calls for greater use of compensatory payments as sanctions. Restitution of the loss to the victim is deemed an appropriate aim of criminal justice, and it is in the interests of society as a whole.

*Victim-offender mediation or community mediation.* - One of the major transformations in the European Criminal Justice systems from the 70s onwards, has been the growth of the restorative justice movement and the increased interest in informal conflict resolution schemes, such as victim-offender mediation. This change has global dimensions, well known to Asian and African countries,

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<sup>5</sup> See Matti Joutsen 1987, pp. 235-240; see also pp. 192-196 and 231-235.

which have, in fact, much longer traditions in informal conflict resolution. In Australia and New Zealand mediation has been applied in specific family and group conferences.

In Europe, Austria, Norway, Belgium and Finland have been the pioneers – especially in practical application and legislative planning. Reconciliation is generally considered an option only during the preliminary stages of the criminal process, for example during the police investigation or as a measure implemented outside of the state-based criminal justice system.

#### 9. Other Sanctions

*Confiscation.* - Confiscation of personal property is used to some extent as an independent sanction, and its use appears to be expanding. This trend has been encouraged in part by the 1988 United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances. Generally, however, confiscation of the property derived from or used in the offence is considered a penal measure to be applied in addition to the sanction, and not as an independent penal sanction.

*Loss of licence or rights.* - *Suspension of driving or other licence* is used in some countries as a sanction in criminal law; however, in most, it is an ancillary criminal sanction or an administrative measure. *Deprivation of certain rights and/or removal of professional status*, such as the right to perform certain functions or hold certain positions or public offices, the right to vote, and the right to act as an expert or witness in court, may be used mainly as an ancillary sanction. Furthermore, some forms of withdrawal of rights (such as dismissal from office) are reserved for certain special offender groups, such as civil servants.

#### 10. Changing the Contents: Co-operation, Consent and Commitment to Community

1. New alternatives differ essentially from traditional penalties on one central point: They usually require the offender's consent, cooperation and sometimes even a specific contract. These sanctions treat the offender, not merely as a passive object of compulsory measures, but also as an active and autonomous person, capable of making his/her own choices.

2. The second important aspect is the *commitment to the society*. Community service, social training courses and victim-oriented sanctions need society's involvement; after all, that is why they are called 'community sanctions' or 'community-based sanctions'.<sup>6</sup> As stressed by *Kalmthouth*: "The intrinsic value of sanctions must be more than the simple fact that the offender can stay in the community during its enforcement. The real value and meaning of community-based sanctions or measures must be sought in the fact that they contribute to the reintegration of offenders into society by stimulating and improving the offenders' sense of responsibility and their social skills by confronting them with the consequences of their offending behaviour and by asking them to perform re-socialising activities" (*Kalmthouth* 2000 p.123).

3. Community-based sanctions and measures can only be applied within a community-orientated infrastructure geared to the specific requirements of these sanctions. Their implementation is to a large extent dependent on the existence of an organisation like the probation service. This service organises (and also prepares, enforces, supervises and controls) the community-based sanctions in close cooperation with private, semipublic and public organisations or institutions. The reason community sanctions have not gained a firm footing in, for example, Spain and Portugal must be mainly concerned with the lack of a well-functioning implementation system.

4. The role of the new alternatives is not confined to the sentencing level. They have a special impact on the pre-trial and post-trial phase. This changes the power relations in the criminal justice system. In many countries (for example Austria, Belgium, Germany, the Netherlands) the public prosecution service – or sometimes even the police – now have sentencing powers that formerly belonged exclusively to the courts. Financial settlement, compensation, mediation and restitution, conditional pre-trial release, community service and training courses can be applied as part of out-of-

<sup>6</sup> According to Recommendation No. R (92) 16, community sanctions and measures (CSMs) are to be understood as sanctions and measures which maintain the offender in the community and involve some restriction on his/her liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose.

court settlements to reduce pressure on overcrowded prisons and the overburdened judicial apparatus. (Kalmthouth 2000). A wide variety of sanctions and measures also apply after the completion of any sentence. Decisions on electronic monitoring, assignment to the probation service and community service may be taken – not by the trial judge – but by the prison authorities or a specialised sentencing judge after the trial (Italy, France, Portugal, Spain and Sweden).

### **B. Limitations and Possible Pitfalls**

Of all the alternatives developed in the western European countries, community service has clearly been the most successful. It has been adopted in almost all European countries (see the Penological Bulletin 2000). However, there are significant differences among different legal systems. Community service has proved to be a success especially in Finland, England, France and the Netherlands, but not in countries like Italy, Poland, Portugal, Spain and Switzerland (Kalmthouth 2000 p.124-125).

Despite the fact that almost all European countries have amended their sanction systems, true success stories are still hard to find. This is true especially if we consider the “original plan” of using these measures *as an alternative to incarceration*. In order to enhance the use of community-based sanctions one has to be aware of these possible shortcomings and their causes. New alternatives can fail in two different ways:

1. *Unpopularity*. - Firstly, new alternatives may turn out to be unpopular and they may remain unused.

2. *Net-widening*. - New alternatives may turn out to be a success in implementation, but are not used instead of imprisonment, but rather in order to replace other non-custodial sanctions. For example, community service seems to substitute prison sentences only in roughly 50% to 60% of cases. In other cases, they are used as substitutes for other community sentences (Kalmthouth 2000 p.127). Here too, the difference to the Finnish figures is clear. Follow-up research showed that community service had replaced imprisonment in more than 90% of all cases.

3. *Counter-productive effects*. - From the point of view of the original aim, new alternatives may also have counter-productive effects: Sometimes they may even *increase the use of custodial measures*. Some judges may simply regard community sanctions as too soft an option, and in order to ensure that there is “sharp-short-shock” effect, use pre-trial detention as a form of sanction. Non-compliance with the requirements of community sanctions may lead to the use of imprisonment as a back-up sanction. As far as community sanctions have really replaced imprisonment, this may not be such a big problem. But if community sanctions have been used to replace other community sanctions, the use of custodial back-up sanctions may lead to genuine increase of prison sentences.

4. *Social discrimination*. - Finally, there is the risk that community sanctions are used only for “normal decent offenders” who lead a more or less stable life, while those suffering from for example drug or alcohol problems are locked in prison. The Council of Europe Rule 20 forbids the discrimination in the imposition and implementation of community sanctions on grounds of race, colour, ethnic origin, nationality, gender, language, religion, political or other opinion, economic, social or other status or physical or mental condition. However, in reality important categories of offenders – especially persons suffering from drug or alcohol problems, unskilled workers, ethnic minorities and persons with prior convictions - are often highly under-represented (Kalmthouth 2000 p.131).

All in all, care must be taken in order to make sure that the new alternatives...

- are used and implemented *in the first place*
- - are used *instead of imprisonment*
- - are *not used in a way that increases* the use of imprisonment
- - are *not used in a way that leads to social discrimination*.

### C. Overcoming the Difficulties: General Pre-Conditions for Policy Success

#### 1. Clearly Defined Aims, Content and Implementation Criteria

The essential issue is to ensure that the new alternatives will be used instead of imprisonment, and not in lieu of some other – more lenient – sanction. In some cases, the failures in replacing custodial sanctions with new alternatives are explained by the *lack of clear provisions* in law on both the conditions for imposition of community sanctions and the methods of their implementation. What, therefore, is needed, is legislation clearly outlining the procedures and conditions for their imposition and implementation, together with a coherent and systematic view of the interrelations of the existing sentencing alternatives.

*Aims and content.* - The legislation should specify the aim and nature (purpose and content) of the sanction; that is, whether the focus is on the punitive dimension, rehabilitation or restitutive elements, and if on all of these, which ones come first (*Kalmthouth 2000 p.126*).

*Position and relation to other sanctions.* - Especially in those cases where the emphasis is on the “punitive dimension” (and the principle of proportionality), the courts should be given *clear guidance as to how the new custodial sanctions fit in with the present sentencing system*. The court should be able to assign the new alternative’s appropriate place in the scale of punishment. For example, is 40 hours of community service the equivalent of one month’s of imprisonment? Is it more or less severe than a suspended sentence of a certain length? This would help judges in determining the proper place of the measure in the scale of penal values.

This requirement is usually neglected in systems which allow multiple combinations. If, for example, community service can be combined with any other alternative (with fines, suspended sentence and even as supplementary sentence for imprisonment), confusion on its proper place and relation with other penalties is unavoidable.

*Application criteria.* - When a new alternative to custodial sanction is introduced, it is of vital importance to give clear guidance to the courts on the criteria for its application. The form in which this guidance can be given will vary from one jurisdiction to the next, and it will depend largely on the role of legislator, on the superior courts and on other agencies capable of formulating guidelines in sentencing in each jurisdiction.

#### 2. Credibility and Consistency in its Enforcement

1. *Organising the work.* - Community service and other community sanctions are (as a part of their punitive dimension) meant to operate as “fines on people’s time”. Thus, they require the offender to perform the work during their leisure time. Still, in many countries, the work has been arranged on a full-time basis (8 hours a day). This clearly jeopardises the original concept of a community sanction being a “fine on time” devised in order to oblige the offender to perform his or her tasks over a relatively long period of time in a community-orientated environment. Another consequence is that the community sanction loses its formative and re-integrative character, because the way it is carried out does not give the offender the required time to make a real commitment to the community (*Kalmthouth 2000 p.128*).

2. *Successful implementation requires intensive supervision and support.* - There is an obvious relationship between the failure rate and the quality and intensity of supervision: the less control and supervision, the higher the dropout rate. In many countries, in spite of Rule 24 of the European Rules, strict and uniform rules with respect to breach criteria and procedures are lacking. This may require that the roles and tasks of the involved agencies are sorted out: In many countries the probation officers are still notoriously reluctant to take breach actions because they consider a failure to complete the imposed sanction as a breakdown of the therapeutic relationship or as the consequence of the offender's chaotic lifestyle. In several countries, probation officers still consider the supervision of a penal sanction difficult to bring into line with their professional principles. These kind of issues have to be dealt with openly.

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3. *Consistent responses to violations.* - There should be clear and consistent practice in the cases where the conditions of the sentence are violated. This is also a question of equality. Different and sloppy practices create mistrust and resistance on the part of public prosecutors, the judiciary and the public.

4. *Social inquiry reports and consent.* - The use of community sanctions is sometimes prevented due to the fact that no social inquiry reports have been prepared and there has been no contact with a probation officer or counsellor. In some systems the chances of receiving an alternative sanction instead of a short prison sentence are in these cases very small.

In only in a few countries (the Czech Republic, Denmark, Finland, Sweden, and the United Kingdom) must the probation service draw up a pre-sentence report on the suitability of the offender for a community sanction. This report includes also his or her consent to such a sanction. Unfortunately, in many countries, asking the offender's consent is only a formal ritual maintained in order to preclude the presumed violation of forced or compulsory labour regulations. However, the experiences in Finland clearly indicate, that *an explicit and well-informed consent is a highly motivating factor for the offender.* By giving his/her consent to the work, the offender has also committed to the performance in a manner that gives hope for good success rates.

### 3. Resources and Infrastructure

The success of a community sanction depends heavily on the availability of resources for their implementation. Probation requires a suitable infrastructure for the arrangement of supervision, and community service requires not only a suitable organisation but also designated places of work. In addition, the general economic and political circumstances in a country may have a role in determining the extent to which community sanctions are used in general.

One important reason why community sanctions have so far only partly fulfilled their purpose is the lack of a well equipped financial and institutional infrastructure. Here, Portugal provides an example. As probation and community service were introduced, it proved difficult to set up a wholly new probation service. This led to an overburdening of the probation services which, in turn, decreased court confidence in these services.

These risks have been noted in the European Community Sanctions and Measures (Rules 38 and 42, see also the rules 39 and 40). Still, most European countries have not provided adequate means from public funds to create the necessary infrastructure for the implementation of community sanctions. In cases where sufficient means have been provided they have, as a rule, been taken away from other activities of probation services rather than additional means. In other words, the implementation of a new community sanction will generally be assigned to an existing service, on the assumption that this service has already developed the necessary infrastructure.<sup>7</sup>

The point is well summarized by *Joutsen* (1990): "The most efficient route to increase the credibility of community sanctions and thus promote their use is that the state and local community provide the necessary resources and financial support for the development, enforcement and monitoring of such sanctions. Particular attention should also be paid to the training of the practitioners responsible for the implementation of the sanctions and for the coordination between criminal justice agencies and other agencies involved in the implementation of these sanctions in the community."

## **D. Community Service in Finland**

*Basic features.* - Community service was introduced into the Finnish penal system in 1992 on an experimental basis in four judicial districts. In 1995 the system was extended to cover the entire country, and community service became a permanent part of the Finnish system of sanctions.

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<sup>7</sup> As *Kalmthouth* notes: "This shows that politicians' belief in the viability of community sanctions is not very high – at least, not as high as their belief in the viability of the prison system, into which they are willing to pour budgetary allocations measured in hundreds of millions each year in order to expand the capacity" (ibid p.127).

Community service is imposed instead of unconditional imprisonment. The duration of community service may vary between 20 and 200 hours.<sup>8</sup> The prerequisites for sentencing the offender to community service are (a) that the convicted person consents to it, (b) that the sentence imposed on the offender does not exceed eight months, and (c) that the offender is deemed capable of carrying out the community service order. Also (d) prior convictions may in some case prevent the use of this option. The offender's ability to carry out the work is evaluated on the basis of a specific *suitability report*. *This report may be requested by any one of the parties, the prosecutor or the court. The suitability report is prepared by the Probation Service.*

*Avoiding net-widening: the two step procedure.* - In order to ensure that community service will really be used in lieu of unconditional sentences of imprisonment, a *two-step procedure* was adopted. First the court is supposed to make its sentencing decision by applying the normal principles and criteria of sentencing, without even thinking about the possibility of community service. *If the result is unconditional imprisonment (and certain requirements are fulfilled), then the court may commute the sentence into community service.* In principle community service may, therefore, be used only in cases where the accused would otherwise receive an unconditional sentence of imprisonment. In commuting imprisonment into community service, one day in prison equals one hour of community service. Thus, two months of custodial sentence should be commuted into roughly 60 hours of community service. If the conditions of the community service order are violated, the court normally imposes a new unconditional sentence of imprisonment.

*The number of hours of community service.* - The court should always determine the number of hours (20 to 200 hours) of community service to be served. The length of the service depends in practice on the original sentence of imprisonment. The practice that one day in prison equals one hour of community work is not this favourable to those who are performing community service, since prisoners are released from prison on parole after having served one half (for first time prisoners) or two thirds (repeat offenders) of the sentence.

The rate of conversion has sometimes been criticised for not reflecting the actual differences in severity between imprisonment and community service. It is difficult to assess the exact relation between the scales of severity of different sanctions, since there are no fixed and unambiguous criteria that would be needed for this. In addition, some attention should be paid in the assessment to the fact that the performance of community service lasts twice as long as the sentence of imprisonment for a first time prisoner. This means, in other words, that the offender undergoes a longer period without any free weekends – and without alcohol, which is often difficult for persons undergoing a sentence. Secondly, attention should be paid in the assessment to factors other than those directly related to the pure comparison of the relative severity of sanctions. Had exact comparability between sanctions been the sole basis, there would have been no need to adopt community service in the first place. In the assessment, some weight should also be given to the fact that community service as a sanction is more constructive and also, from the point of view of possible recidivism, less detrimental (see below).

*Contents.* -Community service consists of a certain amount of regular, unpaid work carried out under supervision. The sentence is usually performed in segments of three or four hours, ordinarily on two days each week. The intention is that this service would be performed over a period that roughly conforms to the corresponding sentence of imprisonment without release on parole. Only work for a non-profit organisation is allowed.

The Probation Service approves a service plan for the performance of a community service order. The plan is prepared in cooperation with the entity with whom the place of work has been arranged. The person who is to perform the work should be allowed an opportunity to be heard in the drafting of the service plan.

<sup>8</sup> The maximum for hours of community service varies in different countries: 200 (Finland), 240 (Belgium, Denmark, Ireland, Luxembourg, Sweden, United Kingdom), 300 (Scotland, Norway, Switzerland), 380 (Portugal), 384 (Spain), 400 (Czech Republic), 480 (Italy, the Netherlands, Poland).

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The performance of a community service order is supervised quite closely. On the other hand, the supervision is specifically focused on ensuring the proper performance of the work. Unlike the other Nordic countries, in Finland community service does not contain any extra supervision aimed, for example, at controlling the offender's other behaviour in general. The supervision is strictly confined to his or her working obligations. Consequently, in Finland supervision is not an independent component of a community service order.

*Violation of the conditions.* - Minor violations are dealt with by reprimands, whereas more serious violations are reported to the public prosecutor, who may take the case to court. If the court finds that the conditions of the community service order have been seriously violated, it should convert the remaining portion of the community service order into unconditional imprisonment. The hours that have already been worked should be credited in full to the offender. In this calculation, the length of the imprisonment should be determined by applying the general conversion scale.

*Community service in practice.* - Annually some 3500 - 4000 community service orders are imposed by the courts. This is around 35-40% of the sentences of imprisonment which could have been converted (sentences of imprisonment of at most eight months). Over one half of the community service orders are imposed for drunk driving.

The proportion of orders interrupted has varied between 11-15% (of those sentences started each year). Annually some 250 000 - 300 000 hours of community service are performed, which corresponds to some 400-500 prisoners (15% of the prison population) in the overall prison population (assuming that in the absence of community service a corresponding unconditional sentence of imprisonment would indeed have been imposed). A typical community service order is for 70 to 90 hours.

According to a study prepared at the Prison Administration Department of the Ministry of Justice, a slight, albeit systematic, difference in recidivism was noted between those sentenced to community service and those sentenced to imprisonment. Of those sentenced to imprisonment, 55% were again entered into the criminal register for a new sentence during the following three years. During the same period, 52% of those receiving a community service order re-offended. Over a five-year follow-up period, recidivism among those sentenced to imprisonment had increased to 67%, and recidivism among those sentenced to a community service order had increased to 61%. In the study, an attempt was made to ensure that both groups were comparable (*Muiluuvuori* 2001).

*Suitability and equality.* - Only those who are deemed capable to comply with the community service order, may receive this benefit. This "suitability" is assessed on the bases of a suitability report, prepared by the Probation Service. The situation can, in practice, be particularly problematic if the person in question has problems with intoxicant abuse, and this constitutes a risk to the fulfilment of the community service order. In such a situation we are dangerously close to intoxicant abuse which requires institutional treatment, automatically leading to a prison sentence. Indeed, using suitability as a factor in deciding on the sanction raises the danger of social discrimination (more generally regarding these risks, see *Kalmthouth* 2001). An attempt has been made to reduce this risk by combining the enforcement of the sanction with a set of social support measures. This obviously is not enough. For those offenders who are unable to cope with the community service order, other types of arrangements are needed. One solution is a form of "Contract Treatment" (Drug Court), developed especially in the US and more recently in Sweden.

### **E. Treatment on Contract**

#### **1. The Swedish System**

The Swedish law contains a specific sanction, titled "contract treatment" suited for those who suffer from drug or alcoholic addiction. The treatment lasts between 6 months to 2 years. Part of the treatment takes place in a institution. Participation in the treatment is always voluntary. Before passing the sentence, the offender is asked, whether he/she is willing to undergo the treatment period.

The relation between other sanctions and contract treatment is arranged in two ways: Contract treatment can be used as a normal sub-condition to probation, or it may be used as the very reason for

not imposing a prison sentence. In the latter case (a “genuine” contract treatment), this sanction is used more clearly as an alternative to imprisonment. In this case the court also declares the length of the original prison sentence which would have been passed had the offender not been accepted to take part in the treatment programme.

In Sweden some 1100-1200 contract treatment orders are given each year compared to 15000 prison sentences and 3000 community service orders imposed annually.

## 2. The Finnish Reform Plans

According to recent reform plans, a similar type of sanction shall also be included in the Finnish sanction system in 2003/2004. These plans have been inspired partly by the Swedish solutions. However, the main impetus has come from the Finnish experiences in Community service. It clearly seems that there is a need for a separate sanction targeted for those offenders who are suffering from alcohol and/or drug addiction and who are not able to cope with the requirements of community service.

The Finnish version follows the legislative solutions adopted in the Finnish community service act. Thus, this new sanction is planned to replace only a prison sentence using the same “two-step procedure” successfully employed in connection with community service: First the offender must be sentenced to an unconditional prison sentence (max. 8 months). After that the court has to consider, whether the sentence may be commuted to treatment. The main condition would be that the offender’s criminality is heavily affected by his/her addiction (= the crime is a “cause” of the alcohol/drug addiction) and that the offender consents to the treatment. In practice this penalty would be used in those cases where the offender is suffering from such addiction problems that they endanger his ability to cope with the requirements of community service.

The duration of the treatment is 6 months to 2 years. A part of the treatment would be delivered in institutional settings, another part in an open environment. If the offender refuses the treatment or quits the programme or otherwise breaches the conditions, the sentence may be commuted back to imprisonment.

## **F. House Arrest and Electronic Monitoring**

### 1. General Observations

In *electronic monitoring*, a “passive” or “active” tag is attached to the person under supervision. The passive tag responds to a signal, generally transmitted by telephone, thus informing the caller (the supervisor or a computer) that the person in question has not left the designated area. The active tag sends a continuous signal to a nearby telephone; should the person leave the designated area, the signal will stop, alerting the supervisor to a violation of the order.<sup>9</sup>

The special benefits of home probation are, first of all, that it restricts the risk of future offences by direct supervision. Without violating the conditions of probation, he or she cannot commit offences other than against him/herself (or against those living in the same building). As other community sanctions, home probation allows the offender to maintain family ties and continue to work or study. It also is less costly than prison, regardless of whether or not electronic monitoring is used.

However, there are some social and ethical counter-arguments. Electronic monitoring is accused of involving an invasion on the offender's privacy at home. This has been countered with reference to the fact that in prison the offender would have considerably less privacy. On the other hand, “house arrest” expands the control over, not only the offender, but also over his/her family. For some, the use of new technology (and the practically limitless opportunities it involves), resembles too much the horror images of the “surveillance society”, described in the *Brave New World* by Huxley.

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<sup>9</sup> This system was first used in Palm Beach County, Florida, in December 1984. As early as in 1990, some 40 states in the United States were using this option. In 1998 over 100 000 offenders were subjected to electronic monitoring in the US. No reliable data is available on the effects on recidivism (*Tonry* 1999 p.12-13).

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In Europe, electronic monitoring has been in a wider use in the UK and in Sweden. In the UK this option has been used mainly as a condition attached to parole. In Sweden electronic monitoring is a substitute penalty for imprisonment.

2. Electronic Monitoring in Sweden

*Description of the system.* An experiment with intensive supervision by electronic monitoring (ISEM) was carried out in Sweden from 1994 to 1998. In 1999, ISEM became permanently available as a form of sentence implementation that can be used as an alternative to short prison terms.<sup>10</sup> An individual who has been sentenced in a court of law to a short period of imprisonment may apply to the correctional authorities requesting that his or her sentence be served under ISEM rather than in prison. The number of days to be served under ISEM is the same as would have been served in prison.

ISEM involves the convicted person remaining at home except for the time allowed by the probation service for employment, training, health care, participation in corrective-influence programmes, commuting to and from these activities, shopping for necessities and other similar tasks. The probation service usually also allows the convicted person an hour outdoors on days when he or she has no other activities to take part in outside the home. A detailed schedule is drawn up by the probation service, and monitoring is carried out principally by means of an electronic tagging device.

If the person leaves or arrives at home at times that do not correspond to the schedule, an alarm is triggered at the probation service office, and the individual concerned will immediately be contacted in order to establish the reason for the discrepancy. Checks are also made in the form of unannounced visits to the person's home several times a week. Most of these visits include a breath test to determine whether the person is observing the ban on alcohol consumption. Drug use is checked for by means of urine and/or blood tests administered both at the beginning of the implementation period and subsequently when necessary.

In addition, the convicted person must visit the probation service at least once a week and take part in the corrective-influence programme they provide. Supervision at the person's place of work is performed by a contact person (a manager, co-worker, teacher, or the like) employed by the probation service, who informs the board if the convict is absent from work or has in any other way violated the rules prescribed. There are no electronic checks to determine when the person is present at his/her place of work. Abuses of ISEM are met with a swift and palpable response, which usually entails removal from the programme and a transferral to a prison for the remainder of the sentence.

*Practical experiences.* - The results of a specific evaluation study (BRÅ 1999:4) show that 75 per cent of the target group applied for ISEM and that about 85 per cent of the applicants were allowed to participate. Of these, roughly 95 per cent completed the programme, whilst the remaining 5 per cent quit the programme and served the remainder of their sentences in prison.

About 40 to 45 per cent of all sentences that specified a maximum of three months in prison were implemented using ISEM and about 60 per cent of all sentences for those in the ISEM target group. About 50 per cent of those who underwent ISEM had been sentenced for drunk driving. In 1997, some 3,800 convicts, their families (65 per cent lived with a spouse) and their employers (70 per cent were employed) were spared the negative consequences of a prison sentence. The cost of ISEM to the correctional authorities was significantly lower than the corresponding cost of incarceration.

The most common reason for not granting ISEM was that the convict did not cooperate in the investigation carried out by the probation service. Those who served their sentences under ISEM had a somewhat more favourable social background and current social situation, even with respect to criminality, than the group who of their own volition or on the basis of the probation service's assessment did not serve their sentences under ISEM. One consequence of this may be an increase in the concentration of habitual criminals in prisons (similar effect can also be found in Finland after the expansion of Community Service).

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<sup>10</sup> The following is based on a report published by the Swedish National Council for Crime Prevention (Brå-Rapport 1999:4).

With respect to the time spent in the home by the convicted person, the level of supervision was high. On the whole, the technology worked well, although continued technological development is important. The probation service made an average of three visits a week to the convicted person's home. Twenty-five per cent of these visits, whose main purpose was to check up on the individual concerned, were carried out by external personnel engaged for the purpose by the probation service. On these occasions a breath test was usually conducted to establish that the convicted person was adhering to the ban on alcohol.

About 6 per cent of the convicted offenders were forced to quit ISEM, usually as a result of violations of the ban on drugs or alcohol, or because they had otherwise broken the rules. Of those who underwent ISEM during the geographically limited portion of the trial period (1994-1995), 26 per cent relapsed into crime within three years compared with 28 per cent of a corresponding group who served their sentences in prison. A cautious interpretation might be that ISEM does not generally affect the convicted person's tendency to re-offend. However, certain results indicate that ISEM may have a somewhat restraining effect on the tendency to relapse into drunk driving.

Generally speaking, convicts and their families were positively disposed towards ISEM. Over 90 per cent of the convicted individuals reported that they would prefer ISEM to prison if sentenced to the same penalty again and a little over 80 per cent of their spouses would also prefer ISEM in such circumstances. Although both the convicted individuals and their spouses felt that some of the demands imposed by ISEM caused stress and threatened their personal integrity, they did not do so to the extent that prison would have been perceived as an attractive alternative. The majority of the convicted offenders and their spouses saw ISEM as a more lenient alternative to prison.

The experience of the contact persons was also positive on the whole. More than three-quarters said they were prepared to work as a contact person again.

As a corrective measure, ISEM is considerably cheaper than prison. The cost to the correction authorities for ISEM is lower than the cost of keeping convicts institutionalised (from 500 to 850 SEK less per day). Furthermore, ISEM yields substantial economic gains for society as well as for the individual, since the convicted person can usually continue working at his ordinary place of work, thereby avoiding the loss of income.

## **G. Juvenile Criminal Justice**

There are enormous variations within the European Juvenile Criminal Justice systems. The age limit for criminal responsibility alone varies between 10 to 18 years. Still, all systems seem to share the same goal, of restricting the use of custodial sentences in the youngest age groups. The vulnerability of juveniles to the damages of custodial sentences is widely recognised. These detrimental effects include psychological and health problems, disruption of family links, impaired education and a lack of re-integration into society. This also holds true in regard to pre-trial detention, which, however, has too often been used as a kind of substitute penalty for young offenders in order to reach the "short sharp shock" effect.

The other common feature among the Scandinavian countries is that the main responsibility among authorities for the socialisation of young persons belongs to the social welfare authorities and not to the criminal law authorities. The criterion for all child welfare measures is the best interests of the child. Interventions in the event of offences are also predicated on the fact that the child is endangering his or her future.

But also, in those cases, where the use of criminal justice is unavoidable, the aims and contents of the penalties differ from the adult criminal justice system.

*Experiment in juvenile penalty in Finland.* - In Finland a new community sanction for those between the ages of 15 and 17 years (juvenile penalty) was introduced on an experimental basis in 1994. It has a twofold content: (a) supervision for a period of three months to one year, and (b) a community service-type of work order or other similar activity for a period of 10 to 60 hours. On the penalty scale this new sanction is located on the level of conditional sentence.

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One of the goals of the juvenile punishment is to create an *additional step in the "ladder" of sanctions* and in this way slow the process that would ultimately lead to an unconditional sentence of imprisonment. In addition, the enforcement of the sanction has clear *social goals*. An effort was made to incorporate elements in juvenile punishment which would seek to promote the ability of the young person to function in society and to promote his or her sense of responsibility. Juvenile punishment is, in a way, a compromise between the neoclassicist and the social and rehabilitative perspective.

*The contents.* - Juvenile punishment consists of two elements, youth service and supervision. Youth service consists of regular unpaid work carried out under supervision as well as tasks that promote social adjustment and that are carried out under supervision. Youth service orders' duration ranges from a minimum of ten hours to a maximum of sixty hours. Supervision is always a component of juvenile punishment. The period of supervision ranges from four months to one year. The purpose of supervision is to support and guide the person sentenced to the juvenile punishment. A part of the supervision can also be carried out in connection with group activity.

The Probation Service is responsible for the enforcement of the punishment. The Service also prepares the enforcement plan which is a key document in the enforcement of the punishment. This is done in cooperation with the social welfare board of the young offender's place of residence and with the supervisor. In practice the enforcement of the juvenile punishment is based on work programmes developed by the Probation Service and the social welfare authorities. One of the purposes of the programme used in the meetings is to increase the young offender's understanding of why he or she commits offences, why committing offences is wrong, what the impact of offences is on the victims and on the offender himself or herself, and how the young person could act differently in situations where he or she is tempted to commit an offence. Also the youth service programmes have similar orientations.

*Sentencing offenders to juvenile punishment.* - There are explicit rules to guide the sentencing judge: A person who was 15 years but not yet 18 years old at the time of the offence can be sentenced to juvenile punishment. The first requirement for the application of juvenile punishment is that "in view of the seriousness of the offence and the circumstances connected with the act a fine is to be deemed an insufficient punishment, and there are no weighty reasons that require the imposition of an unconditional sentence of imprisonment." (Juvenile Punishment Act, section 3(1)). This provision locates juvenile punishment, in the ladder of sanctions, on the level of conditional imprisonment (and thus between fine and unconditional imprisonment). The question of whether or not the offence calls for a sanction that is located at this level is solved primarily in the light of the seriousness of the offence, in other words through application of the ordinary grounds for sentencing and for the imposition of conditional imprisonment.

It is, however, not enough to locate the sanction at the same level as conditional imprisonment. We still have to make a choice between conditional imprisonment and juvenile punishment. Here, one should bear in mind the amendment made to the Act in 1998, according to which the sanction should be applied if "the use of juvenile punishment is to be deemed justified in order to prevent new offences and to promote the social adjustment of the young offender". The Act places before the judge a difficult task. In practice, the most reliable basis for the assessment of the risk of recidivism has proved to be earlier offences. Indeed, the primary focus of the sanction is young individuals who have committed prior offences.

*Violation of the conditions.* - If the person sentenced to juvenile punishment violates the enforcement plans or orders given on its basis, the Probation Service should give him or her a written reprimand. In the case of a more serious violation (for example not serving the punishment or interrupting the punishment), a report is prepared for the prosecutor on the matter. In the more serious cases the prosecutor takes the matter to court, and in the less serious cases the matter is returned to the Probation Service which continues the enforcement of the punishment. The court decides on the sanction for a serious violation of the conditions of juvenile punishment. The court may extend the period of supervision or convert the juvenile punishment into another sentence, which is to correspond to the portion of the juvenile punishment that has not yet been served. The type of sanction in question would usually be a conditional sentence of imprisonment that is supplemented with an unconditional fine.

In the drafting process, there were considerable reservations regarding the conversion of juvenile punishment into unconditional imprisonment. Since the point of departure was that one condition for the imposition of juvenile punishment was that there were no weighty reasons for sentencing the young offender to unconditional imprisonment, there was deemed to be a contradiction in converting juvenile punishment into unconditional imprisonment simply because of a violation of the conditions. It should also be noted that, in the more serious cases, the young offender would in any case be sentenced to unconditional imprisonment for any new offences.

## H. Mediation and Extra-Judicial Settlements

Mediation schemes are now available in almost all European countries (for a full account, see Victim-Offender Mediation in Europe, 2000). The following observations are aimed only at providing two brief Scandinavian examples.

### 1. Mediation in Norway

In Scandinavia, mediation has the longest tradition in Norway. The Norwegian mediation schemes were started in 1981, and in 1991 the practice was “legalized” by passing “The law on mediation in Conflict-counsels”.<sup>11</sup> A transfer for mediation is an independent criminal sanction which has been acknowledged in the code of criminal proceedings (See the Norwegian Code of Criminal Proceedings 67 and 71a §).

In Norway, mediation serves as an alternative to the criminal justice system in the sense that a successful mediation automatically leads to non-prosecution. Mediation is not restricted to criminal matters, although the proportion of civil matters is almost nil. The system covers the whole country. In each community there has to be a conflict counsel as well as a communal mediator. Conflict counsels are financed by the state. The communal mediator is elected for a period of four years by the communal board.

The *basic conditions* for mediation are *voluntariness* and a *principal agreement of the object of mediation*. A further requirement for mediation in criminal cases is that the offence is not of a serious nature. Mediation is possible mainly in cases which would alternatively be dealt with by either child welfare actions, non-prosecution, fine, or a short conditional sentence.

The *initiative* for mediation may come from either the police or the prosecutor. If the offender is under 18, his/her parents must be heard. If the parties agree, the mediator writes down their contract. The role of the mediator is to mediate, not to present a ready made solution. However, the mediator has to see that the contract is balanced and fair. The mediations are oral, but the contract will be on paper. A signed contract will be sent to the prosecutor who after that makes a decision on possible non-prosecution.

### 2. Mediation in Finland

*Introduction.* - The first mediation experiment was started in Finland in 1983. Today, all towns with a population of over 25,000 and most of those with over 10,000 offer mediation services. Over 75 per cent of Finns live in a municipality that has an agency for mediation. Annually some 5000 cases are referred to mediation (see *Iivari* 2000).

In Finland mediation does not constitute a part of the criminal justice system but cooperates with the system as far as the referral of cases and their further processing is concerned. There is no legislation on the organisation of mediation. However, the criminal code has recently been revised so that it now mentions an agreement or settlement between the offender and the victim as a possible grounds for waiving of charges by the prosecutor, or the waiving of punishment by the court. In 2002 a plan was published to extend mediation to cover the whole country.

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<sup>11</sup> See *Paus* 2000. The aim of the establishment of the system of “conflict-counsels” was (1) to create an alternative to the traditional criminal process in minor offences, (2) to intensify the work with juvenile delinquents, (3) to reduce the workload of the police, (4) to speed up the time used in processing cases, and (5) to reduce crime.

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Mediation is based on volunteer work. Also participation in mediation is always voluntary for all the parties. The municipal social welfare authorities usually assist in coordinating the mediation services, but mediators are not considered public officials. The persons who function as mediators are unpaid volunteers who have taken a training course of approximately 30 hours in preparation for the task. The training includes some basics of criminal and tort law.

*Mediation process.* - The mediation process is not tied with the criminal process. Thus, it can start at any time between the commission of the offence and the execution of the sentence, and be initiated by any one of the possible parties. The *victim* or the *offender* may contact the mediation service right after the offence. However, the case is normally first reported to the police. After that the *police* may either send the case to mediation or may advise the parties to contact the mediation office. A third possibility is that the *prosecutor*, after receiving the files, sends the case to mediation. Three-quarters of all cases are referred to mediation either by the prosecutor (44%) or by the police (30%); the remainder of the cases are initiated by the offender (9%), social authorities (7%), the victim (5%) or other (6%).

During the session the *mediator's principal role* is only to mediate. He/She should act on a neutral basis and not try to lead the parties into one direction or another. The aim is to provide an opportunity for the parties for a better understanding of each other's points of view and for an agreement. However, the role of the mediator is also dependent of the situation. If the parties are unequal in terms of negotiating resources, and if the outcome appears to be unfair to either of the them, the mediator should intervene and, for example, inform the parties about the court practice as well as the legal rights of each party.

Once the process has started it normally leads to a *written contract*. The contract contains the subject (what sort of offence), the content of the settlement (how the offender has consented to repair the damages), place and date of the restitution as well as the consequences for a breach of the contract.

What happens after a successful mediation depends largely on what category the offence belongs to and how serious the offence is (see above I.A). In complainant offences a successful mediation automatically means that also the prosecutor drops the case. In non-complainant offences, it is under the discretion of the prosecutor whether he/she will drop the charge on the basis of the mediation. If the prosecutor takes the case into the court, mediation may still affect the sentencing decision of the court. It can totally withdraw all sanctions if the requirements of Penal Code 5:3 come to be considered, or it can mitigate the sanction.

*Practical experiences* - A rough estimation of the total number of cases in all mediation schemes gives the result of about 5000 referrals each year. 80% of the cases consist in Finland either of minor property offences, or minor forms of assault and battery.

Agreement is reached in about 50-60% of the referrals. An average of 90% of the contracts will be fulfilled. The majority of the contracts contained monetary compensation. On the other hand, money is not the sole issue, since in one-fifth of the cases the victim made no financial claims. Then the agreement contained mainly immaterial compensation e.g. an apology, a promise not to repeat the offence, or an undertaking to return the stolen property.

Mediation clearly provides a workable channel of restitution. In addition to material compensation, mediation may serve as a means for repairing some of the emotional and psychological damage caused by the crime. Contact between the offender and the victims has been able to temper the fears and aggressions the crime has aroused in the victim. Those victims that have been interviewed have also - in general - been quite satisfied with the mediation process. The popularity of mediation work among the municipal authorities as well as the willingness of the community members to do unpaid work has clearly been a positive surprise.

Only tentative results on recidivism rates are available. A comparison between different groups of offenders (with similar background and similar offences) revealed that recidivism was lower among those who have participated in mediation (compared to those who had gone through the normal criminal justice process).<sup>12</sup>

### III. THE SENTENCING PHASE: FRAGMENTARY NOTIONS

#### A. Restricting the Use of Imprisonment

##### 1. Depenalisation

1. The simplest way of avoiding the use of imprisonment would be just to construct legal barriers against it. One should always carefully consider whether imprisonment should be included as an legislative option in the first place. And when laws are changed, one should consider if *imprisonment for certain offences could be abolished*. Social, cultural and economical changes in society are often reflected in changed attitudes towards certain behaviour, as well as the value of liberty. A review of criminal law may show that existing penal provisions were drafted at a time when certain offences were deemed particularly reprehensible. However, in the light of the present attitudes, a community sanction may well be more appropriate.

In Finland, theft offences provided an example of this. In a rural society, i.e. when the country was still predominantly rural, and property was highly valued, theft was made punishable by harsh sentences of imprisonment which, in practice, exceeded those given for crimes of violence. Following e.g. the significant increase in the standard of living, theft was no longer considered to be as serious an offence. Accordingly, the law was amended several times to lower the sentence for theft. No doubt similar changes have occurred – and are occurring – in the quickly developing Asian countries.

2. The risk of custodial sanctions, even for the less serious offences, is always present in the form of a back-up sanction, which enters in the picture if the offender does not comply with the requirements imposed by less severe sanctions. Therefore, the possibility of *decriminalisation and other sanctions outside the criminal law* must also be kept in mind. Historically, “offences” like vagrancy and public drunkenness provide good examples. Although these offences were rarely imprisonable offences by themselves, the “offenders” were usually fined, but unable to pay the fines. Such non-payment often led to imprisonment. The dramatically falling number of fine-defaulters in Finland during the late 1960s provides an example of the possibilities to reduce the use of custodial measures by decriminalisation.

##### 2. Legal Presumptions Against Imprisonment

1. Another statutory measure would be to impose *statutory requirement of justification for the use of imprisonment*. Such a measure would compel the court to justify why none of the available community sanctions are appropriate in the case at hand. The Swedish law states clearly that the court must first consider all other sentencing options, and only if these do not come into consideration, the court may impose a custodial sentence. This policy is also accepted in the Finnish sentencing law.<sup>13</sup>

2. Even stronger restrictions against the use of imprisonment may be imposed when the accused is a young offender (see the Council of Europe Recommendation on Sentencing). Both the Swedish and the Finnish laws allow the use of imprisonment for young offenders only if extraordinary reasons call for this sanction. In both countries this means that less than 100 juveniles under the age of 18 (at the time of the commission of the offence) are sentenced to unconditional imprisonment annually.

#### B. Expanding the Scope of Traditional Alternatives

Also the restrictions on the use of community sanctions could be relaxed. These restrictions generally refer to (1) the type of offence, (2) the length of the sentence, (3) the criminal history of the offender, and (4) other attributes of the offender.

1. For example, the maximum length of imprisonment that can be replaced by a community sanction could be raised. For example in Finland in 1976, the maximum length of conditional

<sup>12</sup> A recent Australian study found that the proportion of juveniles who re-offended (i.e. were subsequently charged and brought before the Children's Court) was about 28 per cent lower for those who had participated in a mediation scheme (called Youth Justice Conference) compared to those who had originally been dealt with by a Children's Court (see <http://www.lawlink.nsw.gov.au/bocsar1.nsf/files/CJB69.pdf?file/CJB69.pdf>).

<sup>13</sup> Similar provisions are to be found in the Australian criminal code, which requires that “a court must not pass a sentence of imprisonment on a person unless the court, having considered all other available sentences, is satisfied that no other sentence is appropriate in all the circumstances of the case.” See in detail *Joutsen* 1990.

imprisonment was raised from one year to two years. Also existing absolute prohibitions against the use of community sanctions in case of recidivism could be replaced by statutory provisions allowing the court to exercise discretion. This type of amendment was carried out in Finland in 2000.

2. The scope of community sanctions may be expanded also by *allowing new combinations of such sanctions*, or by allowing for the possibility of inserting additional requirements or conditions in e.g. probation orders. This type of reform was carried out in Finland in 2000 by allowing the possibility of combining short community service orders (20-90 hours) and long conditional prison sentences (1-2 years).

3. In general, *increasing the credibility* of community sanctions serves as one central method in narrowing the scope of custodial sanctions. One example of how an “old” sanction can be made more credible concerns the fine, the most common sanction in nearly all, if not all, jurisdictions. If steps are taken to ensure that the collection of fines is made more effective, judges would consider it to have a stronger “bite”, and its use could be expanded. At the same time, the risk of imprisonment for non-payment of fines would be reduced.

4. Some jurisdictions aim at restricting the *use of imprisonment below a certain length*. The rationality of this policy is much dependent on the general length of sentences,<sup>14</sup> as well as with the guarantees against the possibility that short sentences will not be replaced by longer sentences.

### C. Amendments to Recidivism Rules

In most countries a substantial part (usually the majority) of prisoners are recidivists (a person who has previous convictions). It is, therefore, evident that the size (and composition) of the prison population heavily depends on the way the law treats persons with prior convictions. In the US, the three strikes laws provide an acute (bad) example of the impact of recidivism rules in prison rates.

The mechanical aggravation of penalties for recidivists has a long tradition in European criminal codes - and, as with so many other traditions in the field of criminal justice, there are good reasons to take a critical look at this practice. One of the achievements of the criminal legislation during the 20th century has been a kind of “devaluation” of this aggravation by replacing old casuistic rules with more flexible models of regulation.

In Finland, this took place with the sentencing reform in 1976. One of the main aims of this reform was to restrict the significance of a prior criminal record in sentencing by replacing old mechanical provisions with a regulation which allowed aggravation only when recidivism implies increased culpability. According to chapter 6 section 2(4) of the Criminal Code, the previous criminality of the offender may increase the penalty “if the relation between the offences on the basis of their similarity or for another reason shows that the offender is *apparently heedless* of the prohibitions and commands of the law”. Casual or occasional repetition should, thus, not increase punishments. In order to find out whether the accused has shown “apparent heedlessness”, the judge must compare the new crime with the previous ones as well as look at the lapse of time between crimes, at the amount of premeditation, and at the motivational connection between these crimes. The mere number of previous convictions is not the only criteria to be taken into account.

### D. Restricting the Use of Predictive Sentencing

Another bad example from the US sentencing system is predictive sentencing which means that sentences are based on unsure assessments of the offender’s dangerousness and future behaviour.

The Finnish sentencing provisions generally rule out predictive sentencing on the basis of dangerousness. However, there is one exception in the law. Provisions on preventive detention require an assessment of dangerousness. This system is reserved for those violent offenders who have previously been sentenced for a serious violent offence and who are deemed to present a particular

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<sup>14</sup> A statutory prohibition against short imprisonment sentences would, however, meet with difficulties in countries where almost all sentences of imprisonment are quite short. For example in Finland, the median sentence of imprisonment is about 3 months.

danger to the life or health of another. The scope of application is quite restricted. Some 20-30 persons are kept at any one time in preventive detention. In principle, preventive detention for dangerous recidivists means indeterminate sentence, since the offender may be retained in prison even after he has served his or her original sentence if he/she still is manifestly deemed to present a particular danger to the life or health of another. During the last 20-30 years, however, no one has been kept in custody for longer than the term of their original sentence.

Even in its limited use preventive detention contradicts the prevailing sentencing ideology and the principle of proportionality. According to a recent proposal, the entire system of preventive detention could be abolished. The dangerousness of the offender could be taken into account through normal rules of release on parole.

#### IV. PAROLE AND EARLY RELEASE

##### A. The Benefits of Parole and Early Release

1. Finally, prison population size can be reduced by increasing the use of early release procedures - parole and conditional release. Unfortunately, many countries have become more restrictive in granting early release. The most extreme forms of this trend are political and populist programmes directed against the use of parole (like "truth in Sentencing") and proposals for "real-time" sentencing. However, there are a number of advantages from the point of view of the public - from the point of view of the potential victims - in increasing the use of parole.

2. The most obvious benefit must be the assistance that parole (and the accompanying supervision and support) can give to the *reintegration of the offender into the community*. The possibility of parole also *encourages good behaviour in prison*. In addition, early release *reflects our everyday moral judgements*, which often require a swift response immediately after the offence has occurred (and the offender has been detected), but which tend to become more lenient in the course of time.. Time is "the Great Healer" – also when it comes to feelings of resentment and retribution. And, of course, parole is a means to reduce the number of prisoners, without undermining the general preventive effect of the criminal justice system.

3. *Parole* is used in almost all countries around the world.<sup>15</sup> Under most parole systems, the prisoner may be released under supervision after having served a specific portion of the original sentence, as well as an absolute minimum (for example in England and Wales after having served one third of the sentence, but at least six months). Close to parole comes, in some countries, *remission of sentence*. This is a more mechanical release from prison once the prisoner fulfills certain criteria, most commonly that the prisoner has not been subjected to disciplinary measures and has otherwise been of good behaviour. The assumption is, therefore, that remission shall be granted unless there are special reasons to the contrary.<sup>16</sup> In the following, all arrangements of early release are considered under the term "parole".

##### B. Key Points in Parole Policy

The effect of parole on the prison population size is largely determined by the solutions adopted in the following four points:

<sup>15</sup> In the Asian and Pacific countries responding to the Third UN Survey, its use was reported in China, Fiji, Hong Kong, Indonesia, Japan, Korea, Papua New Guinea, the Philippines, Sri Lanka and Thailand (*Joutsen* 1990). Matti *Joutsen* reports also country-specific variants of parole including pre-release treatment (Indonesia) and extramural punishment (Fiji). This latter measure extends to prisoners serving at most one year, or to other prisoners within a year of the earliest release date. Such prisoners may be released subject to a compulsory supervision order, and they are to undertake public work for no less than thirty hours each week. Under the pre-release employment scheme in Hong Kong, a prisoner with less than six months to serve of a sentence of two years or more may be placed under supervision for the remainder of the sentence, and be required to (1) reside in a hostel provided for this purpose, and (2) remain employed. In Thailand, under certain conditions a prisoner may be transferred to a penal settlement, where he receives eight acres of land. He may have his family stay with him, and may stay for life. The land may be transferred to his heirs as part of his estate (see *Joutsen* 1990).

<sup>16</sup> According to *Joutsen*, remission of sentence is used in, for example, Fiji, India, Indonesia, the Philippines, Sri Lanka and Thailand (*Joutsen* 1990).

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1. Basic policy: parole as a rule, or parole as a prerogative. - Countries may have a different basic policy: Some countries grant parole only for a small group of (well-behaving, not dangerous) prisoners after a case-by-case consideration, some countries use it as a standard form of release, reserved for (practically) all offenders. The policy adopted in this point is reflected in the way the material conditions for parole are stipulated in the law (and applied in practice).

2. The formal conditions. - Every system stipulates also formal conditions for parole. A part of these conditions refer to how much (what proportion) of the original sentence has to be served before the prisoner is eligible for parole (usually after 1/3, 1/2, 2/3 or 3/4 of the sentence being served). The second form of requirement defines the minimum (absolute) time to be served, before parole is possible. Some European systems still retain relatively high minimum times (for example 6 months in the UK and Wales), while others have practically abandoned the requirement for a specific minimum time (in Finland this time is 14 days). The shortening of this minimum time may be defended on the grounds of equality: To the extent that prisoners must serve an absolute minimum before becoming eligible, it also erodes (in an unequal way) the difference between the amounts of time spent in custody under sentences of different lengths.

In addition, these two formal preconditions may vary in different prisoner groups (according to the age, prior convictions, the type of offence and the length of the sentence). In most systems, first offenders and young persons are released earlier (for example after 1/3 or 1/2), and recidivist later. In some systems, the right to parole is restricted or denied for certain categories of offenders (for example drug offences). In certain countries, also the length of the original sentence has an effect. For example, those serving a longer sentence may have the right to parole only after 3/4 of the sentence has been served, while those under shorter sentences may be released after having served only half of their sentence (for example England and Wales). There seems to be very little logic behind these practices. In fact, taking into account the background arguments for the parole system as a whole, one could even demand that those serving a longer sentence should be released under less restrictive formal conditions. Such practices are, thus, mainly explainable by public demands and political arguments.

3. *Parole revocations.* - Also the way parole violations are dealt with may have a substantial impact on the incarceration rates. Some systems hold the threshold low, and are prepared to revoke parole even on the basis of minor infractions. In other systems, the revocation of a parole order may be possible only when the released prisoner has committed a more serious offence. Policy differences in these matters may have visible effects on the prisoner rates. For example, in California two-thirds of those entering the prison each year (admittals) are parole revocations. In some other countries, the number of prisoner admissions due to "pure parole violations" may be practically non-existent.

4. *Conditions for a re-release.* - Another, often overlooked, detail deals with the issue, *at what point a person whose parole has already been revoked (at least once) may be eligible again for a new parole?* The main point to be decided here is how much of the "rest of the original sentence" this person must serve, before being eligible for a new parole. Some countries use formal fractions (such as 1/3-3/4), while others have fixed minimum times (for example 1 month in Finland). Different kinds of combinations are possible too.

A common feature of all these systems is that this part of legislation is very technical and very difficult to grasp. Another feature is that the solutions adopted may have a great impact on incarceration times, since those whose parole has been revoked may often have very long sentences to serve. Thirdly, rigid regulation (especially if based on formal fractions of the original sentence) can easily lead to unjust and unfair results, especially when the threshold of parole revocation is low. In the worst cases this can mean that trivial violations – such as the use of alcohol or omitting the supervision orders – may be followed by years of incarceration.

5. Comparisons between the European criminal justice systems on these four points reveal great differences. Consequently, the role of parole as a means to control prison rates, varies among the European countries. All in all, parole is the most efficient tool in reducing the size of the prison population, once (a) it is applied to all prisoners as a standard solution, (b) the revocation of parole may

take place only after more serious violations, and (c) re-release for parole is not tied too closely to the length of the original sentence. The Finnish system meets all the three requirements.

### C. Release from Prison in Finland

1. Practically all offenders (99% of prisoners) sentenced to a determinate sentence of imprisonment are *released on parole*. The decision is made by the Board of Directors of the prison in question (in accordance with instructions issued by the Ministry of Justice). In general, *recidivists* are always released after they have served two-thirds of their sentence, and *first time prisoners* are released after they have served one-half of their sentence. Those placed in *juvenile prison* are released after they have served one-third of their sentence. In all cases, a further condition is that the prisoner has served at least fourteen days.

An offender who is serving a sentence of life imprisonment may be released only if pardoned by the President of the Republic. Those held in preventive detention (at the moment some 20 prisoners, see above) as dangerous recidivists are in practice released on parole once the entire sentence originally imposed by the court has been served.

2. Release may be *postponed* beyond these minimum periods in general by one month or, at times, by even more if the grounds for discretion noted in the law are deemed to exist. In practice, release on parole is postponed only for two reasons: either the offender has committed a new offence within a very short time of his or her two previous releases, or he or she has violated the conditions of the furloughs granted during his or her sentence. Postponement of release on the grounds of the type of offence and a prognosis of dangerousness is very rare. All in all, parole is postponed in about 6% of all cases. Earlier release may be possible for various reasons related to aftercare (education, employment, housing) or general social reasons (illness, family-related reasons). In practice, few offenders are released on parole earlier than usual.

3. The *period of parole* is the remaining sentence, but at least three months and at most three years. About one-third of those released on parole are placed under supervision. The supervisor may be the Probation and After-Care Association, a private individual or the police. In principle, the supervision involves both control and support.

4. The court decides on *revocation* of parole if the offender commits an offence during the period of his or her parole and on the grounds of a behavioural infraction. In practice, all parole revocations are based on new offences, and only offences that would normally lead to a prison sentence may serve as a reason to revoke the parole order.

Once the parole has been revoked, the prisoner may be released on a new parole, once he/she has served the normal fractions of the "new sentence" plus one month of the old sentence.

### D. The Enforcement of Prison Sentences

1. The use of community alternatives may also be enhanced during the enforcement of the prison sentence. In "intermittent custody" the offender may spend the daytimes outside the institute but returns to the prison for the night-time. For some prisoner groups, the prison administration may grant permissions to study or work outside the prison.

2. The prison-structure can also be developed into more "open direction". *The use of "open" prisons* is one important means to this end. This system is widely used for example in the Scandinavian countries. In Finland some 25% of prisoners are placed in open facilities. In Sweden the number is still higher. Open prison units may also include work colonies, which have been established for certain work projects (for example the restoration of many cultural-historically valuable sites and other important building and repair work). Inmates participating in work or other activities and who are considered to suit freer circumstances and are not likely to leave the institution without permission, are placed in open institutions. In open institutions inmates always use their own clothes. In Finland all open institutions are intoxicant-free, in which an inmate is required to make a commitment not to use intoxicants. In open institutions prisoners are paid wages for their work of which they pay taxes and their keep.

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3. Perhaps the most widespread form of "opening" the prisons is the system of prison leaves (or prison furloughs). These furloughs have become a routine in the Scandinavian countries. In Denmark around 50,000 leaves are granted annually, in Sweden 40,000, in Norway 15,000 and in Finland 11,000 (the absolute number of prisoners in these countries varies between 2,500-5,500). In Germany, the numbers are even higher; more than 500,000 prison leaves (including day leaves) with a prisoner rate about 50,000.

**E. Amnesties**

If the above measures are ineffective in bringing the prison population size down, or cannot be applied (because they have not been legislated for or because they would not be acceptable in a particular country), then consideration can be given to the use of amnesties for less serious offenders who are approaching the end of their sentences. Amnesties are essentially a measure of short-term value, but if high prison population levels and overcrowding cannot be effectively combated in any other way, amnesties can play a useful role.

In Finland, amnesty was used in 1967 in connection with the 50th anniversary of our independence day. A substantial number of prisoners sentenced mainly for property offences and drunk driving, got their sentence reduced by one-sixth. As the experience showed, a majority of those released returned to prison within a relatively short time, thus confirming that amnesties provide only temporary relief.

# ENHANCING THE COMMUNITY ALTERNATIVES — GETTING THE MEASURES ACCEPTED AND IMPLEMENTED

*Tapio Lappi-Seppälä\**

## I. INTRODUCTION

Identifying the measures needed to reduce the prison populations and ensuring that these measures are accepted and actually implemented are two different things. To get these measures accepted it is necessary to convince all the key players in the criminal justice world. The policy makers (including government ministers) and legislators must be convinced; so must the judiciary and also the police and prosecutors. And it is vitally important to convince the media and the general public. Critical issues, thus, remain:

- how to get the laws accepted on the political level,
- how to get them implemented on a practical level,
- how to confront the punitive-populist pressure from the politicians and the media

On the basis of the foregoing chapters, we may distinguish the following elements or actors in the criminal justice field, which need separately to be addressed in order to make a change.<sup>1</sup>

1. *Political will. - Attitudinal and ideological readiness to bring down the number of prisoners* may be far more important than the choice of concrete means to achieve this end. The essential step in the process is, thus, *to define prison overcrowding on a political level as a problem* that should and can be solved.

In Finland this *political will and consensus* to bring down the prisoner rate was formulated within a group of key individuals which later was able to produce a number of measures to change the situation. Not only law reforms and alterations to sentencing practice but also low-level day to day decisions contributed to the desired result.

2. *The role of criminal-justice practitioners. -* The content of crime policy is a result of different practices run by different actors: the police, prosecutors, judges, the prison agencies, community corrections and an increasing number of non-governmental agencies. A successful decarceration policy requires that all key actors have committed themselves to this aim.

For example, collaboration with and assistance from the judiciary was clearly a necessary prerequisite for the change in Finland, and this will be the case also in other countries.

One has to bring the key people together to promote policy discussions, leading to decisions as to the direction in which policy ought to move. One concrete form of cooperation and the exchange of information could be sentencing seminars arranged for the judges. Also the *exchange of information and cooperation between different agencies and actors* is needed.

3. *Information and education. -* Society's reactions against crime are heavily dependent on the view the public, politicians and state officials have on the magnitude of criminality and the nature of the crime problem. Much of the people's and the politician's response to crime and their reliance on punishments is explained by their belief that criminal sanctions really are an effective way of dealing with these problems. Reading the basic criminological facts from reliable sources, and not from the media, usually changes – or should change – these views.

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<sup>1</sup> Good practical advice for constructing non-custodial alternatives is given also in *Stern* 2002 ([http://www.kcl.ac.uk/depsta/rel/icps/developing\\_alternatives\\_to\\_prison.doc](http://www.kcl.ac.uk/depsta/rel/icps/developing_alternatives_to_prison.doc)).

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*Basic criminological facts should be communicated to politicians, decisions makers, state officials and criminal justice practitioners.* Clarification of the (modest) effects of punishments – and informing the public of these effects as well as the existence of other possibilities – may reduce the unfounded public confidence in the penal system.

4. *Public opinion and the role of the media.* - As crime policy becomes more and more politicized, the role of public opinion presumably only increases in the future. Therefore, one should be more and more concerned whether and how well informed these views are. The perceptions of the public are heavily influenced by the biased picture of crime reality offered by the media. *Governments should, therefore, invest more in public education and information in these matters.* Extra efforts are needed to raise the public awareness of basic research-based facts on criminality, the functioning of criminal justice and the existence and content of different crime prevention strategies.

In the composition of the Finnish criminal policy, media has played a central role, mainly by retaining a sober and reasonable attitude towards issues of criminal policy. Generally, the Finns have been saved from low-level populism.

5. *Constructive crime-prevention alternatives.*- On the other hand, crime is a problem and politicians are responsible for offering solutions to this problem. If nothing else is offered, criminal law and the prison system will also in the future prevail as the primary shield against crime. Therefore, *the development of convincing crime prevention strategies outside the domain of criminal law becomes also an issue of importance.*

## II. PRACTICAL LEVEL

“Any policy of reducing the use of imprisonment and the length of sentences must win the hearts and minds of the judges” (Walmsley 2001). The police and prosecuting authorities often exercise a major filtering influence in the criminal justice system. Efforts to provide criminal justice officials with balanced information about imprisonment should certainly extend to the police and prosecuting authorities, as well as the prison and probation services.

### A. Basic Facts and Professional Education

1. *The reality of prison.*- These key groups in criminal justice must become fully aware of what imprisonment can and cannot achieve, and what harm it can do. Especially, all judges ought to be familiarized with prison conditions and they should be well-informed about the opinions of prison experts, especially including those who work in prisons and with prisoners. Furthermore, they should also receive information concerning the impact of the sentences on prison population levels and on the future criminal careers of those sentenced.

2. *Basics in criminology.* - Judges and prosecutors should receive training at least on the basic facts of criminology. Perceptions on the *nature and causes of crime* have a direct impact on punitiveness. If crime is primarily understood as a problem created by social and environmental factors, one is less willing to rely on punishments, in comparison to views which identify criminality as a problem caused by evil individuals.

Assumptions on the *effectiveness of criminal sanctions* affect the result as well: It is easier to justify harsh sentences if we believe they can lead to good results. The more clearly we realize the adverse effects of penalties, the more critical will our attitude be towards them and the level of punishment.

Possibilities in this respect vary from one country to another. Those jurisdictions which have professional judges are, clearly, better off. But to have professional judges with legal training is not enough. The training itself should – for example the curriculum of law schools – reflect these concerns. The ideal situation would be for criminology and criminal policy to be taught in the juridical faculties. This has – to a certain extent – been the case in Finland, where local court judges and prosecutors are relatively young, having received their university courses during the 1970s and the 1980s in the spirit of liberal criminal policy.

3. *The benefits of community sanctions.* - Ensuring that these groups understand the purpose and rationale of community sanctions and that they are favourably disposed towards using them requires providing them with information and training. The key groups should be made aware of the *general benefits of community sanctions* and the general drawbacks of the widespread use of custodial sanctions.

4. *The functioning of other services.* - Those working in the criminal justice system should be trained in the *rules, procedures and practices of the various other services involved*. This is especially important in countries where the roles and responsibilities are divided between social welfare authorities and criminal justice agencies. Information exchange would make it easier for them to understand the problems involved in community measures, and the possibilities of working together to solve these problems.

## **B. Legal Conferences and Professional Training**

The implementation of specific policies (for example new laws) usually requires additional training and guidance. For some of the professional groups – especially the judges – this may pose additional problems. All European jurisdictions value the independence of the courts as one of the cornerstones of democratic society. Still, judicial independence does not mean that any form of guidance is forbidden. It merely means that this guidance must be given in a way that is in accordance with the principles developed within each legal culture and with their traditions.

1. Most European Criminal Justice Systems regard both legislative norms and Supreme Court decisions as proper forms of judicial guidance. Several European criminal codes have specific provisions on sentencing and the choice of sanction. In some countries, the Supreme Court has the power to issue *sentencing guidelines* that extend beyond the scope of cases at hand. Also appellate courts may have the powers to guide the sentencing practices of the lower courts, for example by reviewing their sentences or organising sentencing conferences (see below).<sup>2</sup>

Other strategies focus on drawing the attention of the courts to the official policy of favouring community sanctions, for example through the adoption by the legislature or the executive of *an official statement of the purposes and principles of sentencing*.<sup>3</sup>

2. *Also judicial conferences* or professional associations can assist in clarifying sentencing objectives and guidelines. For example, they could specify the criteria and principles which permit the comparison of various sanctions and the standardization of their use. The judicial conferences provide a special form of training. Other forms include the arrangement of special courses and seminars at which new legislation is introduced.

These kinds of training courses and seminars have been arranged for judges and prosecutors on a regular basis in Finland by judicial authorities – in co-operation with the universities. Basically all major law reforms are accompanied by systematic training courses across the whole country.

These conferences and associations need not be limited to judicial personnel; they could be expanded to include corrections personnel and other persons responsible for the administration of sentences.

3. *Annotated information on current court practices*, published by research and statistical authorities, would also be useful. This can be done in the form of a publication giving the “normal” sentences for the basic types of offences, which indicates how aggravating and mitigating circumstances have affected the sentence. Such information would simply be provided to the courts as a tool, showing the judges what other courts have done in similar cases.

<sup>2</sup> In the Netherlands, the National Conference of Presidents of the Criminal Chambers of the Courts of Appeal has started to issue 'orientation points' for sentencing. These non-binding 'orientation points' project to some extent the common sentencing practice of the Dutch courts and are designed to provide starting points for sentencing.

<sup>3</sup> This was recommended in the report of the Canadian Sentencing Commission (Sentencing Reform: A Canadian Approach. Minister of Supply and Services Canada 1986, recommendation 12.06.)

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Although detailed sentencing statistics have been published in several countries, the information does not necessarily reach the judges. In Finland experiments with a computerized sentencing register were carried out in the 1980s. The Dutch judiciary has recently presented a database for sentencing to be used by the courts, providing means to compare alike cases where possible.

4. The selection of the sanction is often determined by the motion of the prosecutor, or by the way in which the case is presented. For this reason, *prosecutorial guidelines should also be developed* on the presentation of the court, on the prosecutor's proposal for sentence (where this is possible), and on whether or not the prosecutor can and should appeal decisions to a superior court.

**C. Extra Efforts in Sustaining the Credibility of Community Sanctions**

Community sanctions will not be imposed or implemented if the courts or the probation services regard them as non-credible, ineffective or inappropriate. This credibility of community sanctions can be tied to their success in achieving certain *pre-defined practical goals* and their *symbolic (expressive) function* (Bishop 1988).

1. *The multitude of practical aims.* - Among the practical goals of community sanctions are the reduction of the prison population, the reduction of the costs of the system of sanctions, social reintegrating and the reduction of recidivism.

This multitude of practical aims is both a strength and a weakness. Since there are many aims which often are not made explicit by the legislator, different groups may have different expectations. Therefore it can be expected that some groups will always criticize the sanctions as having been "failures" in the light of some unspecified criteria, and may refuse to cooperate in their implementation. But due to the multitude of aims, *a failure in one respect does not necessarily mean a failure in other respects*. For example, even if recidivism would be the same as after a prison sentence (which is not the case, see they below), some other intermediate treatment goals might have been achieved. Therefore, when success or failure is being evaluated, one should keep in mind all the different dimensions involved (see *Bottoms* 2001 p.87 ff).

Growing international evidence confirms that community service offers the offenders rewarding, constructive experiences and reciprocal social relationships. Community service is also experienced by the offenders as a fair sentence, resulting from the offender's own behaviour – and not as being the "judge's fault". Both of these elements explain why community service systematically results to (slightly) lower re-conviction rates (see *Rex* 2001 p.77 ff).

2. *Symbolic dimensions.* - Non-custodial sanctions also have a punitive dimension. Their credibility can, thus, be enhanced if they are not seen as excessively lenient. Even terminology might be used to enhance the perception of community sanctions as punitive. Instead of speaking of the "waiving of measures" or "absolute discharge", for example (both terms imply that "nothing happened"), one might speak of "punitive warnings" or "penal warnings" or, even, "final warnings".

3. *Ensuring continuity in training.* - Several experiences from different countries indicate that when new measures are implemented, there is ample enthusiasm, as those groups and persons who have originated the project are still personally involved. However, once the programme is placed on a more general footing, there is the danger of falling into routines. Moreover, unexpected difficulties in implementing the sanctions may occur, local circumstances may cause trouble, and the work has to be done with new people who, perhaps, are not as committed to the original purpose of the programme.

This all means that demonstrating the appropriateness of community sanctions to the courts and the practitioners *is an ongoing process which by no means ends with the adoption of the requisite legislation and the arrangement of an initial training phase*. In a way, the idea must be sold over and over again, also to those working for and with the programme.

4. *Taking care of community relations.* - The community must also be informed. The success of many community sanctions depends to a large extent on the interaction between the community and the

offender. Therefore, special measures should be adopted to communicate to the community the benefits and crime control potential of community sanctions.

Examples of such measures include information on the true content of these sanctions and their implementation as well as on the positive reintegrating effects, the situation of offenders and the use and existence of mediation or dispute settlement mechanisms in the community. The value of volunteer work and the citizens' associations role in the implementation of community sanctions deserves clear recognition – also to be publicly announced by the governmental officials.

### III. POLITICAL LEVEL

The laws that criminal justice practitioners apply and implement are the result of political processes and political decisions. In the end, the content of any given criminal justice system is defined by these processes. This entails, that the level of penalties and the extent of incarceration is determined by the prevailing *political culture* and by the degree to which criminal political decision making is directed by rational analyses on aims and means, and the extent to which criminal policy is directed by the media and subordinated to general politics or the quest for political popularity.

#### A. Combating Penal Populism

##### 1. Penal Populism

1. *The flaws of penal populism.* - Within a fairly short period of time, a new concept – “penal populism” or “populist punitiveness” – has entered in the criminological literature (*Bottoms 1995* and *Hough & Roberts 2001*). The concept refers to the “tendency of legislators to enact policies based primarily on their anticipated popularity, with disregard for their penal value” (*Hough & Roberts 2001*). This phenomena is closely connected with the general politicisation of crime policy, which has taken place during the last two decades (see above). The basic flaw in this new form on penal policy is that: (1) it offers simple solutions to complex problems, (2) it is inconsistent with the results of systematic criminological research and, (3) it leads to unnecessary suffering and extensive material and social costs in its unfounded reliance on incarceration.

2. *The results of penal populism.* - In this populist process politicians are locked into a penal “arms race”, where each party is offering tougher and tougher measures in order to protect the public – and to gain popularity among the voters. This process of penal escalation has reached its peak in the US, but some European countries seem to have taken the same route.

Perhaps, the most worrisome feature of the present European political context is that due to the logic of this “arms race” even the most radical – often openly racist – populist movements may have considerable impact on the penal policy of the mainstream parties. Despite the fact that these parties distance themselves from the populist programmes of the right wing movements, there is one area where they do not like to disagree – the requirement of being “tough on crime”. No party seems to be willing to accuse another of exaggeration when it comes to measures against criminality. Being “soft on crime” is an accusation that no one wishes to accept. And it is *this fear of being softer than one's political opponents* that tends to drive politicians, in the end, to the extremes of penal excess (*Hough & Roberts 2001*).

3. *Confronting penal populism.* - In many cases this policy is based on “harmless ignorance” on crucial criminological facts. But the worst forms are examples of sheer political calculation based on the insecurity and fears of the general public. And in the most appalling cases, these movements do not only exploit but also *increase and strengthen* the fears and prejudices of the public against racial and ethnic minorities. In this respect, confronting the penal populism becomes, not only a matter of more rational penal policy, but also an issue of better democracy and social justice.

##### 2. The Will of the People?

Having said this, one has to consider the counterarguments too. The standard defence for these punitive claims is that in advocating harsher sentencing, populist politicians are simply being appropriately responsive to the democratic will. Several objections to this can be added:

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1. In the first place, public opinion is much *more complex and nuanced* than is generally supposed. In many cases, there simply does not exist any uniform public opinion, but a variety of differing views, changing among different segments of the population. Those who speak in the name of “the people” very often speak just for themselves.

In addition to this, a careful analysis on penal politics shows that politicians *lead* as much as follow the public opinion (see especially *Beckett*, 1997). Punitive public demands may well be the result – not the cause – of punitive policies.

2. Secondly, rarely – if ever – are these proposals based on reliable research on the actual content of public attitudes. In many cases, those who refer to “public opinion”, are expressing mainly their own personal values which they wish to authorize by the force of public opinion. In some cases the source of “public opinion” is a media-prepared poll, designed to serve certain prefixed political purposes. Both cases have nothing to do with serious attempts to follow the “voice of the people”.

3. Thirdly, even *if there are* reliable measurements of the public opinion, we may encounter some principled difficulties in their implementation. “Counting heads has nothing to do with validating moral reasons”. This applies also to our conceptions of justice. It would, furthermore, be a simplistic form of democracy that delivered flawed criminal justice policies simply because there was (an apparent) public demand for them. As *Hough & Roberts* summarize: “This would amount to democracy by uninformed plebiscite, quite different from the form of government by elected representatives that our ... nations purport to uphold.” (*Hough & Roberts* 2001).

3. Raising the Rationality of the Criminal Political Decision Processes

1. *Inform the politicians of the basic facts.* - To begin with, penal policies in many developed democracies are characterized by misinformation on the part of both politicians and of the people whom they were elected to represent. Informing the politicians of the basic facts would be the first thing to do. Much of what is said below on informing the public will apply directly to the politicians. This holds true both with the form and the content (the politicians are at least as active readers of the tabloid papers as any of us). However, at least some of the politicians are willing to acquire additional information, once it is given in a concise enough form. Special efforts should be taken to provide accurate and concise information packages.

Politicians are in a position to *make policy choices* between different alternatives. That is their main task. And it their basic responsibility to be able to *explain the pros and cons* of the possible alternatives. In any case, that is what the public should demand them to do. Therefore, politicians must be helped to understand what imprisonment can achieve, what its limits are, and what its dangers are. They must also fully understand the financial costs entailed by a high level of imprisonment. Even if they are not impressed by the arguments for greater humanity and social reintegration, they will sometimes be impressed by the expense of imprisoning so many people (*Walmsley* 2001).

Sometimes it might be useful to draw attention to how similar countries or jurisdictions cope differently (*Hough & Roberts* 2001). The value of this comparison is, of course, greatest in those countries that have the most severe practices. For others – such as Finland – international comparisons are becoming more and more dangerous.

2. *Political culture.* - Providing the necessary information will not be enough, if the political culture remains unreceptive to rational argumentation. In this respect, there are great differences between different cultures. The political culture in the Scandinavian countries has traditionally appreciated evidence-based policies and pragmatic rational argumentation over populist and symbolic gestures. The situation may well be different in other countries – in fact, this is precisely what a “drift towards penal populism” is all about. The main question, then, remains: *Is there anything that can be done in order to influence the political rhetoric itself and the way of argumentation?* At least, two additional pieces of advice can be given.

3. *Apply the normal rules of political accountability also in penal discourse.* - In several other spheres of political life (other than criminal justice) proposals are supported, research-based

evaluations of their effectiveness. Those politicians advocating different proposals (concerning for example economics, traffic or education) usually need to explain the sources of the funds; how much the proposals cost and where the money can be taken from. These same requirements should also be applied to punitive crime policies. It should not be enough just to demand “law and order”: Proposals for tougher sentences should be accompanied with research-based estimations on how much crime will be reduced, and what are the financial costs of increased incarceration. If the same standards of accountability that are applied elsewhere in politics, were followed in the criminal justice debate, the attractiveness of punitive claims might be significantly reduced.

Moreover, objective evaluation of all major projects should be mandatory. This should also apply to changes in sentencing policies.

4. *Increase the political costs of penal populism.* - In addition, there may be some (albeit limited) scope for reducing the political payoffs in “talking tough on crime”. At the same time that penal populism has been growing, there also has been a *growing distaste for populist posturing* as such, among both the public and the media.

The politicians have realized this, too. Usually, no one wishes to be labelled as a penal populist. This also means that if a certain politician’s arguments can be shown – by researchers and pressure groups for penal reform – to include attitudinal oversimplification, political opponents would undoubtedly use this opportunity to introduce new slogans such as “act smarter – not tougher” could also be of some assistance in the debate (*Hough & Roberts 2001*).

Giving *intellectual weapons in the hands of political opponents of any penal populist* – irrespective of the party he/she represents – is one way of improving the quality of political discussions and, thus, enhancing the rationality of political decision-making processes.

## **B. Public Opinion and the Media**

The media and the general public play a crucial criminal political role in many developed countries. The politicians respond to the requirements of the public (whether these demands are “real” or “imaginary”). Media, on the other hand, influences in many ways public opinion and people’s attitudes.

### 1. Better Measurements of the Public Opinion

Despite what has just been said in the preceding chapter, the politicians will undoubtedly respond to the requirements of public opinion also in the future. This being the case, efforts should be made to *raise the quality of attitude measurements in criminal justice as well as the interpretation of the available evidence.*

1. *Avoid stereotypes in the interpretation.* - Careful studies show that public opinion is far from unidimensional or monolithic. Many people have sophisticated views about punishment; many are ambivalent about the appropriate response to offending. Whilst the majority think that the courts are generally too soft, majorities also tend to recognize that prison is expensive and damaging (*Hough & Roberts 2001*). If given other opportunities in addition to punishments in the polls (which is rare), people tend to support alternative, non-punitive responses (*Beckett 1997*).

2. *Avoid oversimplification in the measurement.* - In most opinion polls, there is the tendency of oversimplification. The ways in which attitudes are measured tend to exaggerate popular punitiveness. Questions are too vague and too general. As a consequence the respondents fill the “gaps of information” with their own imagination which, in turn, is coloured by the information given in the media.

For example, the questions concerning proper sentencing levels are answered specifically with persistent or violent criminals in mind, while the clear majority of offenders who appear before the courts, are poorly educated, unemployed young men charged with property offences. Answers about penalties for drunk drivers are given with “killer drivers” in mind, while a normal drunk driver (in Scandinavia) is someone who had too many drinks the night before and got caught in an early morning

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roadside traffic control on his/her way to work. If the questions are rephrased to correspond more accurately to real life situations, also the punitiveness decreases.

Questions should be *more specific* and they should avoid value-laden terms. Asking “are courts tough enough on persistent criminals” is guaranteed to elicit agreement from the vast majority of the population. Even more misleading are the media organised “on-line net-polls”, arranged in connection with every major crime event.

3. *Include also cognitive dimensions in the measurement.* - Better measurement of public attitudes also involves placing the results of an opinion poll in context with *what people actually know* of the problem being explored. All attitudes are partly based on beliefs of the factual conditions (what the crime rate is, what kind of people the criminals are, how effective the sanction system is, etc). While considering the relevance of public opinion as a criminal political argument, one should also take into account what the factual premises behind this opinion are.

Results showing that people want more severe punishment are of little worth if at the same time a) people have no idea about the actual level on penalties, b) the public is mistaken on the nature and development of crime, and c) people have overly optimistic views on the possibilities to influence criminality by means of raising penalties. After all, in these cases we may well conclude that *if* people would have had correct information of the facts *then* they would also had shown different views on the appropriate penalties.

## 2. Informing the Public Opinion

Penal populism feeds off public ignorance and misunderstanding about crime and punishment. The obvious remedies are *to improve the quality and availability of information* and *to provide better access to the research evidence* about the crime strategies that work and the ones that do not.

1. *The reality of crime.* - Empirical research shows that those who know less of the facts of crime and crime control also have the highest fears and most punitive demands (*Hough & Roberts 1998*). Thus, improving the general level of knowledge would also reduce the punitive demands of the public. The public's fear of crime and hostility towards offenders in general needs to be counteracted by providing more accurate descriptions of criminality, crime rates as well as the offenders and the circumstances in which they commit the offences. People systematically overestimate the increase (and the gravity) of crime.

2. *The reality of punishments.* - Also information on the functions of punishment, on the relative effectiveness of custodial and community measures, and on the reality of prisons is needed.

For example, the public is generally aware of neither the *problems faced in prisons* nor the dangers in the uncontrolled use of imprisonment nor its human and financial costs. Too many take for granted the media posters which parallel prisons with hotels.

The public is also unaware of the *actual level of sentences*. Demands for harsher sentencing do not spring from a systematic study of sentencing pattern in the courts. People read or hear about sentences from the media. In the light of the summary of facts provided in the news, the sentence seems to be too lenient, which leads to the conclusion, that “we need to do something about sentencing”. One way to lessen the public anxiety about specific sentencing decisions would be information systems which could successfully summarize overall sentencing patterns whilst managing to communicate what the “going rate” is for specific sorts of crime.

Governments and research institutes bear the basic responsibility for informing people about crime trends and court practices. However, in practice, the media will continue play the key role as a source of information for the public.

3. Raising the Quality of Crime News – Can the Media be Influenced?

The media are the source of much information, both true and false. Unfortunately, the media image of crime is selective, simplified and skewed. It drives the discussion (on the television) down to the level of five second sound-bites, thus preventing any efforts to have more nuanced and complicated analyses.

Still, this is the reality we have to live with. Free media and the freedom of expression are also one of the cornerstones of any democratic society. The possibilities to influence the way that the mass media cover crime and punishment are heavily restricted, based mainly on the self-criticism of the media itself (at best). What then – if anything – can be done?

1. *Challenge media misrepresentations.* - Representatives of the media who are receptive to these issues can be drawn into a debate on how criminal justice should be reported. The basic requirement is for more responsible media coverage. Media watchdogs could be required to ensure that coverage on sensational and rare offences and incidents is balanced; at the very least such coverage should point out how rare such incidents are.

2. Most news on crime tends to underline that crime is becoming more and more threatening, even if national crime figures are going down. The growth of crime is always news, declining figures receive much less attention. A 10 per cent increase means that crime is “soaring” whereas a 10 per cent decrease means “a small reduction”. *Therefore, it would be important to place reports of individual crimes in a statistical context.* This is a common practice in the Finnish media, but evidently much rarer in other countries.

3. Often the style of crime reporting is the result of sheer ignorance. Reporters do not have the skill nor the time to make better stories. Media personnel are prone to the same misunderstandings as the average citizen. Those responsible for informing the public on these matters – the governmental officials and research agencies – need to ensure that the media is also given accurate information about criminal justice. One has to remember that responsible reporters are also receptive to well-founded critique.

4. Governmental research agencies play a central role in serving the media with accurate information. For example, in Finland the National Research Institute of Legal Policy has, since 1975, published detailed yearbooks on both crime and sentencing statistics. This book (over 300 pages) is now also available on the Internet.

Other useful means may include: appointing press officers, improving media access to statisticians and academics, and using more efficiently the new technology to communicate statistical information to the press. In most Scandinavian countries the public and the press have free access to the frequently updated national crime statistics on the internet.

5. *Editorial policies* may be moderated if their unintended consequences are pointed out to the editors. Key persons in the media market (editors, leading reporters, etc.) should be cooperated with. In the UK there was at least a temporary break on the tabloid media’s style to sensationalise crime, after influential media personalities were invited to participate in a committee that examined the media’s role in exacerbating the fear of crime (*Hough & Roberts 2001*).

**C. Constructing Convincing Political Alternatives**

Politicians need some persuasive alternatives. As noted by *Hough & Roberts*, any attempt to render the penal debate “fireproof” against populism cannot be simply defensive: “Politicians *have* to be able to respond to public concern about crime; they will listen to the message that Draconian sentencing is ineffective only when they are provided with positive and plausible suggestions for effective replacement strategies” (*Hough & Roberts 2001*).

On the other hand, if other, more functional instruments can be advocated, it will also become more and more difficult to justify severe sentences. The development of convincing crime prevention strategies outside the domain of criminal law reduces, thus, the political strains on the criminal justice system.

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What is needed is a *comprehensive national crime reduction programme based on a partnership on prevention, employing all relevant crime prevention strategies*. The shape of such a programme will, of course, vary across jurisdictions, and it needs to be responsive to local conditions and priorities. These kind of national programmes have now been implemented in several European countries, including France, the UK, Sweden and Finland. The content of these programmes fall, however, outside of this presentation.

#### IV. WHY DO HIGH PRISONER RATES MATTER?

“The more criminals you lock up the less crime they can commit.” But there is clear evidence that to have a significant effect on crime levels you would have to lock up far more people and for longer periods - at a great public expense - than even the countries who are most enthusiastic about imprisonment have been willing to do (*Walmsley 2001*).

The benefits of massive use of imprisonment in crime prevention could easily be achieved with other, more economic and humane measures. What, then, are the costs involved?

High and growing prison population sizes lead to overcrowding. Overcrowded prisons are a breach of United Nations and other international standards which require that all prisoners shall be treated with the respect due to their inherent dignity and value as human beings, which includes being accorded a reasonable amount of space.

High prison population numbers bring with them poorer conditions of hygiene, poorer sanitation arrangements, less time for outdoor exercise, insufficient bedding and clothing, insufficient nutrition and health care, more tension, more violence between prisoners, more violence against staff and more suicides.

Growth in prisoner numbers means less effective supervision by staff, less time to organise activities to ensure the chances of successful reintegration, less treatment programmes, increased stress and higher sickness levels among the staff.

And what does it say about the state of a country that it finds it necessary to lock up more than one per cent of its male population (as the case is in the US and Russia). The picture looks even darker, if we recalculate the figures excluding boys too young to be imprisoned and older men. And if we look at how many urban male citizens belonging to ethnic minorities aged 15 to 30 are being locked up, we are faced with even more serious questions concerning the social costs of mass imprisonment: “The hardening of social and racial divisions, the reinforcement of criminogenic processes; the alienation of large social groups; the discrediting of legal authority; a reduction of civic tolerance; a tendency towards authoritarianism.” (*Garland 2001 p.204*).

One can but hope that the same political structures that once enabled the birth of mass imprisonment will, in the long run, work against it. As David Garland concludes: “But over the long term it is probable that its conflict with the ideals of liberal democracy will become increasingly apparent, particularly where penal exclusion ... is so heavily focused upon racial minorities. A government that routinely sustains social order by means of mass exclusion begins to look like an apartheid state.” (*ibid*).

# COMMUNITY-BASED ALTERNATIVES TO INCARCERATION IN CANADA

*Richard M. Zubrycki\**

## I. INTRODUCTION

Ten years ago Canada, like most other western nations, was experiencing explosive growth of its prison population. By the mid-1990's the annual growth rate in federal penitentiaries had reached 10% per year, outstripping by far the long-term average annual growth rate of under 2.5%. Prison capacity was seriously exceeded and about half of all federal offenders were double bunked in cells designed for single occupancy. Similar patterns of growth and crowding were also being experienced in provincial prisons.

Today, the size of Canada's prison population is comparatively low and is stable or dropping. This is due to complex interacting forces, including significant crime rate reductions, which are not fully understood.<sup>1</sup> However, one important aspect of this positive direction is the conscious efforts that have been made to utilize community-based alternatives to imprisonment to the extent possible, consistent with public safety.

This paper explores some of the characteristics of the Canadian system that support the use of community alternatives, and recent developments and innovations in that field. The extent to which community programmes have directly offset prison population levels is difficult to quantify. Nor is it possible to say with certainty what particular innovative programmes or policies turned the tide against prison crowding. Nevertheless it is arguable that a wide array of features of the Canadian criminal justice system support the safe use of community alternatives to reduce upward pressure on prison populations.

## II. THE CANADIAN CONTEXT

Canada is a country of diversity, populated originally by nomadic Aboriginal people and later, beginning in the 15th and 16th centuries, by Europeans who originated primarily from the British Isles and France. Early settlement was followed by waves of immigrants from many countries: predominantly, but not exclusively, Scotland and Ireland in the 18th and 19th centuries, China and Eastern Europe during the late 1800s and a mixture of other East and West European, Asian, Far East and African countries during the last 50 years. Today about one-quarter of a million immigrants are welcomed to Canada each year, where their distinctive cultures mix and blend into what has often been referred to as a "cultural mosaic" in contrast to the assimilation of the "melting pot" that some believe characterizes the United States to our South.

Canada covers a vast expanse of territory: almost 10 million square kilometres touching the Pacific, Atlantic and Arctic Oceans and stretching about eight thousand kilometres from Atlantic to Pacific. Yet we are a sparsely populated nation. Thirty-one million people concentrated for the most part in a narrow band within two hundred kilometres of the U.S.-Canada border, and to a large extent clustered in a handful of major cities.

Canada was founded on a confederation of colonial entities. Its federal form of government reflects this diverse history and culture. There are fourteen major jurisdictions: the Government of Canada which is national in scope, 10 provinces and 3 northern territories.<sup>2</sup> There are thousands of municipal governments within the provinces and territories and over 600 Indian bands spread over 2400 Reserves

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Department of the Solicitor General  
Canada

<sup>1</sup> In 1995 the federal penitentiary population stood at 14,386, 5 years later, in 2000 it had dropped to 13,092, a decrease of 9%. This is particularly notable in that the prison populations of other countries such as the U.S and U.K. continued to rise during this period (as they continue to do) irrespective of significant reductions in the rate of crime.

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populated by Aboriginal First Nations people, but governed under a complex combination of shared federal-provincial jurisdiction.

Criminal justice responsibilities are shared among these various jurisdictions. Sections 91 and 92 of the *Constitution Act* (1867) assign to Parliament (i.e., to the federal level of government) responsibility for establishing the criminal law, while provinces are assigned responsibility for the administration of justice within their boundaries, including police and court administration. With regard to correctional programmes, the federal government is assigned constitutional responsibility for “penitentiaries” whereas provincial and territorial Legislatures are responsible for the maintenance of “prisons and reformatories”. These terms are not defined in the *Constitution Act*. Rather, they are distinguished from one and other in the *Criminal Code of Canada* (s.743.1), which assigns all sentences of less than two years (“two years less a day”) to provincial custody and all sentences of two years or more in length to federal penitentiaries. This is commonly known as the “two year rule”.

Probation is a good example of how the different levels of government must interact in the criminal justice field. Probation is a sentence that may be handed down by a court pursuant to the *Criminal Code*, which is established by Parliament, but it must be administered by the provincial or territorial jurisdiction where the conviction has taken place. It may be for a period of up to three years and may be combined with a custodial sentence of up to two years less a day, i.e., in a provincial prison.

Penitentiaries and parole supervision are administered by the Correctional Service of Canada (CSC) under the federal *Corrections and Conditional Release Act (CCRA)*. The National Parole Board (NPB) is the conditional release decision-maker under the same *Act*. It is an independent administrative tribunal of government appointees who make case by case release decisions. The various forms of conditional release in the federal system are set out in the following Table and in Appendix C.

**Table 1. Types of Conditional Release**

Type of Release	Eligible after Serving
Escorted Temporary Absence	First Day of Sentence
Unescorted Temporary Absence	One-sixth or 6 months (the greater)
Work Release	One-sixth or 6 months (the greater)
Accelerated Day Parole	One-sixth or 6 months (the greater)
Day Parole (regular)	6 months before Full Parole Eligibility
Full Parole (& Accelerated F.P.)	One-third of the sentence
Judicial Determination (Full Parole)	One-half of the sentence (if ordered by a court)
Statutory Release	Two-thirds of the sentence (presumptive)

The Parole Board only rules on temporary absences for offenders sentenced to imprisonment for life, the others are delegated to the Correctional Service of Canada. Work Releases are granted solely under CSC’s authority. The National Parole Board is also the paroling authority for the territories and all but three provincial jurisdictions. Three provinces<sup>3</sup> administer their own parole boards under authority delegated to them under the *Corrections and Conditional Release Act*.

Without going into greater detail, it is easy to see that the Canadian criminal justice and correctional systems are multi-layered and complex. They have been referred to as “fractionated” because of their many cross-cutting lines of jurisdictional division and layers of authority. In this

<sup>2</sup> Provinces from west to east: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. Northern Territories from West to East: Yukon, Northwest Territories and Nunavut.

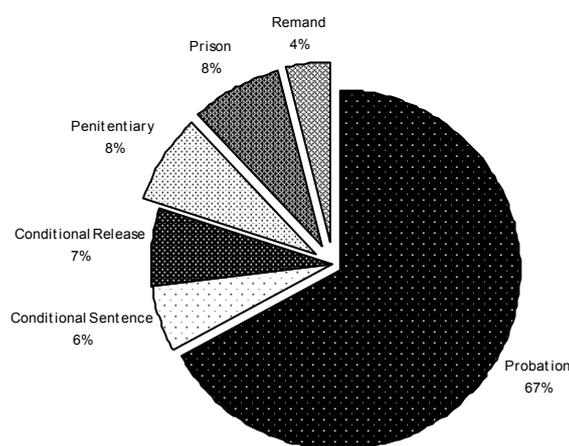
<sup>3</sup> British Columbia, Ontario and Quebec.

context, it is difficult to talk about national programmes or policies, since there is little that can be simply directed by a central authority. More often national programmes result from extensive consultation, collaboration and coordination between and among jurisdictions.

### III. KEY FEATURES OF THE CANADIAN SYSTEM

David Rothman (1971, 1980) provides accounts of the emergence first, of the American penitentiary at the beginning of the 19th century and then, 100 years later, of the start of the community correctional movement in the form of “aftercare”. Originally focused only on offenders *after* leaving prison, the concept of dealing with offenders in the community *instead of* in prison gave rise to the introduction of probation and parole. During the past century those notions have taken hold until today, in Canada, 80% of offenders under sentence (or on remand) are being dealt with in the community as depicted in the Figure below.

**Distribution of Sentenced Adults in Canada 1999-2000**



Source: Adult Correctional Services Survey, 1999/2000  
Canadian Criminal Justice Statistics, Statistics Canada

A number of characteristics of the Canadian correctional system may be seen as providing a framework that is conducive to community correctional responses to criminal offending, in particular: a principles-based sentencing system, a research and risk-based correctional system, an active and committed voluntary sector and community corrections professionals – largely probation and parole officers – who can secure community acceptance while they implement and operate community programmes.

#### A. Principles-Based System

In 1982, Canada’s Constitution was patriated from England where it had originated as a statute of the British Parliament as the *Constitution Act* of 1867. In so doing, the earlier Act and subsequent amendments were reaffirmed and supplemented with the *Canadian Charter of Rights and Freedoms* (*Charter*). The Charter codified certain rights long established under British Common Law and principles of natural justice, as well as contemporary Canadian human rights jurisprudence. The new *Constitution Act* (1982) provided a valuable framework for the protection of human rights. The *Charter* soon became the benchmark against which all Canadian law was measured.

The newly patriated Constitution and the *Charter* gave rise to an ambitious Criminal Law Review process led by the Department of Justice. Included within it were a Sentencing Review by a Royal Commission, and a Correctional Law Review conducted by the Ministry of the Solicitor General. From these reviews emerged a new *Corrections and Conditional Release Act* (1992), and in 1996, a Bill (C-41) to amend the *Criminal Code of Canada* to introduce sentencing reforms.

Consequently the new CCRA contained two statements of purposes and principles to guide application of the law in penitentiaries (sections 3 and 4) and for conditional release (sections 100 and

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101). Similarly, purposes and principles of sentencing were placed in s.718 of the *Criminal Code* (see Appendix A). Grown from the same root, all three statements have many similarities and parallels:

- All three statements declare their purpose to be to contribute to and maintain “...a just peaceful and safe society...”;
- The *CCRA* proclaims as a principle that “...the protection of society [is] the paramount consideration...” in the corrections process while the *Code* sets out as principles that it “denounce” and “deter” criminal conduct;
- To balance the immediately foregoing principles that might be interpreted as favouring incarceration, there are other integrative principles that would favour community-based measures: all three statements provide that the “least restrictive measures” available should be chosen, providing that they are consistent with public safety;
- Both statements of purpose in the *CCRA* refer to “rehabilitation of offenders and their reintegration into the community”, the *Criminal Code* states that one of its primary objectives is “...to assist in the rehabilitation of offenders”.

Taken together, these principles strike a balance that is supportive of community-based programmes as realistic alternatives to incarceration when consistent with public safety.

But perhaps the most important implication of a principles-based system is that it leaves discretion in the hands of the courts. Jurisdictions like the United States that have increasingly limited judicial discretion and come to rely on mandatory forms of sentencing (e.g., “three strikes” laws, mandatory minimum penalties), have effectively transferred discretion from judges to prosecutors. As a consequence, these nations have seen their prison populations grow out of control, and to continue to do so even in the face of steep and continuous drops in the crime rate (Garland, 2001, pp.208-209). In a principles-based system, judges are more able to tailor the sentence to the offence and the offender and in Canada’s case, to apply the least-restrictive principle on a case-by-case basis according to each unique set of circumstances.

## **B. Legislative Framework**

In addition to leaving sentencing discretion in the hands of the judiciary, the *Criminal Code* of Canada provides a structured framework for community forms of sentences for courts to consider:

- Section 717 provides for “alternative measures,” in other words pre-trial diversion, to be used instead of judicial processing where a number of conditions are met including an admission of responsibility for the offence by the accused person and that “...the person considering whether to use the measures [usually the prosecutor] is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim”; (see Appendix B)
- Sections beginning at s.720 provide for pre-sentence reports to be prepared by probation officers – perhaps the best opportunity to help courts understand the behavioural dynamics of the offender and to consider the appropriateness and feasibility of a community sentence;
- Section 730 creates absolute and conditional discharges. In the latter case a probation order with conditions may be issued to be supervised by a probation officer until the order expires (up to three years) and the conviction is discharged;
- Section 731 provides for probation orders of up to three years to be given as a sentence in and of themselves or in addition to a fine or sentence of imprisonment of two years or less; sections 732.1 and 732.2 establish a framework for conditions and enforcement of probation orders;

- Section 732.1(3)(f) specifies that a condition of probation may be to perform up to 240 hours of work in the community – known as a “community service order” or CSO – under the supervision of a probation officer;
- Section 732.1(3)(g) authorizes an enforceable condition of probation to require the probationer to attend a specified treatment programme in the community – known as “treatment orders”;
- Section 732 authorizes “intermittent sentences” of 90 days or less to be served several days at a time (usually week-ends) while the intervening periods are supervised by a probation officer;
- Section 736 allows provinces to establish “fine option programmes” so that offenders may work to discharge fines owed to the court, including work while in custody to shorten time being served in default of payment of a fine;
- Sections 738 and 739 provide for restitution orders to be made by courts and administered by probation officers where it is so ordered;
- Section 742, introduced in 1996, created a new form of sanction, the “conditional sentence”. It is similar to a suspended sentence or a probation order but is considered the equivalent of a custodial sentence although it is served in the community. It is therefore appropriate for more serious offences where there is no greater risk to the community than if the person were in custody.

### **C. Voluntary Sector**

Canada is fortunate to have a very active voluntary sector. Community organisations, many of them national in scope, owe their longevity, values, energy and innovativeness to a base of members and leaders drawn from local communities. Today, in addition to other activities, they provide services on a non-profit fee-for-service basis to both provincial and federal correctional services by providing residential, parole supervision and other services to support the re-integration of the offender into the community. These voluntary organisations owe no particular allegiance to any single level or jurisdiction of government and their services are often shared among correctional systems, often on a shared-use basis with federal correctional services.

Although the *Criminal Code* and CCRA bring a degree of uniformity to the national scene, there are significant gaps in policies and practices of the various jurisdictions. Further uniformity and integration is achieved by agreement that is reached in a variety of *ad hoc* and continuing consultative bodies. Consequently there are regular meetings of the Heads of Corrections and Heads of Community Corrections from all jurisdictions, Canadian Association of Paroling Authorities (CAPA), and senior officials of Justice and Solicitors General to name a few. Ministers and Deputy Ministers meet on a regular basis to discuss matters of mutual interest. Similarly in the voluntary sector, national organisations such as the Canadian Criminal Justice Association and the National Associations Active in Criminal Justice bring together voluntary and official criminal justice workers on a national scale to share information, plans and priorities.

Not only are voluntary sector representatives important partners in implementing community based programmes today, but they have been perhaps the most effective innovators of new community programmes during the past century and longer. In the 1800s, voluntary organisations in Canada, as elsewhere, motivated by altruistic and religious values, invented the concept of “aftercare” in recognition that many offenders leaving prison could benefit from some support, guidance and assistance to adjust successfully to the community. Today the Canadian Criminal Justice Association, John Howard Society and Elizabeth Fry Societies are examples of direct descendents from those earliest organisations. They have been instrumental in the invention of probation, parole, court workers, half-way house residences and community service orders to name a few. Today, while continuing to innovate and create new programmes these organisations and many more (the Department of the Solicitor General provides core funding to 14 such National Voluntary sector groups) deliver residential, counselling and supervision programmes in partnership with federal and provincial/territorial government agencies.

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An active voluntary sector with a strong partnership with government agencies is one of the key ingredients for the mobilization of community-based programmes. They often provide the ideas and human resources to bring the programmes about, but as important, they provide a bridge to community acceptance that is essential to success. Some theorists make a distinction between community-based programmes that are simply “in” the community as opposed to those who are “of” the community (Fox, 1977 p.1, Lauen, 1990, p.12). Lauen discusses “community managed” programmes that are arguably the most effective because they are created and operated by the community for its members – both offenders and non offenders. Programmes that are simply operated in the community by the official correctional system are arguably less effective because they and their clients are less accepted, indeed may even be rejected by the community.

#### **D. Research and Risk**

Research is essential to understand what works best with which kind of offender. Actuarial assessment of risk helps us understand, among other things, which offenders can be managed in the community and what risk factors they need to work on to maintain a crime-free lifestyle.

Perhaps the most fundamental thing that has been learned from research over the past fifty years or so is that increased punishment does not produce increased deterrence. This appears counter-intuitive in societies, including Canada, that have long based their criminal justice systems on a firm belief in deterrence. However, recent meta-analyses that combine literally hundreds of studies and hundreds of thousands of subjects confirm this conclusion. Smith, Goggin and Gendreau (2002) compared the impact on recidivism of incarceration and of intermediate sanctions.<sup>4</sup> They concluded that incarceration has no greater impact on recidivism than community sanctions and, in fact incarceration may actually increase later recidivism – by 2-3% overall and as much as 7% in some cases.

Cutting-edge research on the actuarial assessment of risk has a variety advantages. The ability to place offenders in risk categories, and to measure the outcome of different treatments with different risk categories, helps to greatly refine our knowledge of what works better with which groups. So, for example we are able to conclude with some degree of certainty that interventions with low risk offenders that are too intense, can actually increase their risk, while more intense treatments work best with the highest risk offenders. For example, a recent evaluation of electronic monitoring (EM) in three Canadian provinces (Bonta, Wallace-Capretta and Rooney, 1999) found that EM had no different effect on outcomes than did community supervision by itself when risk and criminogenic needs were controlled. However, in the one jurisdiction that a) included moderate risk offenders in its programme, and b) combined EM with a programme of treatment provided by a voluntary community organisation, positive results were found for this group.

Being able to better differentiate between more and less effective treatment programmes not only helps policy makers and programme managers decide where to invest their resources, it helps make more effective correctional decisions about programme placement, security classification and degrees of liberty that are appropriate for individual offenders. Perhaps most important, by helping to identify criminogenic need areas (factors associated with their pattern of offending) for individual offenders to work on, risk prediction techniques lead to more successful outcomes in terms of lowered recidivism.

A number of tools exist for this purpose – the Wisconsin Offender Classification System and LSI-R (Levels of Service Inventory – Revised) are two of the most widely used (Andrews and Bonta, 1998). In Canada today virtually all jurisdictions utilize one or a combination of risk prediction tools (with the Canadian-developed LSI-R being the most common) to help make risk-based decisions. While the degree of knowledge and understanding of risk prediction technology and its appropriate uses still varies across jurisdictions and across professional groups (e.g., judges, prosecutors, prison and parole officials), it nevertheless has been instrumental in helping chart a path that is more and more travelled in Canada’s criminal justice system.

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<sup>4</sup> Intermediate sanctions include: intensive supervision, arrest, fines, restitution, boot camps, scared straight, drug testing and electronic monitoring.

### **E. Community Correctional Professionals**

A network of supportive and enabling criminal justice professionals<sup>5</sup> is essential for community-based correctional programmes to become an established component of a criminal justice system. Some must be dedicated to such programmes, others at least accepting and supportive of them. In a federal system it is unrealistic to expect that these professionals would all be part of one national, internally consistent programme. Rather, they represent various roles and jurisdictions but are bound together by the concept of community corrections to which they all subscribe in varying degrees. Keeping in mind that personal philosophies differ and that some aspects of community corrections are controversial, it cannot be expected that the field is uniform and internally consistent. Nevertheless, the extent to which community programmes are used in Canada is evidence that the concept has been well accepted overall.

Judges, of course are crucial. They must see community alternatives as appropriate or they would simply not use them. And prosecutors are arguably the most crucial figures in “front end” (early in the judicial process) diversionary programmes. Without their initiative or at least their consent no pre-conviction diversion would be possible. To some extent, these actors may still be motivated by expediency as Rothman (1980) found them to be at the turn of the last century. Without recourse to community sanctions courts would arguably be burdened with more trials than they could handle. Similarly prosecutors (Crown Attorneys) would be overwhelmed with the workload of prosecuting many more contested cases. The offer of an agreed-upon community sanction is a welcome plea-bargaining tool to help deal efficiently with the less serious cases and to concentrate prosecutorial resources on those that are the most serious and contested. Writing in 1999, Jonathan Rudin still found that “...one of the major reasons for the increasingly widespread support of alternatives among these players in the justice system is the growing backlog of cases in many provincial courts” (p. 296). This pragmatism, combined with altruism and the search for effective correctional programmes, has proven to be fertile ground for community-based corrections.

Police too may see some expediency in supporting community-based programmes. “First offenders classes” and “john schools” (discussed below) allow for some intervention to take place with groups of low-risk, usually first-time offenders but without costly court procedures. But expediency alone does not explain the national policy of the Royal Canadian Mounted Police (Canada’s national police force) and widespread implementation of family group counselling techniques in their nation-wide Community Justice Forums (see below).

Many of the foregoing officials as well as others are committed to community-based programming which they see as the more effective and least harmful among potential options, particularly traditional incarceration. Probation services are operated by every provincial and territorial jurisdiction with the mission to work with appropriate offenders in the community. They usually work closely with voluntary sector service providers and match offenders with appropriate programmes to control their criminal behaviour and help them return to a crime-free lifestyle in the community. These same voluntary sector workers collaborate with institutional and paroling authorities as well to help ease offenders back into the community as soon as it is considered safe to do so.

Institutional officials, particularly at the federal level where sentences are longer and offenders most serious, recognize their first mission to be to maintain the safe and secure custody of offenders who are under sentence. But they also recognize their ultimate responsibility to be the return of inmates to the community in a safe and effective fashion. Therefore, institutional programming is geared to help offenders deal with their criminogenic needs. By matching cognitive-behavioural programmes to needs and levels of risk, research-tested programmes help reduce and manage risk so that ultimately release will be more successful. Gradually, therefore, more offenders are being managed in the community for longer periods of time with fewer new offences (Corrections and Conditional Release Statistical Overview, 2001).

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<sup>5</sup> The term “professional” is used here to include volunteer and paid employees of voluntary sector (not-for-profit) organisations as well as full-time officials of state organisations irrespective of their level of training.

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Parole officers and their voluntary sector partners assist offenders to develop and implement community release plans that address their residential, education, employment and criminogenic needs in the community. A variety of voluntary organisations operate over 190 halfway houses across Canada and are able to accommodate close to 2,000 offenders at a given time. They may offer programmes related to specific needs such as substance abuse, or simply basic room and board. In addition, over 10,000 individuals volunteer in various roles with the Correctional Service of Canada. They help provide pro-social role models and often continue to offer support and assistance in the community after release.

Support of the voluntary sector also extends beyond the end of the sentence. Established voluntary organisations founded in the traditions of aftercare have never regarded the boundaries of a sentence to confine their activities where there was a need. Recently, this philosophy has led to the creation of a new programme model called Circles of Support whereby groups of community members (usually faith groups) provide on-going friendship and practical support as well as setting limits and monitoring accountability targets for high-risk offenders. In some instances the Circles of Support collaborate with police who are also targeting the same high-risk offenders, and who have recruited local social agencies to assist. These support networks are very promising, especially with serious sex offenders. More will be known about them as they are evaluated.

In Canada, Aboriginal people face special challenges having been isolated on Indian Reserves for decades with unequal access to employment, education, health care and many other social and economic advantages. Today they represent under 3% of Canada's population but over 17% of its penitentiary inmates. In some provinces where they are concentrated, Aboriginal inmates approach 100% of the prison population. On average, Canada incarcerates Aboriginal people at eight times the rate of non-Aboriginals. Culturally appropriate community services and programmes are often lacking for Aboriginal people making their re-integration into both Aboriginal and urban communities. At the same time, Aboriginal culture has much to teach the non-Aboriginal culture, particularly about healing the spirit as well as the person. Restorative Justice (see below) is a new way of thinking about criminal justice that is both consistent with and inspired by the culture and traditions of Aboriginal people. Significant adjustment will be needed for the mainstream criminal justice system and processes to accommodate this promising new style of doing criminal justice, and increasing numbers of Aboriginal practitioners and programmes at all levels need to be further developed.

### IV. COMMUNITY-BASED CORRECTIONAL PROGRAMMES

In 1994, it was estimated that if the then-current rate of growth were to continue, the penitentiary population would double its size within 10 years. Provincial and territorial jurisdictions were experiencing the same phenomenon and the future looked untenable. Concerted efforts were called for by all governments. In May 1995, federal, provincial and territorial Ministers of Justice and Solicitors General asked senior officials to consider ways that could reduce upward pressure on prison populations. Federally, a number of measures were introduced as discussed below. Jointly, the various jurisdictions formed a Working Group of the Heads of Corrections from all the jurisdictions and focused on what could be done jointly and individually, and four Annual reports were prepared for Ministers (1996-2000).

In the first *Population Growth Report* (1996) a set of principles were recommended to Federal, Provincial and Territorial Ministers at an annual meeting. The principles were derived from and consistent with similar statements in the *CCRA* and *Criminal Code* as well as U.N. international instruments<sup>6</sup>. The principles were significant because, irrespective of various differences of view and political philosophies, all jurisdictions at all senior bureaucratic and political levels agreed to support existing and innovative programmes based on these principles. While they do not carry the same weight as similar statutory statements and could be disavowed at any time by any jurisdiction, so far they have not been. Probably the greatest impact of the principles statement is the encouragement, even empowerment, it gave to correctional administrators to advance non-custodial programmes

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<sup>6</sup> For example the Standard Minimum Rules for the Treatment of Prisoners, the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

without (or at least with less) fear of being countermanded at higher levels of authority. The Statement of Principles read as follows:

While it is recognized that there are differential approaches to similar policy issues across jurisdictions, and such diversity must be respected, there are many principles and objectives that are held in common which could be made explicit and endorsed. Some of these would be:

- The criminal justice system is a social instrument to enforce society's values, standards and prohibitions through the democratic process and within the rule of law;
- The broad objective of the criminal justice system is to contribute to the maintenance of a just, peaceful and safe social environment;
- Public safety and protection is the paramount objective of the criminal justice system;
- The best long-term protection of the public results from offenders being returned to a law abiding lifestyle in the community;
- Fair, equitable and just punishment that is proportional to the harm done and similar to like sentences for like offences is a legitimate objective of sentencing;
- Offenders are sent to prison as punishment, not for punishment;
- Incarceration should be used primarily for the most serious offenders and offences where the sentencing objectives are public safety, security, deterrence or denunciation and alternatives to incarceration should be sought if safe and more effective community sanctions are appropriate and available. (*as amended in February 1997*)
- The criminal justice system is formed of many parts within and across jurisdictions that must work together as an integrated whole to maximize effectiveness and efficiency.<sup>7</sup>

The Population Growth project helped create an environment where emphasis was placed on maximizing the use of community-based corrections at all stages of the criminal justice process where possible, consistent with the foregoing principles. While the principles provided a policy framework to further amplify the statutory framework that existed at that time, strong motivation also came from the fact that correctional institutions everywhere were crowded and all the indicators were that this trend would continue and even worsen.

In 1997 the Canadian incarceration rate stood at a record high of 133 per 100,000 of the general population.<sup>8</sup> Both institutional and community caseloads had been rising steeply since the mid-1980s and had increased by 29% and 40.8% respectively between 1985 and 1995 (*Population Growth Paper*, 1996, p. 2). Moreover, although the number of adults charged with crimes each year had declined by 11% during the previous five years, the rate of offenders admitted to custody increased by 30% (from 485 to 630 per 10,000 persons charged) – more people were being sent to prison and penitentiary even though the crime rate was beginning to decline (*Corrections Population Growth*, 1996, Summary Table 4).

The first Population Growth report made 11 recommendations to Ministers to promote non-carceral measures such as:

- Making greater use of diversion programmes (many of which already existed);
- Develop charge-screening policies to move appropriate cases into diversion programmes;
- Use risk prediction techniques more widely;

<sup>7</sup> Amended as noted in 1997 in vol.2 of the Population Growth reports.

<sup>8</sup> Includes youth as well as adults, and both sentenced and those on remand. Compares to the United Kingdom at 99 and Australia at 89.

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- Develop Aboriginal community pilot projects;
- De-incarcerate low risk offenders.

Over the next three years all jurisdictions contributed information about the measures they were taking to comply with these recommendations and the results they were achieving. By the time of the fourth report in 2000, there had been significant changes in the criminal justice environment. Although by no means attributable to these efforts alone, they surely made an impact if only by promoting a change of attitude that increasingly accepted incarceration as an extreme measure to be reserved only for the most serious cases that clearly required it.

By 2000, the incarceration rate had declined to 123 per 100,000 general population. And, while community caseloads continued to grow, institutional populations had begun a steady decline. The balance between community and custodial sentences had also begun to shift. Whereas about 77% of the combined federal, provincial and territorial correctional caseload was in the community in fiscal year 1994-95, it was about 79% in 1998-99 (*Corrections Population Report Fourth Edition, 2000, Summary Table 2, p.39*). Attention had shifted further toward community-based sentencing and correctional alternatives right across the spectrum of the criminal justice process.

#### **A. Pre-Charge Diversion – Police**

Diversion from the formal criminal justice system can begin as early as at the police investigative stage. Police may play a role by a) identifying appropriate candidates for diversion and b) operating diversion programmes. Such programmes may vary from one police agency to another. Normally, with the approval and/or participation of the Crown Attorney, cases are identified using established criteria. One of those criteria is always that the subject must be prepared to admit responsibility for the alleged offence. Section 717 of the *Criminal Code* (alternative measures, 1996 – see Appendix B) prohibits such an admission from being used as evidence in court should the case eventually go to trial. The prosecutor is also required to establish that the offence could be effectively prosecuted if it did go to trial. Then, when the offender has successfully fulfilled an agreed-upon course of action, the prosecutor will not proceed with the charges.

Two types of programmes police have introduced are First Offender Classes and John Schools. The former tends to be operated for youthful, first time offenders. It is usually in the form of a class that deals with the law and the consequences of law breaking, including the long-term consequences of having a criminal record, impact on family and friends, and on victims. John Schools are similar but are designed for men who attempt to solicit a prostitute in an unlawful manner (contrary to s. 213 of the *Criminal Code* – communicating for the purpose of prostitution). Again, in the form of classes, men are educated about the consequences of being convicted of such an offence, impact on their family and reputation, and public health implications – often with former prostitutes lecturing on the damage that women experience by a life of prostitution.

Police often partner with community organisations to help deliver these programmes. They are highly efficient in that they occupy a minimum of resources of the formal system because they are initiated so early in the process or, as it is sometimes called, at the “front end”. They are more efficient yet because they deal with groups of offenders rather than one case at a time. Some critics of these informal programmes question their effectiveness suggest they may simply “widen the net” by including very minor offenders who often would not be prosecuted in any event.

Perhaps the best recognized police-based diversion programme is Family Group Conferencing first established in New Zealand and Australia. In Canada, the Royal Canadian Mounted Police operate such programmes across the country under the name of Community Justice Forums. They have grown out of a Restorative Justice philosophy, which will be discussed later in this paper.

In appropriate cases, a trained facilitator (police officer or community volunteer) will convene a group of family members, victims and their support group, and other relevant community members to meet with the offender. As a group they consider the offence and the offender, and an appropriate course of action – often including restitution of some kind – to satisfy the victim and community as well as appropriately sanctioning the offender. Where the offender follows through in good faith, charges usually do not proceed. These programmes are more labour-intensive than many other police-based

programmes because they deal with single offenders and involve a wider range of participants than a normal court proceeding.

### **B. Post-Charge Diversion – Court Based**

Court-based diversion programmes are normally coordinated by the Crown Attorney's office but frequently involve the local Probation Service and/or community groups. Such programmes were first developed by innovative Crown Attorneys and Judges who recognized that programmes did not exist to deal with minor offenders who were often basically pro-social and considered a low risk to re-offend but who might be driven further toward a criminal life style by formal processing by the criminal justice system. By agreeing to alternative measures such offenders can be diverted from the experience of the criminal justice system and can be diverted from the heavy workloads of that system at the same time.

Section 717 of the *Criminal Code* now provides for alternative measures to be used when:

- They are part of a programme authorized by the government of a province or territory and are authorized by the Attorney General or his or her delegate in a specific case;
- They are appropriate for the offender, the interests of society and of the victim;
- The person participates freely having been advised of his or her right to counsel; and
- The person accepts responsibility for the alleged act and the Attorney General's representative (the Crown Attorney) believes there is sufficient evidence to prosecute if that were necessary.

And there are extensive prohibitions against keeping and, or disclosing any record of the alternative measures proceedings.

Frequently, programmes are conducted in the community by voluntary organisations and clients provided by referral from the courts under the alternative measures procedures. In some cases these programmes look much like Community Service Orders that will be discussed below. Offenders may be required to provide assistance to the community or indirectly through a community agency. When completed, the Crown Attorney enters a stay of proceedings on the charge that had been laid and cannot proceed on them at a later time.

Some are concerned that the alternative measures provide a powerful plea-bargaining tool that could result in admissions of responsibility that are not necessary and could not be obtained through prosecution. For this reason there are safeguards in the *Criminal Code* that require the offence to be capable of prosecution and that the offender be aware of his or her ability to defend against it in court.

### **C. Pre-Sentence Diversion – Discharge**

Conditional and absolute discharges have been authorized by the *Criminal Code* for over 20 years. In effect, a discharge order under s. 730 of the *Criminal Code* is neither a conviction nor a sentence. Although there is an admission or finding of guilt, once the judge decides to order the discharge of the offender, there is technically no conviction and no criminal record is created. The discharge may not be given if there is a minimum sentence required by law or if the maximum sentence that may be given is 14 years in prison or more. In the case of conditional discharges, a probation order may be created for a maximum of three years at the end of which the discharge takes effect. Failure to comply with the conditions of a probation order can result in a cancellation of the discharge order and its replacement with the sentence that would have otherwise been given.

### **D. Post-Sentence Diversion – Probation**

Probation is perhaps the most valuable tool used to prevent offenders from being further drawn into the criminal justice process. By preparing pre-sentence reports "...for the purpose of assisting the court in imposing a sentence..." (s.721 (1) *Criminal Code*), the probation officer can be instrumental in proposing a feasible community-based alternative in appropriate cases.

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Moreover, it is frequently the existence of the probation service and programmes that it operates or facilitates, that make the alternative programmes viable. Community service orders, for example, are normally given effect as a condition of a probation order (732.1(3)(f) *Criminal Code*). More important, however, is the administration of the programmes based on this order. Numerous community agencies that can make use of volunteers must be recruited and probationers assigned, hours of participation and department monitored and recorded, as well as the normal counselling of the offender and liaison with the court. Similarly, the probation service is instrumental in administering other orders that may be handed down by the court such as restitution orders, conditional discharges, protection orders<sup>9</sup> and conditional sentences.

Probation services operate a wide variety of support programmes for probationers from job-finding and life-skills development to sex offender and substance abuse programmes. Increasingly probation services utilize risk assessment instruments to help gauge the appropriate level of intervention from only infrequent and casual contact to intensive supervision and counselling. Probation services seldom directly operate halfway houses but they may help voluntary organisations develop them and then utilize their services.

#### **E. Post-sentence Diversion During Incarceration – Conditional Release**

An important purpose of imprisonment is to separate from the community those offenders who pose a threat to public safety. But where this consideration does not apply, i.e., where the risk is assessed as low and manageable, and where the sentence has accomplished its denunciatory purpose, the correctional system's primary purpose becomes the safe reintegration of offenders into the community and the adoption of a law-abiding lifestyle. To achieve this there are a variety of conditional release mechanisms set out in the *CCRA* as outlined earlier. Irrespective of their technical differences, they are all guided by common principles. Release decisions that are recommended by the Correctional Service of Canada and the release decisions made by the National Parole Board<sup>10</sup> are based on an assessment of whether or not the offender poses an "undue risk" to the public that is, the potential risk the offender poses to the community by the commission of a new offence (s.100, *CCRA*). Institutional programmes are designed to reduce risk while community programmes and supervision following release are meant to manage and assess risk on an on-going basis. Increasing or unmanageable risk will result in a return to custody, hopefully before a new offence is committed.

### **V. RECENT INNOVATIONS**

#### **A. Accelerated Parole Review**

In recent years countries such as the United States and, most recently the United Kingdom, have introduced presumptive sentences to increase the punitiveness of their systems in the avowed belief that greater deterrence of crime will result. In so doing they have only exacerbated their prison population growth while having no demonstrable effect on crime reduction<sup>11</sup>. The most extreme example is the United States, which has increased its prison population by over 600% over the past 30 years, doubling it in just the past decade, with such measures. Canada to the contrary has chosen to resist presumptive penalties while introducing a presumptive form of conditional release to ensure the timely release of certain offenders from custody.

In 1992 when the *CCRA* was enacted, it included a provision for the "accelerated parole review" (APR) of offenders who were in penitentiary for the first time and convicted of a non-violent offence (i.e., not on a schedule of offences against persons that forms part of the Act) were *entitled* to be released upon reaching their eligibility date (one-third of the sentence) for full parole. In these cases they can be denied release only if the Parole Board finds reason to believe that they would commit a new crime of

<sup>9</sup> Pursuant to s. 810 of the *Criminal Code* a court may issue an order against a person for the protection of the public; conditions are specified and may include supervision by a probation officer.

<sup>10</sup> The National Parole Board is an independent administrative tribunal comprised of individual members appointed by the Government of Canada to make release decisions according to the *CCRA*.

<sup>11</sup> While crime rates and patterns are comparable in most G7 countries, they have dropped as much or more in those with less punitive characteristics; the same observation is true when comparing States to one another within the US (Zimring and Hawkins (1997), Macalair and Males (1999)).

violence if released. This is a significantly lower test when compared to the regular criteria, which are based on the threat to the community due to the commission of *any* new offence. Offenders in this group were observed to already be released at a fairly high rate and to succeed at a high rate after release. But that release was occurring about four or five months later than their first eligibility dates without any change in their risk levels.

When released upon reaching their first eligibility date, the APR group performed much as expected. When compared to “regular” parolees (parolees who were not eligible for APR and were released at various times after they reached parole eligibility), they re-offended at slightly higher rates over all, but with lower rates of violent re-offending. In view of the positive performance of this group, amendments to the CCRA in 1997 added accelerated *day parole* for this same category of offenders. This made these offenders eligible for presumptive release after serving six months or one-sixth of the sentence (the greater) using the same test as accelerated parole review (risk of violence). This change in the law resulted in an immediate transfer of about 500 inmates per year from federal custody to the community without increased risk.

Similarly, since 1971<sup>12</sup> offenders who have not been released earlier, or who have been returned to custody, have been entitled to be released under supervision during the last one-third of the sentence. This statutory release is also presumptive to ensure a transition period for offenders who are inevitably destined to return to the community.<sup>13</sup> Both of these forms of presumptive release have their detractors because they are characterized as being automatic or, put another way, unearned. Nevertheless these offenders perform reasonably well and contribute to the approximately 40% of federal offenders who are in the community under all types of conditional release on any given day. In a given year, about 13% of these releases end in a new offence and about the same number are returned to custody due to a breach of a condition of release. During the past seven years, new violent offences committed by conditionally released offenders have dropped by over 60% (*Corrections and Conditional Release Overview, 2002*)

## B. Conditional Sentences

Perhaps the most innovative sentencing measure in recent years has been the introduction of conditional sentences (s. 742 *Criminal Code*) in 1996. While similar in many ways to other forms of community sentences like a suspended sentence, probation order, or conditional discharge, conditional sentences are unique. It is a “...sentence of imprisonment...” (s.742.1(a)) that the judge may order be served in the community if he or she “...is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2” (s742.1(b)).

A sentence of *imprisonment* served in the *community*! This internally inconsistent and self-contradictory concept has taken considerable effort by the criminal justice community to grasp. Being a sentence of imprisonment for up to two years, the conditional sentence may be considered appropriate for more serious offences that would attract more serious sentences. On the other hand, being left at large in the community is seen by some to be inappropriately lenient for more serious offences, particularly crimes of violence and crimes that are sexual in nature. Consequently, there have been many calls to limit conditional sentences to less serious offences and offenders. Advocates of the conditional sentence point to the unnecessary cost and ineffectiveness of imprisonment for persons who do not require it to control their low level of threat to the community.

Two Supreme Court of Canada decisions have helped clarify the appropriate use of conditional sentences – *R v Gladue* (1999) and *R v Proulx* (2000). The latter in particular has made the important distinction that conditional sentences can and often should incorporate limitations of liberty that are

<sup>12</sup> Since 1868 inmates had been able to earn remission of their sentence through good behaviour; in 1971 this remission period of up to one-third of the sentence (and most inmates earned all of their remission) was converted to “mandatory supervision” during the remission period; in 1992 mandatory supervision was converted to “statutory release” which became an entitlement and no longer had to be earned.

<sup>13</sup> Inmates can be detained until closer to or right up to the end of their sentence if there is reason to believe they will commit a new offence that will cause serious harm to another person. A small number of offenders are detained each year – about 200 out of about 4000 such releases.

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more punitive than other community sentences. Consequently such sentences now commonly contain conditions that amount to house arrest with strict curfews, limited reasons to be out of one's residence, restrictions of association and the like. Calls for scaling back the application of conditional sentences continue, while it is argued by the government that the current scheme should be properly evaluated after sufficient experience to determine whether and how successful it is, before contemplating any fundamental change.

- It remains premature to draw firm conclusions about the efficacy of this form of sentence but from the partial and preliminary data that has been collected so far, it may be tentatively concluded that:
- The use of conditional sentences has progressively increased since their introduction in 1997;
- Decreasing rates of sentences to custody have corresponded to increasing rates of conditional sentences;
- Conditional sentences have become progressively longer;
- Conditional sentences are most often combined with probation;
- The offences for which conditional sentences are given are inclusive but regional variations are noticeable with violent offences predominating in some areas and property offences in others. (CCJS, 2002).

While the application of conditional sentences is still evolving and our knowledge about their impact are still quite limited, these preliminary results are promising and appear to demonstrate a relationship between falling prison populations and this sentencing option (see Appendix B for full *Criminal Code* provisions).

### **C. Restorative Justice**

This fascinating concept appears full of potential for improving criminal justice practices and engaging communities in real, practical and satisfying ways. It has been pioneered in New Zealand and Australia and is of rapidly growing interest in Canada. The fact that all three of our countries have large Aboriginal populations may account, at least in part, for the interest and almost intuitive belief in its promise. In Canada, the concept is informed by Aboriginal culture and healing traditions, and it is being applied in a growing number of Aboriginal communities as an alternative to the mainstream system.

While there are many shadings of emphasis that may be given to the restorative justice philosophy, the key principle all applications have in common, and the one that sets it apart, is its purpose to *restore the harm that has been done* by criminal conduct. Harm may have been done to a victim or victims, to the community in which the offence occurred, to family and friends of the victims and of the offender. Indeed, quite often the offence and circumstances surrounding it have also caused harm to the offender. Restorative justice approaches seek to repair and reduce all of these harms to the extent possible, rather than simply detecting, prosecuting and punishing the perpetrator as we tend to do in a typically adversarial process.

There are many methods and models to achieve restorative justice goals, each at various stages of maturity. Perhaps the most well-established model anywhere is the Family Group Conferencing approach of Australia and New Zealand. In Canada, as previously mentioned, this approach has also been adopted by the Royal Canadian Mounted Police, the Country's national police force. In their application of this approach in many widely dispersed communities, the RCMP's Community Justice Forums engage youthful offenders, families, community members and victims in a facilitated process to seek agreed upon resolutions that will satisfy the greatest number of injured parties to the greatest degree.

The earliest restorative justice programmes in Canada are generally recognized to have begun in 1974 when victim-offender reconciliation was introduced in the courts in Kitchener-Waterloo, Ontario.

Many other programmes are based on this victim-offender reconciliation or mediation model. Aboriginal variations are based on “the circle” a traditional Aboriginal method of group deliberation, decision-making, conflict resolution and community healing.

Whatever the programme differences among them, similar principles guide restorative justice applications:

- Both victim and offender must give and remain able to withdraw their free, voluntary and informed consent to participate in the restorative justice process; they must be fully informed about the process and its consequences;
- The offender must admit responsibility for the offence and both victim and offender must agree on the essential facts;
- Both can have legal advice at any point and can withdraw if they wish; any admission of responsibility cannot be used as evidence in any later legal proceedings;
- A restorative process can occur at any and all stages of the criminal justice process;
- Power imbalances between victim and offender must be considered and compensated for wherever necessary – neither should feel coerced, pressured, intimidated or inferior;
- All discussions are confidential unless by agreement between the victim and offender;
- Failure to reach agreement should not be used in any subsequent legal proceedings to justify a harsher sentence than would otherwise be given;
- The consequences of failing to honour an agreement should be clearly spelled out;
- Facilitators should be trained and evaluated to ensure competence.

In 1996, restorative justice principles were recognized in the *Criminal Code of Canada* in the sentencing principles

- “to provide reparations for harm done to victims or to the community” (s. 718 (e)), and
- “to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community” (s. 718 (f)).

More recently, Canada was instrumental in the development with other countries of principles similar to those above for consideration by the 11th Session of the Commission on Crime Prevention and Criminal Justice; in April 2002, the Commission took note of the proposed Basic Principles on Restorative Justice and encouraged Member Nations to consider their adoption.

While it is still a time of experimentation and demonstration of how these principles can be applied and what outcomes can be expected, there are many promising signs. Increasingly research confirms that those who engage in the process are more satisfied with the results than those who did not participate (Chaterjee, 1999; Umbreit *et.al.*, 1995). Nevertheless, it remains to be seen if victim participation rates can be increased. They are often reluctant to participate fearing that they are only being used to benefit the offender by lessening his or her penalty. It also remains to be seen whether restorative justice approaches can have any measurable impact on offender recidivism rates. But irrespective of the research knowledge that must yet be accumulated, there are many encouraging signs. In one programme known as Restorative Resolutions, a court-based, probation-run programme, enough prison-bound offenders were successfully maintained in the community to more than pay the cost of the programme out of the cost offsets (Bonta *et. al.*, 1998).

#### **D. Hollow Water First Nation**

Perhaps one of the most impressive among Aboriginal programmes was sponsored by the Hollow Water First Nation community in Manitoba. The programme called the Community Holistic Circle Healing (CHCH), set out to deal with serious sex offenders in the community, repair the damage they had done and were doing, while bringing their behaviour under control without banishment to prison away from the First Nation and in a predominantly non-Aboriginal environment. Imprisonment, in fact, was generally considered to increase the harm.

Community resources were mobilized by the project to identify victims and offenders and to bring them together by way of healing circles. During a 13 step process victims were offered a safe and supportive environment and offenders were called upon to take responsibility for the harm they had caused. Victims and offenders sought and found ways to make amends for past harm and to control their future conduct. The local police, court and Crown Attorney acknowledged the appropriateness of the proposed resolutions and community sentences were given to facilitate the agreements.

The costs that were offset by the programme were estimated to be considerably higher than the cost of running the CHCH programme (funded by federal and provincial governments and by the Hollow Water Band Council). The Federal Government, for example, estimated that in the order of 40 to 50 offenders were kept in the community and out of federal penitentiary custody, at an average cost saving of \$60,000 per year. But the benefits went far beyond the simple reduction of costs and prison populations.

In a 2001 evaluation of the CHCH programme (Couture, J. *et.al.*), a multitude of collateral benefits to the community were identified:

- Early childhood programmes are in operation (e.g., Headstart, day care);
- Children are happier, feel safer and more self-confident;
- Parents are more involved with raising children;
- About 50 children from other First Nations are in foster care in Hollow Water;
- No gang-related activities (a problem in many other places) are reported;
- Youth stay in school longer and remain in the community after graduation;
- High school completions and graduating class sizes have increased;
- Growing number of high school dropouts returning to school;
- Less out-migration and increased migration in from other First Nations;
- Alcohol abuse almost stopped and drug abuse among young being addressed;
- Health improved above provincial average;
- Life expectancy increased from 63 to 70 years.

When asked by evaluators what life would be like without CHCH a community member summed it up: “utter chaos” she replied.

#### **VI. CONCLUSION**

In 1994, the Government of Canada faced a penitentiary population growth rate that threatened to double the number of penitentiary inmates within 10 years if nothing changed. Today that population growth rate has subsided. Federal and many provincial correctional institutions are feeling some relief, the former has experienced progressive population drops over the last seven years. This was achieved in many ways that are possibly not yet fully understood. However, a common effort by federal and provincial governments has clearly made an important contribution. Legal changes across a broad front that encouraged community-based programmes as alternatives to incarceration made a strong impact on attitudes as well as criminal justice practices. While many of these changes were perhaps already under way, and demographic changes surely had a strong impact, comparisons between Canada and its closest neighbour make it clear that different policy choices are possible to purposefully obtain very different outcomes. In Canada a belief that community-based programmes are the more effective choice in the vast majority of cases led to policy choices that would encourage their greater use. This fabric of efforts has helped maintain a balanced and humane correctional system in Canada.

The success that has been obtained demonstrates the value of a common effort across lines of political, functional and operational division. But in addition, investment in community programmes and in more research and evaluation are important to continually learn about and improve community-based programmes. The Hollow Water experience is dramatic evidence that good community-based programmes for offenders also benefit the communities that are their hosts and sponsors. The evidence seems clear that not only are community-based correctional programmes safe, effective and affordable, they contribute to the overall health and well being of the community as well.

Most promising for the future is the expansion and refinement of restorative justice approaches. In the years ahead more domestic and international experience and research will help maximize the contribution of these initiatives right across the criminal justice landscape. In so doing, as Hollow Water has shown us, that contribution will also be to the health and well-being of the communities that have fostered these important initiatives.

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**APPENDIX A: PURPOSE AND PRINCIPLES**

***Corrections and Conditional Release Act – Correctional Institutions:***

*Purpose  
and Principles*

[Purpose of  
correctional  
system](#)

3. The purpose of the federal correctional system is to contribute to the maintenance of a just, peaceful and safe society by
- (a) carrying out sentences imposed by courts through the safe and humane custody and supervision of offenders; and
  - (b) assisting the rehabilitation of offenders and their reintegration into the community as law-abiding citizens through the provision of programmes in penitentiaries and in the community.

*Principles*

[Principles that  
guide the  
Service](#)

4. The principles that shall guide the Service in achieving the purpose referred to in section 3 are
- (a) that the protection of society be the paramount consideration in the corrections process;
  - (b) that the sentence be carried out having regard to all relevant available information, including the stated reasons and recommendations of the sentencing judge, other information from the trial or sentencing process, the release policies of, and any comments from, the National Parole Board, and information obtained from victims and offenders;
  - (c) that the Service enhance its effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system, and through communication about its correctional policies and programmes to offenders, victims and the public;
  - (d) that the Service use the least restrictive measures consistent with the protection of the public, staff members and offenders;
  - (e) that offenders retain the rights and privileges of all members of society, except those rights and privileges that are necessarily removed or restricted as a consequence of the sentence;
  - (f) that the Service facilitate the involvement of members of the public in matters relating to the operations of the Service;
  - (g) that correctional decisions be made in a forthright and fair manner, with access by the offender to an effective grievance procedure;
  - (h) that correctional policies, programmes and practices respect gender, ethnic, cultural and linguistic differences and be responsive to the special needs of women and aboriginal peoples, as well as to the needs of other groups of offenders with special requirements;
  - (i) that offenders are expected to obey penitentiary rules and conditions governing temporary absence, work release, parole and statutory release, and to actively participate in programmes designed to promote their rehabilitation and reintegration; and
  - (j) that staff members be properly selected and trained, and be given
    - (i) appropriate career development opportunities,
    - (ii) good working conditions, including a workplace environment that is free of practices that undermine a person's sense of personal dignity, and
    - (iii) opportunities to participate in the development of correctional policies and programmes.

1992, c. 20, s. 4; 1995, c. 42, s. 2(F).

**Corrections and Conditional Release Act – Conditional Release:**

*Purpose  
and Prin-  
ciples*

[Purpose of  
conditional  
release](#)

**100.** The purpose of conditional release is to contribute to the maintenance of a just, peaceful and safe society by means of decisions on the timing and conditions of release that will best facilitate the rehabilitation of offenders and their reintegration into the community as law-abiding citizens.

[Principles  
guiding  
parole  
boards](#)

**101.** The principles that shall guide the Board and the provincial parole boards in achieving the purpose of conditional release are

- (a) that the protection of society be the paramount consideration in the determination of any case;
- (b) that parole boards take into consideration all available information that is relevant to a case, including the stated reasons and recommendations of the sentencing judge, any other information from the trial or the sentencing hearing, information and assessments provided by correctional authorities, and information obtained from victims and the offender;
- (c) that parole boards enhance their effectiveness and openness through the timely exchange of relevant information with other components of the criminal justice system and through communication of their policies and programmes to offenders, victims and the general public;
- (d) that parole boards make the least restrictive determination consistent with the protection of society;
- (e) that parole boards adopt and be guided by appropriate policies and that their members be provided with the training necessary to implement those policies; and
- (f) that offenders be provided with relevant information, reasons for decisions and access to the review of decisions in order to ensure a fair and understandable conditional release process.

**Criminal Code of Canada:**

[Purpose](#)

**718.** The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

R.S., 1985, c. C-46, s. 718; R.S., 1985, c. 27 (1st Supp.), s. 155; 1995, c. 22, s. 6.

[Fundamental principle](#)

**718.1** A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

R.S., 1985, c. 27 (1st Supp.), s. 156; 1995, c. 22, s. 6.

[Other sentencing principles](#)

**718.2** A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
  - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, color, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,
  - (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner or child,
  - (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim, or
  - (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organisation

shall be deemed to be aggravating circumstances;

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

1995, c. 22, s. 6; 1997, c. 23, s. 17; 2000, c. 12, s. 95.

**APPENDIX B: ALTERNATIVE MEASURES AND CONDITIONAL SENTENCES**

**Criminal Code of Canada**

Alternative Measures:

When alternative measures may be used	<p><b>717.</b> (1) Alternative measures may be used to deal with a person alleged to have committed an offence only if it is not inconsistent with the protection of society and the following conditions are met:</p> <ul style="list-style-type: none"><li>(a) the measures are part of a programme of alternative measures authorized by the Attorney General or the Attorney General's delegate or authorized by a person, or a person within a class of persons, designated by the lieutenant governor in council of a province;</li><li>(b) the person who is considering whether to use the measures is satisfied that they would be appropriate, having regard to the needs of the person alleged to have committed the offence and the interests of society and of the victim;</li><li>(c) the person, having been informed of the alternative measures, fully and freely consents to participate therein;</li><li>(d) the person has, before consenting to participate in the alternative measures, been advised of the right to be represented by counsel;</li><li>(e) the person accepts responsibility for the act or omission that forms the basis of the offence that the person is alleged to have committed;</li><li>(f) there is, in the opinion of the Attorney General or the Attorney General's agent, sufficient evidence to proceed with the prosecution of the offence; and</li><li>(g) the prosecution of the offence is not in any way barred at law.</li></ul>
Restriction on use	<p>(2) Alternative measures shall not be used to deal with a person alleged to have committed an offence if the person</p> <ul style="list-style-type: none"><li>(a) denies participation or involvement in the commission of the offence; or</li><li>(b) expresses the wish to have any charge against the person dealt with by the court.</li></ul>
Admissions not admissible in evidence	<p>(3) No admission, confession or statement accepting responsibility for a given act or omission made by a person alleged to have committed an offence as a condition of the person being dealt with by alternative measures is admissible in evidence against that person in any civil or criminal proceedings.</p>
No bar to proceedings	<p>(4) The use of alternative measures in respect of a person alleged to have committed an offence is not a bar to proceedings against the person under this Act, but, if a charge is laid against that person in respect of that offence,</p> <ul style="list-style-type: none"><li>(a) where the court is satisfied on a balance of probabilities that the person has totally complied with the terms and conditions of the alternative measures, the court shall dismiss the charge; and</li><li>(b) where the court is satisfied on a balance of probabilities that the person has partially complied with the terms and conditions of the alternative measures, the court may dismiss the charge if, in the opinion of the court, the prosecution of the charge would be unfair, having regard to the circumstances and that person's performance with respect to the alternative measures.</li></ul>

**Conditional Sentence of Imprisonment:**

Imposing of conditional sentence

**742.1** Where a person is convicted of an offence, except an offence that is punishable by a minimum term of imprisonment, and the court

(a) imposes a sentence of imprisonment of less than two years, and

(b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2,

the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the offender's complying with the conditions of a conditional sentence order made under section 742.3.

1992, c. 11, s. 16; 1995, c. 19, s. 38, c. 22, s. 6; 1997, c. 18, s. 107.1.

.....

Compulsory conditions of conditional sentence order

**742.3** (1) The court shall prescribe, as conditions of a conditional sentence order, that the offender do all of the following:

(a) keep the peace and be of good behaviour;

(b) appear before the court when required to do so by the court;

(c) report to a supervisor

(i) within two working days, or such longer period as the court directs, after the making of the conditional sentence order, and

(ii) thereafter, when required by the supervisor and in the manner directed by the supervisor;

(d) remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor; and

(e) notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.

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Optional conditions of conditional sentence order

- (2) The court may prescribe, as additional conditions of a conditional sentence order, that the offender do one or more of the following:
- (a) abstain from
    - (i) the consumption of alcohol or other intoxicating substances, or
    - (ii) the consumption of drugs except in accordance with a medical prescription;
  - (b) abstain from owning, possessing or carrying a weapon;
  - (c) provide for the support or care of dependants;
  - (d) perform up to 240 hours of community service over a period not exceeding eighteen months;
  - (e) attend a treatment programme approved by the province;
- and
- (f) comply with such other reasonable conditions as the court considers desirable, subject to any regulations made under subsection 738(2), for securing the good conduct of the offender and for preventing a repetition by the offender of the same offence or the commission of other offences.

### **APPENDIX C: TYPES OF RELEASE**

By law, all offenders must be considered for some form of conditional release during their sentence. Just because an offender is eligible for release, however, does not mean that the release will be granted – release on parole is never guaranteed. Conditional release does not mean the sentence is shortened, it means the remainder of the sentence may be served in the community under supervision with specific conditions.

The National Parole Board must assess an offender's risk when they become eligible for all types of conditional release, with the exception of Statutory Release. That's because the protection of society is the most important consideration of any release decision.

#### **Temporary absence:**

- Usually the first type of release an offender may be granted.
- May be escorted (ETA) or unescorted (UTA).
- Granted so offenders may: receive medical treatment; contact with their family; undergo personal development and/or counselling; and participate in community service work projects.

#### *Eligibility:*

- Offenders may apply for ETAs any time throughout their sentence.
- UTAs vary, depending on the length and type of sentence. Offenders classified as maximum security are not eligible for UTAs.
- For sentences of three years or more, offenders are eligible to be considered for UTAs after serving one sixth of their sentence.
- For sentences of two to three years, UTA eligibility is at six months into the sentence.
- For sentences under two years, eligibility for temporary absence is under provincial jurisdiction.
- Offenders serving life sentences are eligible to apply for UTAs three years before their full parole eligibility date.

#### **Day parole:**

- Prepares an offender for release on full parole or statutory release by allowing the offender to participate in community-based activities.

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- Offenders on day parole must return nightly to an institution or a halfway house unless otherwise authorized by the National Parole Board.

### *Eligibility:*

- Offenders serving sentences of three years or more are eligible to apply for day parole six months prior to full parole eligibility.
- First time penitentiary inmates serving a sentence for a non-violent offence are eligible for day parole after serving 6 months or 1/6th of the sentence (the greater) and must be released unless the Parole Board believes they will commit a violent offence.
- Offenders serving life sentences are eligible to apply for day parole three years before their full parole eligibility date.
- Offenders serving sentences of two to three years are eligible for day parole after serving six months of their sentence.
- For sentences under two years, day parole eligibility comes at one-sixth of their sentence.

### **Full parole:**

- Offender serves the remainder of the sentence under supervision in the community.
- An offender must report to a parole supervisor on a regular basis and must advise on any changes in employment or personal circumstances.

### *Eligibility:*

- Most offenders (except those serving life sentences for murder) are eligible to apply for full parole after serving either one-third of their sentence or seven years.
- First time penitentiary offenders serving a sentence for a non-violent offence must be released when first eligible unless the Parole Board believes they will commit a violent offence.
- Offenders serving life sentences for first-degree murder are eligible after serving 25 years.
- Eligibility dates for offenders serving life sentences for second-degree murder are set between 10 to 25 years by the court.

### **Statutory release:**

- By law, most federal inmates are automatically released after serving two-thirds of their sentence if they have not already been released on parole. This is called statutory release.
- Statutory release is not the same as parole because the decision for release is not made by the National Parole Board.
- Offenders serving life or indeterminate sentences are not eligible for statutory release.
- The Correctional Service of Canada may recommend an offender be denied statutory release if they believe the offender is likely to commit an offence causing death or serious harm to another person; a sexual offence involving a child; or a serious drug offence before the end of the sentence.

In such cases, the National Parole Board may detain that offender until the end of the sentence or add specific conditions to the statutory release plan.

Offenders must agree to abide by certain conditions before release is granted. These conditions place restrictions on the offender and assist the parole supervisor to manage the risk posed by an offender who is on conditional release.

Whether on parole or statutory release, offenders are supervised in the community by the Correctional Service of Canada and will be returned to prison if they are believed to present an undue risk to the public. The National Parole Board has the authority to revoke release if the conditions are breached.

**(Adapted from a *National Parole Board Fact Sheet, 1997*)**

# A SETTING FOR AUSTRALIAN DRUG DIVERSION PROGRAMMES — THE AUSTRALIAN DRUG STRATEGIC FRAMEWORK

*Stephan Vaughan\**

## I. INTRODUCTION

Australia, an island, similar to Japan, is the sixth largest country in the world and has a total area of 7,710,000 square km with approximately 19.6 million people. This equates to approximately the same size as the 48 mainland states of the United States of America and 50 per cent larger than Europe, however it has the lowest population density in the world – only two people per square kilometre. Canberra, where I am based, is the capital of Australia, and is situated on the eastern side of Australia in the Australian Capital Territory.

### A. Australian System of Government

Australia is a democratic Commonwealth constitutional monarchy with a federal system of government. By 1900 there were six self governing Australian colonies. In February 1901 the six colonies became the six states of the Commonwealth and joined together to form the new nation of Australia.

The Commonwealth Constitution gave certain powers to the new Commonwealth of Australia but the states maintained separate sovereignty, retaining responsibility for all other areas of activity not ceded to the Commonwealth. The two territory governments, the Australian Capital Territory (ACT) and the Northern Territory (NT), were created by legislation of the Commonwealth Parliament; the Northern Territory in 1978 and ACT in 1988.

The Australian Commonwealth and each of the states/territories have their own written constitutions which, together with conventions, traditions and common and statute law, established a democratic system of government. The Constitution defines the boundaries of law-making powers between the Commonwealth and the States/Territories.

Australia has three tiers of government, namely the Commonwealth, State and local. Each of these tiers have different priorities and responsibilities, although some of the powers given to the Commonwealth Parliament by the Constitution are exercised in conjunction with the States/Territories.

### B. Commonwealth

Australia's constitution provides for the separation of powers between the legislature, executive and judiciary. Three bodies were established by the Constitution to carry out these powers:

- the Parliament (the legislative power to make laws);
- the Commonwealth Executive (i.e., the Commonwealth Government executes authority to administer laws and carry out the business of government); and
- the Judiciary (the judicial power exercised by the courts).

The Commonwealth Parliament makes laws for all Australians and has responsibility for things such as foreign policy, customs, defence, goods and services tax, social services, migration, trade and currency.

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### **C. State/Territory**

State/Territory government responsibilities include health, law and order including corrections, education, emergency services, public transport and state/territory wide distribution of water, gas and electricity.

State governments raise revenue through indirect taxes (e.g. banking and gambling taxes) and by charging for services (e.g. public transport) but they also receive Commonwealth funding to carry out their responsibilities.

### **D. Local**

Local government regions are known as councils, shires, boroughs or municipalities and every State/Territory has such a system. Each region is administered by a council or group which makes decisions on local, town or city matters. They provide services and amenities such as garbage collection and disposal, building regulations, community health services, maintenance of parks and gardens, libraries, roads and drains and footpaths. Each local government authority levies rates on property owners within its region and receives Commonwealth and State grants.

It is important to outline the three tiers of Government in Australia because each one makes a contribution and has a role in addressing the misuse of illicit and licit drugs. For example:

- the Commonwealth Government is responsible for providing leadership in Australia's response to addressing drug misuse and this is illustrated through the development of the National Drug Strategic Framework that will be discussed in this lecture. The Commonwealth also plays an important role in international drug issues;
- State and Territory Governments are responsible for the delivery of police, health and education services to address drug misuse; and
- Local Governments respond to the needs of local communities by developing community safety initiatives, public place management strategies and supporting accords between police and health services.

## **II. HISTORY OF ILLICIT DRUGS IN AUSTRALIA**

Harmful drug use has many social, health and economic impacts on Australian society.

For example:

- Nearly one in five deaths in 1997 was drug related (including licit and illicit drugs).<sup>1</sup>
- The economic costs associated with harmful drug use, including prevention, treatment, loss of productivity in the workplace, property crime, theft, accidents and law enforcement activities, amount to billions of dollars in Australia annually;
- A relatively large proportion of the funds spent on dealing with harmful drug use are spent on law enforcement, the courts and correctional systems; and
- In addition to the economic and health costs of harmful drug use are the intangible social costs, such as damage to family and other relationships.

The development of policies governing drug use in Australia has been an evolutionary process.

In Australia, a history of illicit drugs shows that prior to Federation in 1901, opium and cocaine were as widely available as alcohol and tobacco, although they were usually consumed in patent medicines.<sup>2</sup> At the turn of the 20th century various states introduced legislation to ban opium use.

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<sup>1</sup> *Single & Rohl 1997*

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Throughout the 1960s and 1970s state/territory legislation enacted to deter illicit drug use was toughened, and followed a prohibition theme. By the early 1980s, HIV/AIDS and other blood borne viruses were gaining in prevalence. Although HIV was initially viewed as a disease largely relevant to the homosexual population it was quickly established that HIV transmission is effected through injecting drug users sharing needles and syringes and it was clear that the previous prohibition policies were not effective.

A change of Australia's Government in 1983 created the opportunity for a re-evaluation of drug policy. In 1985, the then Prime Minister committed the Commonwealth Government to establishing drug use as a priority area of concern. At this stage drug issues were considered to be the responsibility of Health, rather than a law and order issue. As mentioned previously, both health and law and order services fall within State/Territory Government responsibilities.

In order to establish a National approach to drug issues that included State and Commonwealth representation and responsibility, a Conference was convened in 1985 between all of the State Premiers and the Prime Minister to discuss the drug problem. This meeting resulted in the creation of the National Campaign Against Drug Abuse (NCADA) which the Commonwealth and all State/Territory governments agreed to fund for three years.

The Commonwealth Government contributed 50% of the funding to NCADA programmes and the remainder consisted of State/Territory contributions. The cost-sharing arrangements were a major incentive for the states to combine and to reach compromises that would provide for the development of a uniform policy agenda across the country. Activities of a national nature, such as mass media campaigns were funded by the Commonwealth Government alone.

NCADA policies were determined by the Ministerial Council on Drug Strategy, which recognised that a coordinated response to Australia's drug issues required both health and law enforcement agencies to work together cooperatively.

### **III. MINISTERIAL COUNCIL ON DRUG STRATEGY**

The Ministerial Council on Drug Strategy (MCDS) brings together Commonwealth, State and Territory Ministers responsible for health and law enforcement to collectively determine national policies and programmes to reduce the harm caused by drugs.

The Ministerial Council on Drug Strategy is the peak policy and decision-making body in relation to both licit and illicit drugs in Australia and is one of the key elements of Australia's National Drug Strategy. The Council ensures that Australia has a nationally coordinated and integrated approach to reducing the harm arising from the use of drugs. The Council's collaborative approach has been designed to achieve national consistency in policy principles, programme development and service delivery.

Between 1985 and 1991 under the NCADA, a range of national guidelines were developed and endorsed by the Ministerial Council on Drug Strategy including national health policy statements on tobacco, alcohol and illicit drugs. Regular independent evaluations identified certain groups as requiring special attention, and the initial campaign identified women, Aboriginal and Torres Strait Islander Peoples, young people, and prisoners as priority groups.

In the initial years of the National Campaign Against Drug Abuse, programmes and decisions were mainly based on health issues. NCADA underwent a variety of evaluations with the second evaluation of the campaign in 1991 concluding that there was a greater need for cooperation between the health and law enforcement sectors. The campaign was henceforth to be called the National Drug Strategy.

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<sup>2</sup> *Crime & the Australian Justice System in Australia: 2000 and Beyond* Chp. 5 Drug Trends and Policies, T. Makkai

The National Drug Strategy reaffirmed both its commitment to harm minimisation and the fact that alcohol and tobacco were responsible for most drug-related deaths and the costs associated with drug abuse.

Three key policy goals were laid out in the strategic plan:

- To minimise the level of illness, disease, injury and premature death associated with the use of alcohol, tobacco, pharmaceutical and illicit drugs.
- To minimise the level and impact of criminal drug offences and other drug-related crime, violence and antisocial behaviour within the community.
- To minimise the level of personal and social disruption, loss of quality of life, loss of productivity and other economic costs associated with the inappropriate use of alcohol and other drugs.

The National Drug Strategy called on each of the states and territories to develop 3-5 Year Strategic Plans with Annual Action Plans that would reflect local priorities and activities within the overall national policy.

#### **IV. NATIONAL DRUG STRATEGIC FRAMEWORK**

The National Drug Strategy has evolved over time as Australia has learnt more about drug issues.

In 1997, a further evaluation of the National Drug Strategy was undertaken. This evaluation involved extensive consultation with the community, industry, government and non-government sectors and resulted in the development of the current National Drug Strategic Framework (1998-99 to 2002-2003) which was endorsed by the Ministerial Council on Drug Strategy in November 1998.

The National Drug Strategic Framework is the advisory structure governing the National Drug Strategy and provides:

- A coordinated, integrated approach;
- A partnership approach;
- A balanced approach;
- Evidence-based practice; and
- Social justice.

The Framework presents a shared vision and a basis for cooperation and coordinated action to reduce the harm caused by drugs in Australia over a five year period until the year 2003.

##### **A. Harm Minimisation – a Key Principle**

Harm minimisation has been the key principle underpinning Australia's National Drug Strategy since 1985. This approach was reaffirmed in the 1997 evaluation of the National Drug Strategy as one of the key features contributing to its success.

Harm minimisation refers to policies and programmes aimed at reducing drug-related harm, by improving health, social and economic outcomes for both the community and the individual, and encompasses three basic but integrated approaches including:

- Supply-reduction strategies designed to disrupt the production and supply of illicit drugs;
- Demand-reduction strategies designed to prevent the uptake of harmful drug use, including abstinence-oriented strategies to reduce drug use;
- Harm-reduction strategies designed to reduce drug-related harm for particular individuals and communities.

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Harm minimisation focuses on both licit and illicit drugs and acknowledges the poly drug use of individuals. It includes preventing anticipated harm as well as reducing actual harm. Harm minimisation is a comprehensive approach to dealing with drug-related harm, involving a balance between supply-reduction, demand-reduction and harm-reduction strategies.

A comprehensive harm-minimisation approach has to take into account three interacting components:

- the individuals and communities involved;
- the individual's social, cultural, physical and economic environment; and
- the drug itself.

As Australia has a variety of localised drug markets, as opposed to one market, harm minimisation approaches will vary according to population group, time, locality and the changing market environment.

Governments have a responsibility to develop and implement public health and law-enforcement measures designed to reduce the harm that illegal risk behaviours such as injecting drug use can cause, both to individuals and to the community. Harm reduction strategies specifically target the individual using drugs and promote initiatives that benefit the wider community.

A key issue for police, the judiciary and prison authorities is that in attempting to prevent one harm they inadvertently cause another greater harm. For example, by jailing injecting drug users it may restrict access to drugs (and that is arguable), but it will certainly expose the convicted person to unsafe injecting practices and blood borne viruses such as HIV/AIDS and Hepatitis.

## **B. Three Key Strategies**

### **1. Supply Reduction**

Supply-reduction strategies aim to disrupt both the supply of illicit drugs entering Australia and the production and distribution of illicit drugs within Australia.

On a national level the Australian Customs Service and the Australian Federal Police are key agencies in implementing strategies, that are aimed at disrupting drug trafficking operation offshore, apprehending drug traffickers and seizing illicit drugs. Improved technology, together with cooperation and joint operations with international law enforcement agencies have resulted in substantial increases in illicit drug seizures at the Australian border over the last three years.

Funding through the National Illicit Drug Strategy has provided additional resources to these agencies for supply-reduction initiatives such as the Asia/Pacific Group on Money Laundering Secretariat which is a regional initiative in which Australia has taken a leading role. Membership includes South Korea, India, Thailand and the Philippines. The Group is concentrating on implementation of anti-money laundering strategies in member jurisdictions, the provision of practical assistance such as training and technical assistance and the exchange of information to combat money-laundering methodologies. It brings together representatives from legal, financial and law enforcement authorities in member jurisdictions.

Within each Australian State and Territory police services are the lead agencies in the implementation of strategies that increase seizures of drugs and disrupt local drug markets. Police services have played an instrumental role in increasing seizures of illicit drugs over the last three years, particularly the detection and dismantling of clandestine drug laboratories, and the identification and apprehension of illicit drug suppliers.

Supply reduction strategies also apply to limits on access to and availability of licit drugs such as tobacco and alcohol. In Australia there is legislation regulating the sale of alcohol and tobacco to people under the age of 18 years.

## 2. Demand Reduction

Demand reduction is a broad term used for a range of policies and programmes which seek a reduction of desire, and of preparedness to obtain and use illegal drugs. Demand for drugs may be reduced through prevention and education programmes to dissuade users or potential users from experimenting with illegal drugs and/or continuing to use them.

Prevention programmes such as school-based drug education and Police and Court diversion programmes are designed to reduce the desire and use of illegal drugs. Treatment programmes that are largely focused on drug substitution therapies, such as methadone, naltrexone and buprenorphine are also examples of demand reduction strategies that are aimed at facilitating abstinence.

## 3. Harm Reduction

Harm-reduction strategies are designed to reduce the impact of drug-related harm for particular individuals and communities. Levels of drug use among individuals and communities can vary greatly – from no use at all to consumption at harmful levels.

The following are two examples of harm reduction strategies that have been implemented in Australia to minimise the harm that may be caused to injecting drug users:

- Needle and Syringe programmes have been established and are designed to reduce the harm of the spread of blood borne viruses such as HIV and Hepatitis by providing injecting drug users with sterilised needles and injecting equipment. Police have policies in place to ensure that needle and syringe programmes can operate openly without fear of police harassment of staff or clients attending the service to pick up needles.
- Australia's HIV/AIDS epidemic is now about 16 years old, and its cost has been high: approximately 5700 Australians have died and a further 16 700 are living with chronic HIV infection (National Centre in HIV Epidemiology and Clinical Research 1999). Our response to the virus has been characterised by a partnership, involving governments, affected communities, researchers, educators and health care professionals. The success of this partnership-based response is recognised worldwide.

Australia's prompt and rational actions have placed it at the forefront of best-practice population health responses to HIV/AIDS in the world, and the mobilisation of affected communities has been central to the effectiveness of our response. This is demonstrated by the relatively low numbers of HIV/AIDS related deaths and morbidity over the life of the pandemic in comparison to world wide figures for 1998.

Australia's experience of HIV/AIDS does, however, need to be viewed in the context of a global pandemic.

- By the end of 1998 there were 33.4 million people living with HIV/AIDS – a 10% increase on the 1997 figure;
- In 1998 there were 5.8 million new infections – that translates to 16000 new infections a day, or 11 every minute;
- In 1998 some 2.5 million people died from HIV/AIDS-related illnesses; and
- In 1998 at least 2.7 million people aged 15 to 21 years became infected with the virus, which since its first emergence has infected over 4 million infants and children under the age of 15 years (UNAIDS-WHO 1998).<sup>3</sup>

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<sup>3</sup> *National HIV/AIDS Strategy 1999-2000 to 2003-2004*

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Police do not attend non fatal drug overdoses except when called to assist ambulance staff, in order to encourage users or family members and friends of drug users to call for assistance when drug overdoses occur.

For any drug issue there may be a variety of strategies that can be introduced to reduce the harm for particular population groups such as targeted media campaigns, development programmes for professionals, distribution of information products, community development projects, peer education, skills building, and employment programmes. These programmes are often based in settings such as youth centres, prisons, places of employment, gyms and liquor outlets.

### **C. Priority Areas**

The National Drug Strategic Framework and the complementary Tough on Drugs initiative have identified 8 priority areas that require appropriate responses to address the misuse of drugs in the Australian community.

It is in this context that you will again see that the Diversion initiative was developed and implemented in response to the need to address particular priority areas.

1. Increasing the Community's Understanding of Drug-related Harm was identified as a priority because of the confusion in the wider community about drug-related harm.

Health education campaigns such as the National Illicit Drugs 'Tough on Drugs' Parents' Campaign, have been used to increase the public's understanding of drug-related harm and the wider impacts of drug use on individuals, families and communities.

The education campaigns are also designed to increase the community's understanding and acceptance of, the broad range of prevention, treatment and harm-reduction programmes and services and of evidence-based approaches to new treatment options.

Similar health education campaigns have been used to increase the public's understanding of licit drugs, such as tobacco and alcohol. Extensive and targeted mass media campaigns and interventions adopted by general practitioners have seen tobacco usage at its lowest levels, at less than 1 in 5 Australians over the age of 14 years.<sup>4</sup>

2. Building Partnerships is recognised as a hallmark of the success of Australia's National Drug Strategy to date. It was a priority therefore to build on the successful partnerships that had been developed between the three tiers of Government and health and law-enforcement agencies by enhancing partnerships with other sectors of government, community-based organisations and industry bodies.

Cooperation between and within a wide range of sectors of Australian society is required to effectively address the misuse of drugs. This is being achieved by:

- Facilitating representation of individuals from community-based organisations, business and industry and affected communities on bodies that provide advice to the Ministerial Council on Drug strategy;
- Facilitating mechanisms at the three government levels to encourage organisations and individuals outside government to become involved in the development of policies and programmes to address the misuse of drugs; and
- Disseminating information about successful models of community action, to help communities develop local responses to drug-related harm.

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<sup>4</sup> 2001 National Drug Strategy Household Survey

3. Links with other Strategies is a key priority that recognises there are a number of other strategies targeting drug-related harm, subsequently there is a need to avoid duplication and to ensure integration and consistency.

The following examples are provided to demonstrate of the many links that have been established in this regard:

- The Australian National Public Health Partnership which supports national public health interventions and strengthens public health capacity generally;
- the Australian Lead Ministers National Anti-Crime Strategy and the National Campaign Against Violence and Crime which is a national mechanism for crime-prevention planning and research and aims to prevent violence and crime and reduce fear of violence and crime.
- The Australian National Co-morbidity Project which links drugs with mental health areas.
  - MindMatters is a secondary mental health programme which seeks to develop whole of school' approach to building mental resilience and suicide prevention with synergies with drug prevention issues especially relating to smoking.
- National Supply Reduction Strategy for Illicit Drugs. This strategy has evolved since 1997 to include heroin and all other illicit drugs and provides a broad strategic framework to address a range of supply reduction issues at the national level. It recognises that there will be some variation in the way that the Strategy is implemented in each jurisdiction as a result of factors such as organisational differences, as well as differences in the nature of both drug law enforcement and drug supply problems.

4. Supply Reduction – as previously mentioned, these strategies aim to disrupt both the supply of illicit drugs entering Australia and the production and distribution of illicit drugs within Australia.

5. Preventing Use and Harm – These strategies aim to prevent drug use and minimise the harmful affects of drug use by users and the community.

Australian school based drug education is a key prevention strategy aimed to prevent harmful drug take up and use and prevent drug-related harm, targeting children who, for the majority of cases have not yet embarked on a drug taking career.

In some Australian prisons, a graduated penalty system has been established for use or possession of drugs that provides for harsher penalties for users of 'harder' drugs such as heroin, cocaine and amphetamines, and lesser penalties for use of drugs such as cannabis. This strategy was implemented in an effort to prevent the harmful spread of blood borne viruses such as HIV and Hepatitis as a result of graduation of prisoners to injecting drug use.

The Illicit Drug Diversion Initiative emerged as a strategy to prevent and minimise the harmful affects of drug use by directing drug users to education and treatment to alter and ideally cease their drug taking behaviour.

6. Access to Treatment is an integral priority, because of the importance of providing treatment services to people who are drug dependent to reduce drug use and prevent drug related harm.

There is an expectation in the Australian community among drug users and their families that a range of treatment services will be accessible, regardless of age, race, gender, sexual preference and location. There are many strategies in place in Australia to facilitate this priority, including:

- Development of a range of effective alternative pharmacotherapies for the treatment of opioid dependence;

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- Ensuring that treatment services are evidenced-based and provided by experienced and qualified staff;
- The development and tailoring of services for specific groups, such as women, youth, indigenous people and rural and remote residents;
- Increasing treatment through general practitioners and hospitals;
- Developing stronger links between treatment services and mental health services for the management of drug users with co-existing mental health problems; and
- Improving access to treatment for people in the criminal justice and juvenile justice systems.

7. Professional Education and Training is a key priority because a wide range of criminal justice, health, welfare and education workers are exposed to people who experience drug-related harm.

Various strategies have been developed to accommodate this range of professions who may not have the skills, training and confidence, or see it as their responsibility to respond directly to health, social and psychological harms caused by drug use.

With the introduction of the COAG Illicit Drug Diversion Initiative it was recognised that there may be a shortage of available treatment places to meet the expected demand and governments have invested in capacity building of the health workforce, particularly in the area of drug and alcohol treatment.

8. Research and Data Development is another key priority as responses by health, police and education services to redress drug-related harm should reflect evidence-based practice that is informed by quality research, evaluation and assessment.

Funding is provided through various sources for scholarships to encourage research in the illicit and licit drugs field and to build the expertise of Australian researchers in this area, together with direct project grants for specific projects.

Australia has the good fortune to have three research centres of excellence to provide a core research programme that facilitates research into both illicit and licit drug issues. The Research Centres, which have an international reputation for excellence, are all attached to Universities, and engage in a broad range of research, which is published widely. They are located in three separate Australian states and their website addresses are provided below. I encourage you to visit these sites as the Centres.

- The National Drug and Alcohol Research Centre (Sydney, New South Wales)  
[www.ndarc@unsw.edu.au](mailto:www.ndarc@unsw.edu.au);
- The National Drug Research Institute (Perth, Western Australia)  
[www.ndri@curtin.edu.au](mailto:www.ndri@curtin.edu.au);
- The National Centre on Education and Training in Addiction (Adelaide, South Australia)  
[www.nceta@flinders.edu.au](mailto:www.nceta@flinders.edu.au).

The National Drug Law Enforcement Research Fund is another mechanism that facilitates the funding of research in a number of areas that are of significant interest to the Australian drug law enforcement sector.

The following provides a brief summary of some of the areas of study that are currently underway or recently completed:

(i) *The heroin shortage*

A research project to study the causes and impacts of the heroin shortage that has affected particularly the Australian eastern seaboard from early 2000. Australia is believed to be the only country that has been affected by such a heroin shortage. This research will provide a unique insight

into the supply and demand dynamics of the heroin market in Australia as well as the interrelatedness of this market with other illicit drug markets.

(ii) *Drugs and driving*

Three projects have been funded in this area. Two of these projects are examining drug driving among police detainees and injecting drug users respectively. The third is evaluating the efficacy of the Standardised Field Sobriety Test in detecting impairment caused by cannabis alone and cannabis in combination with alcohol.

(iii) *Amphetamine type substances (ATS)*

There are a number of important issues that are emerging for policing concerning ATS. The most important of these is the emergence of more potent forms of ATS than were previously available. In this regard, funding has been provided to allow for the expansion of the Illicit Drug Reporting System in the states of New South Wales and Queensland to include a module on amphetamine type stimulants which are used as party drugs, particularly at rave parties, for the period 2000/01 and 2001/02.

Research is currently underway into: Cocaine markets; components of heroin price; Ecstasy markets; Benzodiazepine and pharmaceutical opiate use and its relationship to crime; petrol sniffing in Aboriginal and Torres Strait Islander communities; and cannabis and other illicit drug use in Aboriginal and Torres Strait Islander communities.

The results of these studies will impact on diversion, particularly the opportunity to divert drug users who are at an early stage of their drug use career from the criminal justice system into education and treatment.

## **V. NATIONAL ILLICIT DRUG STRATEGY – TOUGH ON DRUGS**

The National Drug Strategic Framework is further complemented by the National Illicit Drugs Strategy, titled 'Tough on Drugs' that was launched by the Australian Prime Minister in 1997.

The Prime Minister made a commitment to Australian families to make every effort to tackle the drug problem in the Australian community. The Tough on Drugs initiative is the Commonwealth Government's commitment to addressing the misuse of illicit drugs and has been facilitated by the contribution of a total of \$625m to a range of directed to law enforcement, education, health and research services to identify and apprehend drug traffickers, rehabilitate those affected by illicit drugs and educate young people, families and the community about the important drug prevention message.

It is this funding, in the context of rehabilitating those affected by illicit drugs, that has enabled the implementation of the Diversion initiative across Australia's States and Territories, which will be covered in more detail in the following lecture.

## **VI. GOVERNANCE**

### **A. Council of Australian Governments (COAG)**

The Council of Australian Governments (COAG) comprises the Prime Minister, Premiers of the six States, Chief Ministers of the two Australian Territories, and the President of the Australian Local Government Association.

The role of COAG is:

- To increase cooperation among governments in the national interest;
- To facilitate cooperation among governments on reforms to achieve an integrated, efficient national economy and single national market;
- To continue structural reform of government and review of relationships among governments consistent with the national interest; and

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- To consult on major issues by agreement such as:
  - Major whole-of-government issues arising from Ministerial Council deliberations; and
  - Major initiatives of one government which impact on other governments.

**B. Ministerial Council on Drug Strategy**

As previously detailed the Australian Ministerial Council on Drug Strategy is the peak policy and decision making body in relation to licit and illicit drugs in Australia.

**C. Intergovernmental Committee on Drugs**

The Intergovernmental Committee on Drugs (IGCD) supports the Ministerial Council on Drug Strategy. The IGCD consists of senior officers representing health and law enforcement in each Australian State/Territory (appointed by their respective health and law enforcement Ministers) and people with expertise in other identified priority areas such as education and indigenous issues. The Committee provides policy advice to Australian Ministers on the full range of drug-related matters and is responsible for the implementation of the Australian National Drug Strategic Framework.

The IGCD has a number of specialist expert advisory committees and working groups to ensure the best outcomes of its work.

The IGCD has progressed their work through their partnership with the Expert Advisory Committees and their liaison with the Australian National Council on Drugs to ensure the non-government sector is involved in the Framework.

**D. Australian National Council on Drugs**

The Australian National Council on Drugs (ANCD) was established by the Prime Minister in 1998 following the 1997 Evaluation of the National Drug Strategy 1993-97, in recognition of the need to effectively engage the non-government sector and strengthen the partnership between the government and non-government sectors.

The Council is a high level expert advisory body with broad representation, including government and non government organisations, experts and other key stakeholders with representation from law enforcement, health, social welfare and family interests.

The Council reports annually to the Prime Minister and Australian Ministerial Council on Drug Strategy on progress with its workplan and provides independent advice on drug related matters. The Australian National Council on Drugs works with the Intergovernmental Committee on Drugs to achieve the objectives of the National Drug Strategic Framework. The executive members of both committees meet on a regular basis to ensure an adequate exchange of information about workplans and progress on issues.

**VII. NATIONAL DRUG STRATEGY UNIT**

The National Drug Strategy Unit (NDSU) established following the 1997 Review of the National Drug Strategy, has primary carriage at the Commonwealth level for the co-ordination of activities under the National Drug Strategic Framework and is dedicated to assisting the National Drug Strategy Governance structure to provide leadership and meet the objectives of the Framework.

- The National Drug Strategy Unit's role is to contribute to the reduction in harm caused by drug misuse through:
- the development and coordination of policies, including position and options papers on issues of national significance for the consideration of the Ministerial Council on Drug Strategy and the Intergovernmental Committee on Drugs;
- working with a diverse range of groups including:

- National Expert Advisory Committees and sub-committees/reference groups;
  - the ANCD which represents the Non-Government Sector; and
  - Commonwealth, State and Territory agencies and the National Drug Research Centres of Excellence;
- the provision of policy advice that reflects an appropriate balance of health and law enforcement input;
  - liaison with Australian agencies whose practices may impact on policy directions of both health and law enforcement agencies; and
  - the promotion of the law enforcement role and partnership in the Framework.

### **VIII. NATIONAL DRUG RESEARCH CENTRES OF EXCELLENCE**

Research is a key priority area under the National Drug Strategy as Governments seek to ensure that policy decisions are based on sound evidence.

In 1986 the first two national research centres, one in Perth, Western Australia and the other in Sydney, New South Wales were established under NCADA.

The National Drug Research Institute (NDRI) in Western Australia concentrates primarily on research into the prevention of drug misuse and the National Drug and Alcohol Research Centre (NDARC) in New South Wales concentrates primarily on research into the treatment and rehabilitation of drug misusers.

Funding is provided by the Commonwealth Government through the National Drug Strategy Unit for the core research programmes of these Research Centres. The Centres facilitate research and disseminate their findings on a national and international basis. Examples of this research can be found in the National Drug Strategy Monograph Series. A list of the series is provided as an Attachment to this paper.

The Australian National Drug Research Centres produce technical papers on a variety of subjects associated with drugs that inform both the government and non-government sectors.

In 1999 the National Centre for Education and Training on Addiction (NCETA) became the third Research Centre of Excellence under the National Drug Strategic Framework to receive funding from the Commonwealth Government. This Centre aims to improve understanding of models of practice change and build the capacity of the workforce to respond effectively to alcohol and other drug related harms, and to improve the quality of education and training among frontline workers on preventing and responding to drug related harm. Their research in Workforce Development includes workshops, seminars and training material to facilitate the advancement of workforce development in the alcohol and other drugs field.

The following are some examples of research that have been undertaken by the National Drug Research Centres, that have significantly informed policy decisions and practices that seek to redress drug related harms.

1. National Evaluation of Pharmacotherapies for Opioid Dependence

The National Drug and Alcohol Research Centre in Sydney, New South Wales has recently completed extensive clinical studies of a range of opioid detoxification and maintenance treatments with a total of 1500 participants. The evaluated pharmacotherapies included buprenorphine, methadone, LAAM and naltrexone.

This nationally co-ordinated evaluation provides information on the effectiveness and cost-effectiveness of various treatment options for opioid dependence thereby contributing to the evidence

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base upon which decisions regarding availability and implementation of different treatment options can be made.

2. Temazepam Injecting in Australia

The National Drug and Alcohol Research Centre in Sydney is currently undertaking a study of temazepam injecting following a high take-up rate of use in conjunction with Australia's current heroin shortage. The purpose of the study is to establish the changes in benzodiazepine use following regulatory changes on 1 May 2002 that restrict the availability of the temazepam gel capsules.

The study will gather information about injecting drug users patterns of both temazepam and other benzodiazepines following the regulatory change. An analysis of availability and sources on the illicit black market will also be included.

3. Impact of Changes to Cannabis Laws in Western Australia

The National Drug Research Institute in Perth, Western Australia is currently undertaking a pre-post evaluation of the changes to legislation and regulations for minor cannabis offences.

The evaluation will investigate police implementation of the legislative and regulatory changes; drug market effects; impact on regular cannabis users; knowledge and attitude regarding cannabis and the law; effect on school children; and effect on apprehended cannabis users.

This study is particularly relevant to the further development of Australian Diversion Programmes.

## IX. KEY DATA COLLECTIONS

As part of the evidence gathering required to make meaningful policy decisions, the National Drug Strategic Framework is supported by a number of key data collections. Whilst the methodology and the financing of the collections differ, the data collections collectively provide a picture of the current use of drugs in the Australian community and provide an early warning system to enable effective direction to policy makers in developing advice on drug prevention, education and treatment.

Some of the key national data collections funded by the Commonwealth Government include:

1. Clients of Treatment Service Agencies (COTSA)

This collection is intermittent and is conducted by the National Drug and Alcohol Research Centre. It monitors the changes in demographic characteristics of people using drug and alcohol treatment services and is a one-day census of clients (both users and friends/relatives of users) of all drug and alcohol treatment agencies across Australia.

There are in excess of 500 treatment services and agencies in operation in Australia. These agencies are asked to complete a survey form providing details about each client seen that day. Data are collected on service provided, principal drug problem, drugs injected during the past 12 months, age, sex, country of birth, language spoken at home, employment status, and usual residential postcode.

This collection provides an overview of the number of types of drug users in treatment. It also identifies changes in the drugs used, which vary considerably across the Australian states and territories. This collection is a valuable tool for assessing the current and future needs of treatment services, and identifying issues that require particular attention.

A useful example is the heroin shortage that is being experienced in Australia at the moment, and subsequent increase in the use of benzodiazepines and methylamphetamines. This change in drug availability and use produces challenges for treatment services' ability to manage the induced aggressive and psychotic behaviour of methylamphetamine users.

2. Illicit Drug Reporting System

This collection is conducted by the National Drug and Alcohol Research Centre and allows the monitoring of emergent trends in drug use and markets in all Australian States and Territories.

Annual data is collected separately in each jurisdiction and are coordinated nationally by the National Drug and Alcohol Research Centre (NDARC).

The collection provides details on drug of choice, route of administration and type of illicit drug use, drug-related problems, price and purity, and reactions to government strategies. The collection includes input from key informants such as treatment service providers, structured interviews with injecting drug users and ethnographic research, and the inclusion of existing health and law enforcement indicators.

The IDRS is a strategic early warning system used widely by policy makers and planners in both the health and law enforcement sectors of government. It assists all levels of government to coordinate appropriate policy and programme responses to emerging issues, such as the recent decline in heroin availability and the emergence of high grade methylamphetamine, cocaine and the increased use of benzodiazepines among injecting drug users.

### 3. National Drug Strategy Household Survey

This survey is conducted by the Australian Institute of Health and Welfare and the collection monitors the public's experience of and attitudes toward drug use. Information is collected from Australian households on a wide variety of drug related matters including attitudes to alcohol and other drugs, awareness, knowledge, use and behaviours. For each drug, respondents are asked questions in relation to their age of first use, place of use, where the drug was obtained, prevalence of use among friends, days lost from work or education because of drug use and health problems experienced.

This survey is conducted tri-annually and the most recent survey conducted in 2001 included responses from over 27,000 Australians aged 14 years and over.

### 4. National Minimum Data Set for Diversion

This collection is part of the national evaluation and monitoring strategy for the COAG Illicit Drug Diversion Initiative. Collection of this data by each jurisdiction will enable an analysis of the flow of participants, including the type of interventions they participate in, through the police and health systems and to facilitate ongoing monitoring and evaluation of the Diversion process.

## **X. DIVERSION**

In April 1999, the Council of Australian Governments (COAG) "agreed to work together to put in place a new nationally consistent approach to drugs in the community involving diversion of drug offenders by police to compulsory assessment."

The Council of Australian Governments requested the Ministerial Council on Drug Strategy to develop a national framework for the diversion initiative. This national framework draws on the work of a number of expert working groups which were chaired by members of the Intergovernmental Committee on Drugs (IGCD) and included representatives of the IGCD and the Australian National Council on Drugs (ANCD).

The framework ensures a nationally consistent approach to diversion whilst recognising that law enforcement, drug assessment, education and treatment services are jurisdictionally-based and have different legislative, practice and cultural circumstances.

On 18 November 1999, the Prime Minister announced that COAG had endorsed the framework for the Illicit Drug Diversion Initiative.

### **A. Framework for COAG Diversion Initiative**

The Council of Australian Governments agreed that:

- The Commonwealth would provide funding for significantly expanded early intervention treatment and rehabilitation;

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- There would be shared Commonwealth and State/Territory funding for assessment services; and
- States and Territories would provide the law enforcement basis for diverting offenders into treatment programmes and would maintain their existing health and education effort.

The Commonwealth funding for assessment, treatment, education and capacity building and training totals approximately \$105 million over four years and is being rolled out to allow progressive implementation of the initiative. The basis and process for allocation of funds within jurisdictions is being determined through bilateral discussions.

**B. Diversion Principles**

In developing the diversion initiative, it was important to recognise state and territory autonomy whilst still striving for a national approach. In recognition of this a set of nineteen principles under which the diversion initiative would function were developed by the Inter-governmental Committee on Drugs in conjunction with the Australian National Council on Drugs.

The following principles were endorsed by the Ministerial Council on Drug Strategy to underpin the joint Commonwealth/State/Territory development of an approach to divert illicit drug users from the criminal justice system to education or assessment, with a view to treatment as required.

PRINCIPLE 1	The approach should operate within a broad national framework, which allows jurisdictional flexibility within available resources.
PRINCIPLE 2	The approach should be structured as far as possible on a 'whole of state' basis, progressively implemented, according to identified priority areas.
PRINCIPLE 3	The approach is contingent upon a strong working relationship between the criminal justice system and health, consistent with the principles and partnerships set out in the National Drug Strategic Framework 1998-99 to 2002-2003
PRINCIPLE 4	The approach will recognise the needs of local communities and of illicit drug users with special requirements, such as indigenous Australians
PRINCIPLE 5	The approach should be linked with other systems, such as employment, training and housing, with mainstream Commonwealth, State and Territory (hereafter 'State') programmes considering options for prioritising and assisting access by illicit drug users who have been diverted.
PRINCIPLE 6	The approach should, wherever possible, build on existing structures and practices to ensure value for money within the spirit of the COAG Communique.
PRINCIPLE 7	Implementation of the approach is dependent upon police being appropriately empowered and should take account of its impact on existing legislation/practices/programmes to ensure positive outcomes.
PRINCIPLE 8	Diversion programmes must be sustainable, based on sound design, engage stakeholders, including the local community, and invest in workforce developments.
PRINCIPLE 9	Any diversion strategy implemented at the jurisdictional level, under the COAG initiative, will take account of the needs of juvenile and adult offenders.
PRINCIPLE 10	The approach will build on collaborative relationships, while acknowledging a clear delineation of roles between police who divert, and health professionals who assess and treat.
PRINCIPLE 11	Coordinated police diversion requires a clear understanding of procedures and protocols to be followed for the management of the diversion process.

PRINCIPLE 12	Successful implementation will require each jurisdiction to assess the impact of diversion on police service operations and resources.
PRINCIPLE 13	Police will continue current public health practices with respect to emergency situations and limiting the spread of blood-borne diseases in accordance with the principles set out in the National Drug Strategic Framework 1998-99 to 2002-2003.
PRINCIPLE 14	The approach should offer a range of appropriate and best practice drug treatment services.
PRINCIPLE 15	Required treatment participation should not be disproportionately more onerous for the individual than the criminal justice system alternatives.
PRINCIPLE 16	The approach must include post-intervention support (e.g., discharge planning, planned follow up and appropriate referrals to a range of services).
PRINCIPLE 17	The approach should acknowledge an on-going commitment to the training/education needs of all stakeholders involved in the diversionary process, including police.
PRINCIPLE 18	The approach must be monitored and evaluated to inform best practice and continuous improvement and reflect the intent of the COAG Communique and the goals of the national drug strategy.
PRINCIPLE 19	The approach will be responsive to changing circumstances and emerging needs.

### C. Summary of Diversion Process

Under the diversion initiative illicit drug offenders may be diverted into compulsory drug education or assessment if they comply with the following criteria:

#### 1. Minimum Criteria for Determining Eligibility for Diversion

The primary target group will be illicit drug users who have little or no past contact with the criminal justice system for drug offences, and who have been apprehended by police for possession and/or use of small quantities of any illicit drug (those quantities to be defined at the jurisdictional level). Eligibility criteria to be developed by each jurisdiction and applied by police will, at a minimum, include:

- Sufficient admissible evidence of the offence;
- Admission to the offence;
- Use and or possession of illicit drugs (jurisdictions may decide to go beyond this minimum level of drug offence);
  - The diversion programme will apply to all illicit drugs and such other drugs and drug use as may be agreed bilaterally, e.g. the illicit use of licit drugs, such as abuse of benzodiazepines.
- No history of violence
  - Offenders with a violent history will not be part of the target group; however, there may be situations where this is not appropriate, e.g. where the history of violence is very much in the past; and
- Informed consent by the offender to diversion
  - Police will make all reasonable attempts to ensure that the offender understands their rights and responsibilities under the diversion programme.

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- Diversion must be appropriate given all of the circumstances (taking into account, within statutory limitations, the public interest whether to immediately proceed with criminal justice processes).<sup>5</sup>

The scope for police to divert directly to education is determined by each state/territory. Similarly the nature and extent of the drug education provided might vary between states/territories.

Offenders diverted by police to assessment might be referred to either drug education or to treatment.

#### **D. Expiation**

To expiate their offence:

- Offenders diverted directly to education will be required to fully participate in the education programme, as defined by the state/territory.
- Offenders diverted to assessment will be required to undertake the drug assessment and to participate in the prescribed programme of education or treatment.

While expiation of the offence may occur before the completion of treatment, offenders will be encouraged to complete the course of treatment agreed with the assessor and Commonwealth funding will be available for this treatment episode.

Offenders who satisfy expiation will have no criminal conviction for the offence recorded against them. Offenders who fail to satisfy expiation requirements will re-enter the criminal justice process.

#### **E. Post Expiation**

Offenders will also be supported following treatment, with planned followup and referral to appropriate community services.

Assessment, education and treatment services will provide timely advice to police of expiation failure to comply.

The 1999 Agreement between Commonwealth and State/Territory Governments to divert minor drug offenders into treatment and education, rather than into the criminal justice system, has implications for the policing of drugs. For the first time, there is a consistent national commitment within the criminal justice sector to divert drug offenders into treatment.<sup>6</sup>

Diversion can occur at various stages through the criminal justice system. Police can divert offenders when they first come into contact with them. However, once a charge has been laid then other agencies of the criminal justice system, namely the courts, can choose to divert offenders to treatment. Diversion schemes under the national framework include cautioning and drug courts.

My second paper "Australian Diversion Programmes – An Alternative to Imprisonment for Drug and Alcohol Offenders" will detail the Australian Diversion Initiatives.

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<sup>5</sup> COAG Illicit Drug Diversion Framework

<sup>6</sup> *Crime and the Criminal Justice System in Australia: 2000 and Beyond: Drug Trends and Policies*

**APPENDIX A: NATIONAL DRUG RESEARCH CENTRES OF EXCELLENCE  
DRUG ISSUES – MONOGRAPHS PUBLISHED**

1. *NCADA: Assumptions, arguments and aspirations*  
The Hon Neal Blewett Minister for Health, 1987
2. *Proscription and Prescription Commonwealth Government Opiate Policy 1905 -1937*  
Desmond Manderson, 1987
3. *Drinking and Alcohol in Colonial Australia 1788-1901 for the Eastern Colonies*  
Keith C Powell, MB, BS, MPH, FRACP, 1988
4. *Mothering and Addiction – Women with Children in Methadone Programmes*  
Cathy Waldby, 1988
5. *Drug Education is a Joint Effort*  
Ray James, MPH Ed.D, and Danni Benton, 1988
6. *Karralika – An Evaluation of a Therapeutic Community for Drug Users in the Australian Capital Territory*  
Ruth A Latukefu MA, PhD, 1987
7. *Marijuana – An International Research Report*  
Greg Chesher, Paul Consroe and Rik Musty (Eds), 1988
8. *Drug Awareness and Use among Primary Schoolchildren – An evaluation of the Life Education Centre Programme*  
John A Stephenson, Susan Quine, Petra Macaskill and John P Pierce, 1988
9. *Mass-Media Alcohol and Drug Campaigns : A consideration of relevant issues*  
Mary-Ellen Miller and Joclyn Ware, 1989
10. *Alcohol Education for Aboriginal Children*  
James G Barber, Collette Walsh and Ruth Bradshaw, 1989
11. *The Effectiveness of Treatment for Drug and Alcohol Problems: An Overview*  
N Heather, R Batey, J B Saunders, A D Wodak, 1989
12. *The National Campaign Against Drug Abuse 1985 –88 Evaluation and Future Directions*  
Commonwealth Department of Community Service and Health, 1989
13. *The development and implementation of the ‘Plan a Safe Strategy’ drink driving prevention program*  
The University of Queensland and the Queensland Department of Education Drink Driving Project, 1990
14. *Evaluating treatments for alcohol and other drugs*  
Fiona Mc Dermott, Margaret Hamilton, Bruce Legay, 1991
15. *Estimating the economic costs of drug abuse in Australia*  
David J Collins, Helen M Lapsley, 1991
16. *Responses to drug problems in Australia*  
Susan Henry-Edwards, Rene Pols, 1991
17. *Future Directions for alcohol and other drug treatment in Australia*  
Robert Ali, Mel Miller, Simone Cormack (Eds), 1992

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18. *Comparative analysis of illicit drug strategy*  
Melissa Bull, Don McDowell, Jennifer Norberry, Heather Strang, Grant Wardlaw, 1992
19. *An outline for approaches to smoking cessation: quality assurance project*  
Richard P Mattick, Andrew Baillie (Eds), 1992
20. *An outline for the management of alcohol problems*  
Richard P Mattick, 1993
21. *A treatment outline for approaches to opioid dependence: quality assurance project*  
Richard P Mattick, 1993
22. *An Evaluation of a model of drug education*  
Jeffrey Wragg, 1992
23. *The re-integration problems of drug using young offenders*  
Christine Alder and Hilary Read, 1992
24. *Workplace policies and programmes for tobacco, alcohol and other drugs in Australia*  
Robyn Richmond, Nick Heather, Phoebe Holt and Wendu Hu, 1992
25. *The health and psychological consequences of cannabis use*  
Wayne Hall, Nadia Solowij and Jim Lemon, 1994
26. *Legislative Options for Cannabis Use in Australia*  
David McDonald, Rhonda Moore, Grant Wardlaw, and Nicola Ballenden, 1994
27. *Patterns of cannabis use in Australia*  
Neil Donnelly and Wayne Hall, 1994
28. *Public perceptions of cannabis legislation*  
Jenny Bowman and Rob Sanson-Fisher, 1994
29. *Public Perceptions of Health and Psychological Consequences of Cannabis Use*  
Wayne Hall and Joan Nelson, 1995
30. *The social costs of drug abuse in Australian in 1988 and 1992*  
David J Collins and Helen M Lapsley, 1996
31. *Marijuana in Australia: patterns and attitudes*  
Toni Makkai and Ian Mc Allister, 1997
32. *Models of intervention and care for psychostimulant users*  
Greg Kamieniecki, Niki Vincent, Steve Allsop and Nick Lintzeris, 1998
33. *Australian secondary students' use of over-the-counter and illicit substances in 1996*  
Tessa Letcher and Victoria White, 1999
34. *The social impacts of the cannabis expiation notice scheme in South Australia*  
Robert Ali, Paul Christie, Simon Lenton, David Hawks, Adam Sutton, Wayne Hall and Steve Allsop, 1999
35. *Cannabis offences under the cannabis expiation notice scheme in South Australia*  
Paul Christie, 1999

36. *Infringement versus conviction: the social impact of a minor cannabis offence under a civil penalties system and strict prohibition in two Australian States*  
Simon Lenton, Paul Christie, Rachael Humeniuk, Alisen Brooks, Mike Bennett and Penny Heale, 1999
37. *Effects of the cannabis expiation notice scheme on levels and patterns of cannabis use in South Australia*  
Neil Donnelly, Wayne Hall and Paul Christie, 1999
38. *A review of law enforcement and other criminal justice attitudes, policies and practices regarding cannabis and cannabis laws in South Australia*  
Adam Sutton and Elizabeth McMillan, 1999
39. *Proceedings of Expert Workshop on the Induction and Stabilisation of Patients onto Methadone*  
Rachel Humeniuk, Robert Ali, Jason White, Wayne Hall and Michael Farrell, 2000
40. *Drug Harm Minimisation Education for Police in Australia*  
The National Centre for Education and Training on Addiction, Queensland Police Service and Edith Cowan University, 1999
41. *Drug Law Enforcement: Its effect on treatment experience and injection practices*  
NSW Bureau of Crime Statistics and Research, 1999
42. *The Role of Police in the Diversion of Minor Alcohol and Drug Related Offenders*  
Department of Criminology, University of Melbourne, 1999
43. *Illicit Drug Use in Australia: Epidemiology, Use Patterns and Associated Harm*  
National Drug and Alcohol Research Centre, University of New South Wales, 2000
44. *The Health and Psychological Effects of Cannabis use – 2nd edition*  
National Drug and Alcohol Research Centre, University of New South Wales, 2001
45. *Australian Secondary Students' use of Alcohol in 1999*  
Victoria White, Anti-Cancer Council of Victoria, 2001
46. *Australian Secondary Students' use of Over-the-Counter and Illicit Substances in 1999*  
Victoria White, Anti-Cancer Council of Victoria, 2001

# **AUSTRALIAN DIVERSIONARY PROGRAMMES AN ALTERNATIVE TO IMPRISONMENT FOR DRUG AND ALCOHOL OFFENDERS**

*Stephan Vaughan\**

## **I. THE AUSTRALIAN NATIONAL DRUG STRATEGIC FRAMEWORK**

The National Drug Strategic Framework presents a shared vision and a basis for cooperation and coordinated action to reduce the harm caused by drugs in Australia. The Framework, running over a five year period, will be reviewed in 2002/03 and is expected to lead to a further iteration of the Framework informed by outcomes of the review.

Under the current Framework the National Drug Strategy Unit was established and my role as the Executive Liaison Officer, representing law enforcement issues, was created.

The current phase of the Framework places emphasis on extending the successful partnership between health and law-enforcement agencies to take in a broader range of partners such as the Australian Commonwealth Departments of Education, Science and Training and Customs, in addition to encouraging closer working relationships between government and the community.

## **II. HARM MINIMISATION**

Harm minimisation is the key principle underpinning Australia's National Drug Strategy and refers to policies and programmes aimed at reducing drug-related harm. Harm minimisation aims to improve health, social and economic outcomes for both the community and the individual and encompasses a wide range of integrated approaches.

Australia's harm-minimisation strategy focuses on both licit and illicit drugs and acknowledges the poly drug use of individuals. It includes preventing anticipated harm as well as reducing actual harm. A comprehensive harm-minimisation approach has to take into account three interacting components:

- the individuals and communities involved;
- their social, cultural, physical and economic environment; and
- the drug itself.

Australia has a variety of localised drug markets and harm minimisation approaches vary according to different needs and the changing market environment. The Australian Government's harm reduction strategies specifically target the individual using drugs and promote initiatives that benefit both the user and the wider community.

## **III. SUPPLY REDUCTION**

Supply-reduction strategies aim to disrupt both the supply of illicit drugs entering Australia and the production and distribution of illicit drugs within Australia.

The Australian Federal Police and the Australian Customs Service work in partnership as the key agencies in implementing strategies to reduce the supply of illicit drugs entering Australia. The Australian Federal Police have primary responsibility for the conduct of investigations, particularly

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offshore which aim to detect and seize illicit drugs, while Customs has primary responsibility for the detection of illicit drugs at Australia's border. Funding through the National Illicit Drug Strategy has also provided improved technology and communication capabilities that have provided more innovative approaches to the illicit drug trade and has contributed to significant increases in drug seizures particularly offshore.

State and Territory police services are responsible for dealing with drug use in their communities including the detection and seizure of illicit drugs in the Australian community. Of particular importance is the detection and dismantling of clandestine drug laboratory operations.

#### **IV. DEMAND REDUCTION**

Demand reduction is a broad term used for a range of policies and programmes which seek a reduction of the desire and preparedness to obtain and use illegal drugs.

Demand for drugs may be reduced through:

- prevention and education programmes to dissuade users or potential users from experimenting with illegal drugs and/or continuing to use them;
- drug substitution programmes (e.g. methadone);
- treatment programmes mainly aimed at facilitating abstinence, reduction in frequency or amount of use;
- diversion programmes offering education or treatment as alternatives to imprisonment. These can be offered at various stages of the criminal justice system; and
- broad social policies to mitigate factors contributing to drug use such as unemployment, homelessness and truancy.<sup>1</sup>

#### **V. HARM REDUCTION**

Harm-reduction strategies are designed to reduce the impact of drug-related harm for particular individuals and communities. Levels of drug use among individuals and communities can vary greatly – from no use at all to consumption at harmful levels.

Needle and Syringe Programmes and non attendance of police at non-fatal drug overdoses are examples of Australian programmes that have been implemented to reduce drug related harm.

#### **VI. SHIFT IN POLICY FOCUS TO DIVERSION**

##### **A. What is Diversion?**

Diversion is a process that provides an alternative to criminal justice sanctions to modify individual behaviour. It involves a graduated series of interventions appropriate and proportionate to the seriousness and circumstances of the offence, and the personal circumstances of the offender.

##### **B. Strategies**

Diversion strategies aim to divert offenders from the traditional criminal justice process.

Opportunities for diversion occur throughout the criminal justice process:

- pre-arrest: when an offence is first detected, prior to a charge being laid;
- pre-trial: when a charge is made but before the matter is heard at court;
- pre-sentence: before sentencing;
- post-sentence: as part of sentencing; and
- pre-release: prior to release from a sentence, on parole.

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<sup>1</sup> Demand Reduction: A Glossary of Terms, UNODCCP

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Drug diversion strategies are for offenders who have committed drug-related offences, and/or offences that are directly or indirectly related to drug use. Drug-related offences include drug offences, offences committed while the offender is intoxicated and offences committed to fund drug use. Drug offences include possession, use or trafficking of an illegal drug.

### **C. Background**

In the last two decades, Australian governments have enhanced their policy positions and have developed various strategies and committed significant resources to address the drug problem within Australia. In my view it is fair to say that policing practices and policy shifts were influenced by the emergence of HIV and Hepatitis C as public health issues.

It is recognised that statutory diversion of people from the criminal justice system has been in place for some years in different jurisdictions. Police diversion has also occurred for many years in an informal setting and more recently, law enforcement agencies in particular have established protocols over time to acknowledge and formalise the processes. Similarly the health field has sought the best method of dealing with drug affected or dependent clients, including coerced clients. This has also seen a move to trialing various forms of treatment in an attempt to establish best practice standards.

A two year study which commenced in 1994 on diversionary practices in Australia examined six case studies of practice and held a national forum of fifty practitioners and policy makers who considered key issues, including the benefits of, the barriers to diversion and suggested principles of best practice. The study found that despite the obvious potential benefits of the range of diversion options that exist, there has been no systematic evaluation of the various models in use to date.

The report recognised five different opportunities for the diversion of offenders from the criminal justice system to treatment and rehabilitation currently being used.

- Victoria police were trailing informal police diversion which occurred at the time of the detection of an offence and may consist of informal warnings, confiscation of small quantities of drugs and communication with parents;
- Formal police diversion in which certain categories of offences are targeted for formal cautioning or other non judicial responses by senior officers;
- Statutory diversion in which offenders receive mandatory maximum dispositions, expiation notices or diversion to helping systems (e.g. Cannabis expiation scheme in South Australia);
- Prosecutorial diversion which occurs in situations where, upon reviewing the evidence, prosecutors have the discretion to refer the offender to treatment facilities rather than pursue prosecution. Under these circumstances prosecutors would agree not to take the matter to court as long as the helping intervention process is completed successfully. The prosecutor would act in the belief that the community good is best served by the offender entering into a helping situation, rather than the judicial process; and
- Judicial diversion which involves the use of discretion by magistrates and judges in dealing with offenders. The judiciary may order a range of dispositions and interventions, the nature of which is often dependent on the services available locally and the level of cooperation between local service providers, (e.g. Legislation such as the New South Wales' Inebriates Act 1912, provided significant scope for judicial officers to make drug treatment orders to any type of institution for any length of time up to twelve months).

This study, by the Alcohol and Other Drugs Council of Australia (ADCA) highlighted the following barriers to implementing effective diversion programmes at that time;

- Poor information dissemination between diversion programmes in each jurisdiction;
- Little explicit agreement between key stakeholders regarding appropriate outcomes for diversion programmes; and

- Little congruence in relevant legislation between jurisdictions.

The key principles defined in the ADCA study recognised that diversion of a person required the interaction of a number of agencies addressing different issues to instigate social change. They also emphasised the need for cooperation and coordination between agencies which would allow a range of adequately funded interventions to be readily accessible to drug users.

#### **D. Further Developments**

Following this study, interest in diversion increased around the nation with jurisdictions undertaking various initiatives in an attempt to engage drug dependent offenders into treatment, to minimise the harms caused by drug users, and to separate the interventions used for drug users from those who deal in substantial quantities of drugs.

In relation to cannabis use, most jurisdictions either fully instituted or trialed diversionary practices. In South Australia, the ACT and the Northern Territory expiation notices for simple possession offences were under trial evaluation or in full use. Victoria and Tasmania put cautioning systems in place for offenders in possession of a small amount of cannabis. A formal caution and education system for simple cannabis offences commenced trials in Western Australia. New South Wales used a “field court appearance notice”, rather than formal bail, to secure a person’s attendance at court where they were then dealt with by a magistrate.

In relation to illicit drugs other than cannabis, jurisdictions embraced a variety of programmes. New South Wales, as part of its Alcohol and other Drug Offender Diversion Model Project Proposal, planned to trial a Drug Courts Programme in early 1999. This programme involved an inter-departmental team approach designed to deal with offenders with related alcohol and other drug issues. The criteria for this trial, to determine the appropriateness of referring particular offenders to the diversion options included with the drug courts, required two assessments to take place. The first was a legal assessment to determine eligibility for participation (i.e. non-violent offence category, guilty plea, and willingness to participate). The second was a medical assessment to determine appropriate treatment options and likelihood of success. The Drug Court judge has discretion to decide if individuals are allowed to go through the Drug Court System.

There are two main ingredients for success of the Drug Court model. They are the provision of sufficient resources to ensure the earliest possible appearance of an offender before the court, together with comprehensive assessment, supervision and counselling with ready access to best practice treatment facilities. The second is the expectation that any relapse by the offender is to be expected, but should be dealt with quickly by the court.

Western Australia had a Court Diversion Service in place that manages approx. 450 referrals per annum. This service deals with persons who are considered to have a serious drug problem and intervened whilst they are on remand. If they successfully entered treatment the court could, and normally would, impose a community-based sentence with a condition that they remain in, and complete, the treatment regime. Western Australia also commissioned a consultant at that time to advise on the establishment of a Drug Court and other diversionary options.

South Australia has operated a pre-court diversion programme aimed at persons in possession of drugs (other than cannabis) for personal use since 1985. This programme, The Drug Assessment and Aid Panel, decides whether a person, detected in possession of a small amount of a drug, should be prosecuted or be diverted into the health/welfare system.

The ACT judicial system also provides for assessment and treatment of illicit drugs users and the ACT Drugs of Dependence Act provided for treatment as a sentencing option and for the court to take notice of progress in treatment. The ACT also considered on the spot, in-court assessment of offenders by drug and alcohol professionals to provide magistrates with the best advice on suitable dispositions.

Victoria undertook a project designed to develop early involvement of drug support interventions when an offender is arrested and placed before a court. It applied only to offenders who fell within a

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certain offence category, including possession of a drug of dependence or trafficking in a drug of dependence (to support their own dependence). These offenders had bail set by a court and were assessed by a specialist drug clinician and introduced into treatment prior to the charges being finally dealt with. This treatment and its outcomes were taken into account in the sentencing process. An interesting aspect of this model is that an amount of “treatment” money was allocated to the person at the time of bail. This money followed the person and paid for the treatment process. This trial project later became the successful Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) model of diversion.

Due to the success of the cannabis cautioning programme, Victoria also trialed a caution notice system for drugs other than cannabis. It was applicable to small quantities of illicit drugs and was dependent on the person attending a drug treatment agency for assessment and treatment within strict time lines. Treatment funding was also provided by health to that particular person. If the person completed the requirements, there was no criminal sanction attached to them.

Although Queensland had no formal drug diversionary programmes, police have the ability to caution juvenile offenders under 17 years of age, and in certain circumstances, may caution older persons for a first offence. Queensland has also instituted a process that permits police to release an alleged offender without going through a bail process. This in fact diverts a person from the watch house process. Persons in custody in police watch houses have constant access to medical assistance and a current project, The Cell Visitors Scheme, is designed to reduce the aggressiveness of prisoners by facilitating visits by relatives and friends who may access funding to reduce the duration of stay in police cells.

Whilst these interventions may be regarded as similar they all have some differences. It is worth noting that the issue of diversion practices was also being addressed by the Australasian Police Ministers' Council (APMC) and that the National Drug Crime Prevention Fund, in setting its future strategic directions also gave diversion projects a very high priority.

The National Community Based Approach to Drug Law Enforcement, at that time, was currently funding the following projects with the objective to further inform the field of diversion:

- *A Community Based Drug Law Enforcement Model for Intersectoral Harm Reduction*
- *Drug Harm Reduction Education for Police (since published as NDS Monograph No.41)*
- *Best Practice in the Role of Police in Diversion of Minor Alcohol and other Drug Offenders from the Criminal Justice System (since published as NDS Monograph No.40)*

Australian police services have practiced diversion for many years as they have exercised discretion in dealing with minor possession or use by drug offenders by informally warning the individual without keeping a record of the warning.<sup>2</sup> This was particularly the case with offenders who committed offences of a social nature and were assessed to be low risk with a high likelihood of not embarking on a career of illicit drug use and crime, e.g. young people committing what is regarded as a minor offence such as offensive behaviour.

In response to the reported growth in the use of illicit drugs, increases in opioid overdoses and increases in both violent and property crimes, together with emerging evidence that prison itself is a risk and harm in terms of initiation to drug use and exposure to blood borne viruses, in 1999 the Australian Commonwealth Government proposed a major shift in the practice of drug law enforcement and treatment to deal with drug users.

One of the logical outcomes of the changes that have occurred in public policy and debate on the illicit drug issue has been to develop programmes that divert people who are using illicit drugs from the criminal justice system to the health system.<sup>3</sup>

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<sup>2</sup> Crime and the Criminal Justice System in Australia: 2000 and Beyond – Drug Trends and Policies

<sup>3</sup> July 1999: Evaluation of the Drug Diversion Pilot Programme, Interim Report, Victoria Police

The shift in policy recognises the link between drugs and crime, particularly that users of illicit drugs (particularly, the harder drugs such as heroin) commit disproportionately more crimes than criminals who are not drug users. Whilst repeat offending is attributable to a small number of individuals that cohort commit a disproportionate amount of crime. Strategies aimed at preventing young first time offenders from pursuing a path of crime have the potential to dramatically affects crime rates.

This policy shift also recognises that in Australia, most people sentenced by the court rarely end up in prison. In 1997-98 a total of 74 810 Australians were sentenced, and of these 25% were given a prison sentence. While the crimes committed by these offenders may not be entirely attributable to drugs, it is clear that a large proportion of court time is spent on responding to offences, that in most cases, will not result in removing the offender from the community.

The Illicit Drug Diversion Initiative, has emerged and developed in Australia in response to a requirement to seek innovative approaches to redress increasing illicit drug use and crime rates while easing the burden on the Court process and the community by striving for rehabilitation and treatment. The Illicit Drug Diversion Initiative, commonly known as Police Diversion, is part of the Australian Commonwealth Government's approach to early intervention and prevention of illicit drug use.

## **VII. COUNCIL OF AUSTRALIAN GOVERNMENTS ILLICIT DRUG DIVERSION INITIATIVE**

### **A. The Initiative**

In its Communique of 9 April 1999, the Council of Australian Governments (COAG), as part of a package of new measures with a total cost of \$221million, "agreed to work together to put in place a new nationally consistent approach to drugs in the community involving diversion of drug offenders by police to compulsory assessment."

COAG agreed to a major shift in the practice of law enforcement and treatment and a clear message about the unacceptability of illicit drug use. The measures proposed to increase the availability of information about the dangers of drug use and the impact of police action.

A Commonwealth/State steering committee comprising central agency representatives and the Chair and Deputy Chair of the Intergovernmental Committee on Drugs was established to guide the development and implementation of the COAG Illicit Drug Diversion Initiative.

### **B. The Development Process**

Joint planning arrangements commenced in April 1999, involving representatives of Central agencies in all jurisdictions and members of the Intergovernmental Committee on Drugs (IGCD), calling on the expertise of members of the Australian National Council on Drugs (ANCD) and other key experts.

The focus of these joint planning arrangements was on the development of a nationally consistent approach to the development of a diversion model covering illicit drugs in the community, as requested by Heads of Government, but with scope and flexibility to determine, through bilateral negotiations, the details of implementation in individual jurisdictions. Related measures, involving schools, health and family support, prisons and supply issues, are being developed separately.

For the purpose of this initiative diversion was defined as:

*A process which provides an alternative to criminal justice sanctions to modify individual behaviour through assessment, education and treatment. It involves a graduated series of interventions appropriate and proportionate to the seriousness and circumstances of the offence, and the personal circumstances of the offender.*

The diversionary scheme proposed by COAG has an emphasis on diversion by police at the initial apprehension stage as this will maximise the opportunities for early intervention with illicit drug users.

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It is recognised however that, in order to reduce the harm to both the individual drug user and the community, there needs to be opportunities to divert illicit drug users into assessment and treatment at all stages of the criminal justice process.

The introduction of a national approach to police diversion was seen to complement and broaden existing initiatives by providing early intervention in the criminal justice process and opportunities for individuals to access assessment, with a view to treatment, rather than progress through the criminal justice system. The diversion scheme offered another alternative to police in respect to the way in which they manage some illicit drug users. It did not change existing laws in respect of the use, possession or distribution of illicit drugs.

The commitment to a national approach to police diversion was based upon a recognition of the importance of consistency in drug policy. It also recognised, however, that law enforcement, drug assessment, education and treatment service systems are jurisdictionally based and have different legislative, practice and cultural circumstances. It was intended that a clear pathway from detection to assessment, education, treatment and post-treatment support be designed bilaterally in each jurisdiction under the national framework and that it would be based on the nineteen agreed principles.

It was clearly recognised that three key areas needed to be integrated to form a comprehensive approach to a national diversion scheme. They were:

- Joint planning and evaluation;
- Police and court diversion; and
- Assessment, drug education, treatment and post treatment support.

### **C. Funding**

The costs associated with facilitating the COAG Illicit Drug Diversion Initiative are met by both the Commonwealth and State and Territory Governments.

In recognition of the shortage of treatment places, the Commonwealth Government provides funding for significantly expanded early intervention treatment and rehabilitation places linked to police diversion

The Commonwealth and State and Territory Governments fund the assessment services; and the State and Territory Governments provide the law enforcement basis for diverting offenders into treatment programmes and maintain their existing health and education effort. That is, police services were required to accommodate changed practices to effect implementation of diversion within their current resources.

The Commonwealth has contributed \$105 million to fund assessment, treatment, education and capacity building and training, and this has been progressively rolled out across the Australian states and territories since 1999 and will continue through to 2003. A range of Diversion programmes have now been developed and implemented in Australia and I will provide an outline of these later in this lecture.

This funding is appropriated to the Commonwealth Department of Health and Ageing and it is distributed to the jurisdictional health departments from the Commonwealth Departmental offices in each State and Territory.

### **D. Purpose**

The primary objective of the Illicit Drug Diversion Initiative is to:

- increase incentives for drug users to identify and treat their illicit drug use early, before incurring a criminal record;
- increase the number of illicit drug users diverted into drug education, assessment and treatment;
- reduce the number of people appearing before the courts for use or possession of small quantities of illicit drugs; and

- decrease the social impact of illicit drug use within the community and to prevent a new generation of drug users committing drug-related crime from emerging in Australia, therefore leading to safer environments for all Australians.

### **E. Primary Target Group**

The primary target group of this initiative is individuals who:

- have little or no past contact with the criminal justice system for drug offences; and
- are apprehended for use or possession of small quantities of any illicit drug.

Persistent or violent offenders are not entitled to participate in the diversion initiative. This is largely because the Australian community's perceptions and sentiment is that violent offenders be sent to prison. Many treatment agencies are reluctant to take these kinds of offenders as it could result in a potential law suit and courts and police are reluctant to send violent offenders to a programme that can result in the offender being 'at large' in the community. Violent offenders can therefore expect the criminal justice system to continue to be tough on drug-related crime.

The target group of offenders for drug-diversion strategies include a broad range of people, such as:

- people who use illicit drugs but are otherwise law-abiding citizens, as well as people with a significant criminal history;
- people with a range of patterns of drug use, from non-problematic use (apart from the offence) to dependent use;
- people who will not re-offend, people at risk of re-offending, and recidivist offenders; and
- people who have committed a range of offences, and are subject to a range of sanctions.

### **F. Benefits of the Illicit Drug Diversion Initiative**

There are several benefits of the Illicit Drug Diversion Initiative. They include:

- assisting drug offenders to regain control over their lives;
- decreasing the enormous social cost of illicit drug use on individuals, families and societies;
- providing offenders with early incentives to address their drug use problems, in many cases before incurring a criminal record;
- reducing the number of people appearing before the courts for use or possession of small quantities of illicit drugs;
- obtaining a consistent national commitment within the criminal justice sector to divert drug offenders into treatment;
- enhancing capacity to monitor the outcomes of diversionary and treatment schemes;
- providing an opportunity to divert offenders out of the criminal justice track into an education and/or treatment track; and
- dramatically reducing the crime rate by providing strategies aimed at reducing victims' exposure to repeat criminal activity and strategies aimed at stopping young first time offenders from heading down a path of crime.<sup>4</sup>

These benefits allow more serious matters to be heard in court and frees up police resources.

### **G. Issues for Consideration to Ensure Successful Implementation**

#### **1. Net Widening**

Consideration must be given to any net widening effect of a diversion intervention which increases the number of people involved in the criminal justice system or the consequences of offending for offenders.

For example, if a diversion programme is thought to be less burdensome than the usual criminal justice sanction, it might be applied to a person who would not otherwise be sanctioned at all. In such

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<sup>4</sup> A Sociology of Australian Society: Chpt 12 *Crime in Australia*, T. Makkai

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cases, diversion has increased rather than reduced the number of offenders exposed to criminal justice sanctions.

Net widening can also occur when offenders receive a more severe sentence if they commence and then fail in a diversion programme than they would have if they had accepted the usual criminal justice process in the first place.

## 2. Coercion into Treatment

There is evidence to suggest that coercion to treatment does not appear to be a barrier to the effectiveness of treatment programmes.

A World Health Organisation consensus view on the ethics of treatment under coercion is that compulsory treatment is legally and ethically justified only if the rights of the individuals are protected by 'due process', and if effective and humane treatment is provided. To this end it has been argued that offenders be allowed at least two types of 'constrained choice':

- a choice between treatment and the usual criminal justice process; and
- a choice as to the type of treatment they receive.

The drug dependence of some offenders contributes significantly to their offending behaviour and treatment under coercion is an effective way of treating that dependence, and thereby reducing the risk of re-offending.

There is evidence that heroin-dependent offenders tend to relapse to drug use upon release from prison, and hence re-offend, and return to prison. As treatment reduces relapse to heroin use and criminal recidivism, coerced treatment provides an alternative to prison that can reduce recidivism. It is less costly to treat drug-dependent offenders in the community than it is to incarcerate them and if offenders can be kept out of prison there is less chance of them contracting HIV or Hepatitis C.

Compared to voluntary treatment, coercion into treatment has been associated with increased entry to treatment and retention in treatment.

## 3. Families

Diversion strategies that keep offenders with drug abuse/dependence problems out of detention can place strain on their families and vice versa.

A custodial sentence for a family member with a drug-use problem can sometimes provide some benefit to family members who are responsible for, or affected by, that offender.

For example:

- partners of offenders who perpetrate drug-related domestic violence are likely to be subjected to continued violence unless an effective intervention is instigated;
- children of drug-dependent offenders might be subject to continued child neglect and abuse; and
- interventions to assist offenders with drug-related problems to either care for their children, or alternative arrangements if necessary, need to be incorporated into diversion strategy plans.

However, conversely consideration also needs to be given to the effect families have on the offenders as returning offenders to families and communities that have contributed to the person's drug use and offending behaviour can undermine the effectiveness of the diversion strategy.

Thus, diversion strategies that divert offenders from prison back to their family and community environment need to have the capacity to deal with the ramifications of the diversion.

Assessment of the need for interventions to address specific problems such as domestic violence and the care of dependent children, as well as a variety of support and therapy are important considerations.

#### 4. Cultural Background of Offenders

Some groups in the Australian population are disproportionately represented in the criminal justice system. Within the State of New South Wales, for example, the imprisonment rate of Aborigines (938 per 100,000) is about 4.2 times higher than that for the non-Aboriginal population (224 per 100 000).<sup>5</sup>

Despite this over-representation, participation in diversion programmes in Australia for this population has been found to be disproportionately low.

Particular effort needs to be made to ensure that diversion programmes for over-represented groups in the prison system are delivered appropriately and effectively.

#### 5. General Issues

While diversion provides drug users with an opportunity to re-dress their drug use, some offenders do not accept the diversion option because:

- they do not consider that they have a drug problem;
- they do not consider themselves to be addicted or dependent;
- they do not require counselling;
- they would prefer to attend Court, as they believe it to be easier to be either fined or imprisoned than to participate in a treatment regime;
- use of cannabis is for pain relief and they intend to continue to use; and prefer a fine.

#### 6. Systemic Issues

Diversion requires significant changes to police practice, which if not achieved, present barriers to effective implementation.

The principle of harm minimisation and the strategy of diversion must be understood and supported by Police management, to ensure that it is accepted as a legitimate and common practice for dealing with illicit drug users.

To achieve this goal, it is necessary to develop comprehensive training for police, and indeed the judiciary, to ensure an adequate change process from the traditional view that a measure of success is a conviction for drug possession/use to a realisation that diversionary practices form a positive contribution to public health issues, including minimising harm to the individual and the community. Examples of these harms include:

- a conviction can often lead to failure to gain employment in later life;
- an exposure to unsafe injecting practices and blood borne viruses in a prison setting;
- removal of a family breadwinner from the community with its attendant consequences.

Police services need to be committed to extending and developing diversion programmes to offenders who may not be young and first time offenders. The general attitude must ensure that police are committed to providing offenders with an opportunity for treatment and rehabilitation.

The diversionary administrative processes must be efficient and no more onerous on police services than was previously the case. It is contested that effective diversion will lessen police time in court proceedings with subsequent savings.

Any significant shortages and gaps in the availability of drug-treatment services will have a detrimental effect on diversion as both police and the court system will become frustrated and turn to other ways of dealing with the problem.

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<sup>5</sup> Drug and Alcohol Review (2001) 20,281-294 *Diversion strategies for Australian drug-related offenders*. Spooner, Hall & Mattick 2001

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Services that are appropriate for cultural minorities such as Aboriginal people, services for specific problems such as cannabis dependence, and services for special needs groups, such as those with dual diagnosis, are particularly vulnerable to criticism if not adequately funded and staffed.

Another potential problem is a lack of intersectoral cooperation. While most sectors agree that an intersectoral approach is needed, there are many barriers to actually achieving this. For example, it takes time to develop and maintain interagency relations; to avoid territorialism and to circumnavigate the different values and political pressures found in the different systems.

#### **H. Diversion Summary**

Under the COAG Diversion Initiative illicit drug offenders may be diverted by police into compulsory drug education or assessment with a subsequent referral to treatment.

##### **1. Stage One – Apprehension by Police**

###### **(i) *Minimum Criteria for Determining Eligibility for Diversion***

As stated, the primary target group is illicit drug users who:

- have little or no past contact with the criminal justice system for drug offences; and
- have been apprehended by police for possession and/or use of small quantities of any illicit drug (those quantities to be defined at the jurisdictional level).

It should be noted that the diversion programme applies to all illicit drugs and such other drugs as agreed and includes drug use such as abuse of pharmaceuticals such as benzodiazepines.

Eligibility criteria has been developed by each State and Territory police service and applied by the police. At a minimum it includes:

- sufficient admissible evidence of the offence;
- admission to the offence;
- use and or possession of illicit drugs (jurisdictions may go beyond this minimum level of drug offence); and
- no history of violence, as offenders with a violent history are not part of the target group.

There may be situations when this is not appropriate, e.g. when the history of violence is very much in the past; and informed consent is received from the offender to diversion.

Police make all reasonable attempts to ensure that the offender understands their rights and responsibilities under the diversion programme. Diversion must be appropriate given all of the circumstances (taking into account, within statutory limitations, the public interest whether to immediately proceed with criminal justice processes).

###### **(ii) *Minimum Content of Notice of the Diversion***

Offenders diverted by police to assessment are referred to appropriate drug education and/or a diverse range of clinically acceptable drug treatment services.

In some states/territories police divert certain offenders directly to drug education. At a minimum, a notice of the diversion provided by the police includes the following nationally consistent elements:

- admission of the offence by the offender;
- written agreement by the offender to participate in education or assessment and treatment where applicable;
- signed authority by the offender authorising release of their personal particulars and information about participation in the diversion scheme between police and relevant health authorities;
- the exchange of information about participation is used to gauge the compliance or non-compliance of the offender and to evaluate the initiative;

- a clear explanation of the minimum level of participation expected from an offender in a diversion programme to ensure that the offender is aware of what is expected from them in order for expiation to occur;
- appointment and agency details; and
- agreed police contact.

## 2. Stage Two – Compulsory Assessment

### (i) *Preferred Provider Approach*

To ensure appropriate health related services it is noted that participation in this initiative by appropriate service providers who will provide value for money and select treatment is through a preferred provider arrangement.

Participation by service providers in the compulsory referral arrangements are subject to an approval process at the state/territory level which ensures quality control based on best practice.

While there is no restriction on the type of drug treatment service (i.e., public versus non-government) that is eligible for preferred provider status, preferred assessment, treatment and education providers agree to work within this national framework.

Examples of treatment available include:

- abstinence based;
- residential detoxification; and
- methadone treatment.

### (ii) *Minimum Qualifications and Experience of Education, Assessment and Treatment Providers*

Eligibility criteria have been set and assessors, drug educators and key treatment staff are approved by the state/territory as suitable to conduct drug and alcohol assessment, education or treatment considering:

- relevant tertiary qualifications (including university or TAFE) in health, welfare, behavioural sciences or education; and
- experience in the alcohol and other drug field.

### (iii) *Minimum Content of Assessment*

The aim of assessment is to develop sufficient understanding of the offender's circumstances and needs to enable a plan of future action, including an individual treatment plan where appropriate, to be determined and, where possible, agreed with the offender.

In determining an appropriate course of future action the assessor takes into account the following information:

- quantity, frequency and pattern of current drug use and route of administration. This includes an assessment of the:
  - use of all drugs, both licit and illicit;
  - circumstances in which drug use occurs; and
  - level of dependence.
- the extent and severity of previous drug use problems, including the outcome of any previous treatment attempts or self initiated periods of abstinence;
- drug related risk taking behaviour;
- family relationships and family drug history;
- social situation;
- legal issues, including any arrests, the nature of offences committed and sentences imposed prior to or following commencement of drug use;
- medical problems associated with or exacerbated by drug use;
- mental health or psychological circumstances; and
- motivation for change.

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(iv) *Role of Assessors*

- undertake, in a timely manner, an impartial assessment of the offender consistent with these national guidelines;
- deliver impartial assessment services. Each state/territory must demonstrate their impartiality or management of potential conflicts of interest;
- make at least one assertive attempt to contact offenders who do not present themselves for assessment;
- develop with the offender a plan of future action, including, where appropriate, an individual treatment plan. Wherever possible, this plan is agreed with the offender;
- make an appointment with the appropriate individual or agency who can deliver the prescribed education or treatment, to allow the offender to undertake the recommended course of action;
- in a timely manner, receive, complete and forward to the appropriate person all necessary paperwork;
- notify the police, in a timely manner, of offenders who fail to participate in the assessment or who, after an assertive attempt at contacting the offender, have failed to attend for assessment;
- comply with national and State/Territory best practice guidelines; and
- participate in the monitoring and evaluation of the initiative, including the collection of data.

(v) *Range of Assessment, Education and Treatment Services*

Offenders diverted under this initiative have access to appropriate drug education and/or a diverse range of clinically acceptable drug treatment services such as counselling, withdrawal, residential rehabilitation and pharmacotherapies.

All assessment, drug education and treatment services are intended to be culturally, linguistically and gender sensitive. Wherever possible family involvement is encouraged.

Young offenders have access to youth-specific assessment, drug education and treatment services.

Indigenous offenders have the option of attending an appropriate indigenous agency for drug education or assessment and treatment.

3. Stage Three – Drug Education or Treatment Services

Additional funding has been provided for compulsory places to ensure that there is no displacement of voluntary admissions to assessment, education and treatment.

Diverted offenders may also be called upon to make financial contributions to their treatment where appropriate.

(i) *Role of Drug Education and Treatment Providers*

Drug education and treatment providers:

- act on the written assessment report and recommendation of the approved assessment provider (or, in the case of referral by police to education programmes, on their referral notice);
- make at least one assertive attempt to contact offenders who do not present themselves for education or treatment;
- provide timely access to education and treatment services;
- develop, with the offender, a discharge plan that includes:
  - planned follow up by the treatment agency;
  - assertive referrals to appropriate community services.

(Note: it is recognised that the vast majority of offenders receiving education only are unlikely to require discharge plans.)

- in a timely manner receive, complete and forward to the appropriate person all necessary paperwork;
- notify the police, in a timely manner, of offenders who:

- following an assertive attempt to contact them, have failed to participate in education or treatment;  
or
- have met the necessary conditions to expiate their offence;
- comply with national and State/Territory best practice guidelines; and
- participate in the monitoring and evaluation of the initiative, including the collection of data.

(ii) *Minimum Requirements for Expiation*

Each state/territory determines the relationship between the offences for which they want to divert offenders and the requirement for expiation, taking into account the need to ensure that diverted offenders do not receive an expiation requirement significantly more or less onerous than the court based alternative.

The minimum expiation requirements for more serious drug related offences may vary. The minimum requirement for expiation of a use and/or possession offence is:

- where the offender is referred directly to education, full participation in the prescribed education programme; or
- where the offender is referred to assessment, undertaking a drug assessment and participation in the prescribed programme of education or treatment.

(iii) *Effect of Expiation*

Offenders who satisfy expiation have no criminal conviction for the offence recorded against them. However if an offender fails to satisfy expiation requirements, the criminal justice process will continue.

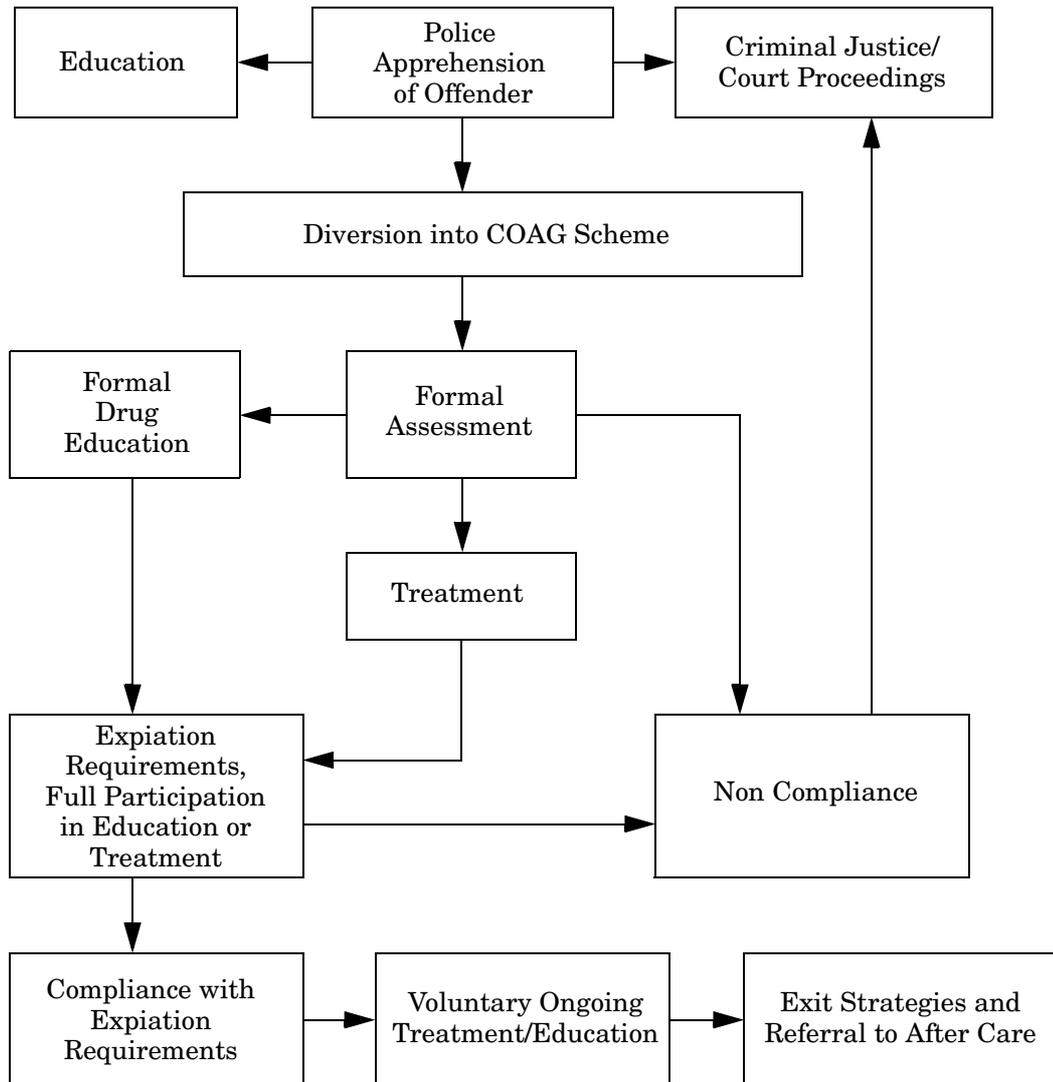
(iv) *Ongoing Treatment*

While expiation of the offence may occur before the completion of the treatment, offenders are encouraged to complete the course of treatment agreed with the assessor and Commonwealth funding is available for this treatment episode.

(v) *Post-treatment Support*

Treatment agencies have discharge plans, including planned follow-up in community settings, with appropriate referrals to a range of services, for example housing, employment and generalist health care. This involves consultation with the offender on their needs and the arrangement of appointments for the offender with community-based services, as appropriate.

**COAG Illicit Drug Diversion Initiative**



Source: <http://www.health.gov.au/pubhlth/nds/nids/diversion/index.htm>

## VIII. TYPES OF DIVERSION

There are numerous diversion strategies used in Australia and I will examine a range of these strategies in turn, including strategies that have been implemented as a result of the Council of Australian Government's initiative:

### A. Cannabis Infringement Notices

In the state of South Australia, and the territories of the Northern Territory and Australian Capital Territory, fines are given for minor drug offences such as possession of small amounts of cannabis.

Possession offences include:

- Cultivating not more than 5 cannabis plants for personal use; or
- Possessing not more than 25 grams – 50 grams of cannabis for personal use.

It is interesting to note that there is continued debate in South Australia on the quantities of cannabis material that should be allowed under an offence of personal possession and the legislation has changed a number of times.

I have mentioned the net widening effect and an example of this can be seen with the Cannabis Expiation Notice (CEN) scheme in South Australia which identified an increase in the number of minor cannabis offences for which CENs were issued from 6231 expiable offences in the 1987/88 financial year to a peak of 17425 offences in 1993/94. The increase appeared unrelated to the prevalence of cannabis use.

It did, however, appear to be related to changes in police procedures, possibly due to the less onerous work involved in issuing a CEN. CENs were associated with less negative consequences relating to employment, further problems with the law, relationships, accommodation and overseas travel

### B. Cannabis Cautioning Scheme

This scheme operates across New South Wales, Victoria, Queensland, Western Australia and Tasmania and applies to adults apprehended for simple use/possession offences.

The scheme covers the offences of use and possession of small amounts of dried cannabis leaf, stalks, seeds, heads and equipment for administration of cannabis.

The scheme applies to adults only. Police may issue a cannabis cautioning notice that warns of the health and legal consequences of cannabis use. A person can only be cautioned if they have no prior convictions for drug offences or offences of violence or sexual assault. A person may not receive more than two cautions.

### C. Drug Assessment and Aid Panel (DAAP)

In South Australia, under the South Australian Controlled Substances Act 1984, people alleged to be in possession of specified drugs of dependence (other than Cannabis) for personal use can be referred to a Drug Assessment and Aid Panel.

The Panel includes a legal practitioner and two others with extensive knowledge of drug misuse and treatment. The alleged offender must plead guilty to the charge of simple possession of an illicit drug to be eligible for DAAP.

The Panel assesses the offender and can require that the offender enter into a written undertaking, effective for up to 6 months, to undergo treatment and education. Non-compliance can lead to prosecution. No conviction is recorded if an offender successfully completes the undertakings.

### D. Pre-Arrest Diversion

Pre-arrest diversion generally involves warnings or cautions by the police. Warnings are informal, cautions are formal. They may be used for disorderly offences associated with drunkenness, use or

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possession of illicit drugs and offences against public order. Warnings take place 'on-the-spot' without, in theory, any legal repercussions for the individual involved.

Cautions are normally formalised, in that there are usually set procedures to be followed and a record is kept of the incident. There are differences between the Australian States and Territories in police powers of discretion as well as the specific forms of police diversion programmes in place.

Arguments in support of the use of police discretion include:

- it reduces the high work-loads of police;
- releases court time for more serious cases;
- reduces the potential harms caused by police arrest and prosecution of offenders; and
- avoids a potential mismatch between sanction and crime, when criminal justice processes and sanctions are perceived to be disproportionate responses to minor offences.

Many of the arguments against the use of police discretion are related to the lack of consistency and accountability that is inherent in the use of discretion. For example: inconsistent use of discretionary powers between police districts can lead to a form of 'justice by geography'. Discrimination by individual police officers against certain classes of people, e.g. minorities, youth, can also occur. It is also argued that offenders could be denied access to treatment or other services that could be available through diversion at a later stage in the criminal justice system.<sup>6</sup>

Formal procedures for police diversion aim to address the problems with accountability and consistency. However, possible problems with formal police diversion include:

- the possibility of 'net widening' which occurs when diversion increases the number of, or consequences for, offenders in the criminal justice system;
- the lack of 'due process' in formal diversion schemes can lead to offenders being cautioned when there is insufficient evidence to prosecute. Despite this lack of due process, sanctions can be recorded as an 'official' part of an individual's offending history and individuals can later be subject to formal sanctions;
- some innocent individuals might admit guilt in order to obtain formal diversion in preference to facing court;
- the requirements of diversion programmes can sometimes be more onerous than those that would otherwise have been imposed had the person progressed through the criminal justice system in the usual way; and
- formal diversion can lack community support if it is regarded as a form of de-facto decriminalisation of illicit drugs.

### **E. Pre-Trial Diversion**

There are a number of systems for diverting offenders prior to prosecution, which generally require prior admission of guilt. An example is where treatment is part of bail conditions.

Current programmes in place in Australia include Court Referral Evaluation and Drug Intervention Treatment (CREDIT) in the State of Victoria and the Drug Assessment and Aid Panel (DAAP) in the Australian State of South Australia. Another example is Conferencing, which is more often used in association with youth programmes.

I will turn now to a brief description and overview of some of the pre-trial programmes currently in use in Australia.

#### **1. Victoria's CREDIT Scheme: Court Referral and Evaluation for Drug Intervention and Treatment**

The Court Referral and Evaluation for Drug Intervention and Treatment programme (CREDIT) was developed by a small group of magistrates at the Melbourne Magistrates' Court who wished to address the high rate of re-offending while on bail noted among illicit drug using offenders.

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<sup>6</sup> An overview of diversion strategies for Australian drug-related offenders. Spooner, Hall & Mattick 2001

CREDIT aims to:

- provide drug treatment immediately following arrest to alleged offenders with problematic drug use, that is, treatment before plea and while on bail;
- develop a commitment to treatment among such alleged offenders by capitalising on the fact they are confronted with entering the criminal justice system;
- divert alleged offenders who have a drug problem from further involvement in the criminal justice process through participation in drug treatment;
- reduce the risk of re-offending to support drug use, associated criminal activity and/or harm to themselves or others during the bail period; and
- develop a model drug treatment diversion programme.

The CREDIT referral process begins at the point of arrest. Police screen offenders to determine their eligibility for CREDIT then refer them for assessment in the Melbourne Magistrates' Court on the next court day. To be eligible a person has to be charged with a non-violent indictable offence, have a demonstrable drug problem, be eligible and suitable for release on bail and not already be on a court order or parole. Magistrates themselves are also able to refer to the programme.

There are four treatment modalities available under CREDIT:

- counselling;
- home-based withdrawal;
- residential withdrawal (short-term detoxification); and
- residential rehabilitation (longer-term rehabilitation following detoxification).

A report is prepared for the Magistrate by the assessing clinician and bail granted on condition the defendant participate in the nominated treatment programme. Legal advice is also available at this time if required through court-based Legal Aid solicitors. Treatment conditions could be varied while on bail and some defendants are also required to attend court for a review during the bail period. People who are ineligible or unwilling to participate simply proceed through the criminal justice system in the normal manner.

When the defendant returns to court at the end of the bail period, the drug clinician presents a further report to the Magistrate. Compliance with the treatment conditions and any other developments of note in the defendant's life are outlined in the report. At this time a guilty or not guilty plea can be entered. Defendants who meet the treatment conditions of their bail are congratulated in court and presented with a certificate of completion.

An evaluation of the first nine months of operation resulted in a continuation for the programme. The evaluation found that the main benefits of the programme for participants were early access to treatment and the opportunity to address both drug use issues and criminal offending. The evaluation found that there was a benefit to the criminal justice system by reducing the burden on courts and prisons. While benefits were evident, the evaluation identified that the main limitation to the current structure of the programme was the limited access to re-offending data.

## 2. New South Wales' MERIT Scheme: Magistrates Early Referral into Treatment Programme

The purpose of drug courts is to deal with individuals who would ordinarily face a prison sentence and present them with an option for long term treatment and rehabilitation programmes within the community, but under the close supervision of the Court.<sup>7</sup>

MERIT was the first Australian drug court set up in a rural area and is the only pre-plea programme in NSW.

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<sup>7</sup> *Drug Trends & Policies* in Chappell, D. and Wilson, P. (Eds): *Australian Justice System*, 5<sup>th</sup> Edition, Melbourne, Butterworths, pp 63-86, 2000, Makkai T.

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The MERIT programme aims to divert suitably motivated drug offenders who meet eligibility requirements from the Criminal Justice System into effective drug treatment programmes.

The primary eligibility criteria relate to the participant's suitability for bail and their motivation to engage in treatment and rehabilitation for their drug use problems over a time framed and structured period.

Whilst the clients originate through the legal system, it allows suitably motivated offenders to be removed from the legal system and placed into drug treatment which is operated and managed by the Health Service.

As MERIT is pre-plea, the accused is bailed to the programme with adjournments until the graduation, at which time the case is heard and matters are finalised. MERIT was originally based on the Court Referral and Evaluation for Drug Intervention and Treatment (CREDIT) system developed at the Melbourne Magistrates' Court.

MERIT has an emphasis on early referral and provides for entry into the programme at the time of arrest or at any time up to the first court appearance. A feature of the MERIT programme which distinguishes it from many other drug courts is the fact that the defendant is not required to enter a plea in order to participate in the programme. Further, there is no requirement that a determination of guilt be made prior to entry to MERIT being extended.

It is worth noting, that of the 96 persons who completed the Programme between the 3rd July 2000 to the 12th April 2002, 40.6% have not come under the notice of Police in any way during or after the Programme. This is an indication of success, given that of the 221 clients accepted into MERIT in the first twenty months of operation, at least 90% had a previous criminal record and 60% had served time in jail.<sup>8</sup>

### 3. Conferencing

Conferencing describes schemes in which victims of crime and other members of the community, including experts and family members, become involved in dealing with offenders beyond the normal confines of the criminal justice system. It can occur in place of a trial as a diversion scheme. Its aims are to divert offenders from the criminal justice system and reintegrate them into the community, and to involve victims in the resolution of cases as a means of empowering them and acknowledging their need for recognition. The Australian State of South Australia currently uses Family Conferences for incidents involving young people.

## **F. Pre-Sentence Diversion**

A magistrate or judge can use adjournments, assessments and other means to delay or stop proceedings prior to sentencing while the offender is assessed or treated. The process can be initiated by the defence lawyer. Some diversion systems allow for no conviction to be recorded if the person successfully completes the programme. Sanctions can also be built in for non-compliance. A current Australian example is a pilot programme being run through the New South Wales rural centre of Griffith.

## **G. Post-Sentence Diversion**

### 1. Drug Courts

Drug courts specialise in the administration of cases referred for judicially supervised drug treatment and rehabilitation.<sup>9</sup> They can be pre-trial/pre-plea, pre-trial/post-plea, post-conviction or a combination of these options. They are more expensive than traditional courts but when taking the whole package of 'court + imprisonment + cost of re-offending, they could be much more cost-effective. Finally, drug courts face implementation challenges with integrating criminal justice and treatment

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<sup>8</sup> *MERIT, a cooperative approach addressing drug addiction and recidivism* presented at the 2<sup>nd</sup> Australasian Conference on Drugs Strategy, May 2002.

<sup>9</sup> P.287 *Diversion strategies for Australian drug-related offenders*

agencies, cooperative arrangements between judge, prosecutor and defence and achieving objectives broader than those of the criminal justice system.

Drug Courts vary considerably from one another and Australia is currently undertaking trials for both. The first Drug Court was established in Sydney, New South Wales.

The NSW Drug Court commenced in February 1999 as a pilot programme with a randomised control study design. The Drug Court operates in Western Sydney and is fed by referrals from Western Sydney's 11 Local and 4 District Courts. The NSW Drug Court Act 1998 and accompanying regulations govern conditions of entry, conduct and termination from the programme. Referrals to the Drug Court may be made from either Local or District Courts in the catchment area. Matters referred to the Drug Court are then dealt with by that court, provided that the individual meets the eligibility criteria and is accepted onto the programme. The NSW Drug Court utilises suspended sentences options as discussed below.

Despite the high drop-out rate (about 40%) the NSW Drug Court programme has proved more cost-effective than imprisonment in reducing the number of drug offences and equally cost-effective in delaying the onset of further offending.<sup>10</sup> The evaluation report, completed after a comprehensive three year evaluation, highlighted several ways in which the cost-effectiveness of the Drug Court could be improved. These include improving the Court's ability to identify offenders who will benefit from the programme, earlier termination of those unsuitable, improving the match between offenders and treatment regimes and improving the level of coordination between agencies involved in the programme.

## 2. Suspended Sentences

Suspended sentences involve the court imposing a sentence of imprisonment, and then suspending its operation for a period of time while the offender is released on specific conditions (bond). Bonds can contain conditions relating to matters such as probation supervision, associates, abstinence from drugs and participation in treatment. If the offender breaches any of the conditions, he/she might be liable to serve the sentence originally imposed or face other consequences. If no breach occurs during the bond period, the offender can be discharged.

The main benefit is that they coerce the offender to be treated, with the consequence of detention, if they fail to comply with the conditions of the suspended sentence.

Suspended sentences share many of the same concerns identified above with regard to drug courts, such as the possibility of net widening. That is, individuals who would not otherwise have received a custodial sentence could be sentenced to detention just so they can be diverted to treatment. If they fail the treatment, then they have to serve the custodial sentence that they would not have otherwise received.

## **IX. EDUCATION AND TREATMENT**

Offenders diverted under the various diversionary schemes have access to appropriate drug education and/or a diverse range of clinically acceptable drug treatment services such as counselling, withdrawal, residential rehabilitation and pharmacotherapies.

Wherever possible family involvement is encouraged, especially in situations involving youth. The aim of the drug education session is:

- To improve the offender's knowledge of the harmful effects of illicit drugs;
- To motivate them to change their behaviour; and
- To provide them with the information and skills to enable them to do so.

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<sup>10</sup> Media Release: NSW Drug Court Evaluation – Final Reports – 28 February 2002

## **X. MONITORING AND EVALUATION**

Monitoring and evaluation of the outcomes of police diversionary action are essential to allow for effective management of the illicit drug diversion programmes.

A National Diversion Minimum Data Set has been developed to record the details of all offenders who accept the opportunity of diversion. The following data are collected by police, assessment, education and treatment workers to allow for analysis of the type of the participants and the flow of participants through the police and health systems:

- Name, address, sex, date of birth;
- Whether the offender is of indigenous descent;
- A police unique identifier;
- Date, location and type of offence;
- Drug type (identified through admissions or field testing);
- Quantity of drug;
- Concurrent offences (if appropriate);
- Type of diversion (i.e. education or assessment, formal caution, infringement notice);
- Compliance with diversion agreement; and
- Reference to court for non-compliance.

## **XI. SUMMARY OF STATE/TERRITORY INITIATIVES**

As at July 2001, 9943 diversions occurred throughout Australia from the inception of the diversion initiative in March 2000.

New South Wales diverted 8021 offenders during the period April 2000 – December 2001 through the following programmes:

- Police Diversion through adult Cannabis Cautioning;
- Court Diversion – MERIT initiative; and
- Youth Drug Court and Juveniles under the Young Offenders Act.

Victoria diverted 2127 offenders during the period October 2000 – December 2001 through the following programmes:

- Police Diversion including:
- Cannabis Cautioning;
- Drugs other than Cannabis;
- Court Diversion – the CREDIT and Deferred Sentencing programmes; and
- Children's Court Clinic.

Tasmania diverted 1407 offenders during the period March 2000 – December 2001 through the following programmes:

- Cannabis Cautioning (1st offence); and
- Police Diversion for other drugs/subsequent cannabis offence.

Western Australia diverted 654 offenders during the period January – December 2001 through the following programmes:

- police diversion of drugs other than cannabis;
- cannabis cautioning;
- court diversion; and
- court supervised treatment.

Queensland diverted 2939 offenders during the period June – December 2001 through the following programmes:

- Cannabis Cautioning.

South Australia diverted 456 offenders during the period September – December 2001 through the following programmes:

- cannabis cautioning programme for juveniles; and
- two separate police diversion programmes for drugs other than cannabis for juveniles and adults.

The Australian Capital Territory diverted 68 offenders during the period July 2001 – March 2002 through the following programmes:

- Court diversion (all illicit);
- Police diversion (non-cannabis); and
- Cannabis cautioning.

## XII. CONCLUSION

Diversionary practices are now in place or being trialed in all Australian States and Territories and range from cautioning offenders, expiation of cannabis offences, diversion for non-cannabis offences, to diversion to treatment programmes. These diversions take place at various stages of the criminal justice process and the different projects aim to divert drug-using offenders from the criminal justice system to enable access to appropriate treatment and reinforce a preventive message.

A range of diversion strategies that are appropriate to the history and risk of criminal and drug-abuse behaviours can be used for drug-related offenders. Offenders who are neither substantially involved in crime or drug abuse, nor at significant risk of being so involved in the future, can receive sanctions to deter continued offences, such as a warning or caution from police, without further consequences.

The aim of such early diversion is to avoid unnecessary costs and negative consequences of involvement with the legal system. The rationale for diversion in these cases is that involvement with the criminal justice system for those who are unlikely to reoffend is not cost-effective and likely to have unreasonably negative consequences for the offender. As the criminal career and drug problems escalate, a series of diversion strategies that are appropriate to the history and potential of the offender can be employed.

These strategies can include pre-trial strategies; pre-sentence strategies; post-sentence strategies; and, for those with the most severe history of repeated failure with drug treatment and judicial interventions: drug courts.

The aim of these diversion strategies is to use the offence as an opportunity to divert the offender to activities and interventions that will have more positive outcomes in terms of health, welfare and criminal activity than would detention. The rationale for diversion in these cases is that treatment in the community is likely to be more cost-effective than detention.<sup>11</sup>

As the evaluation of the COAG Illicit Drugs Diversion Initiative provides new insights into the effectiveness of these alternative approaches, new Initiatives will be developed to further the National Drug Strategy towards the coordinated action against licit and illicit drugs and their harm to society. The next step in the current Strategy is the development of a Prevention Agenda.

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<sup>11</sup> Diversion strategies for Australian drug-related offenders, Spooner et al

**XIII. WHERE TO GO FROM HERE?**

In February 2000 the Intergovernmental Committee on Drugs (IGCD) agreed that the Commonwealth should further advance the development of a Prevention Agenda for the National Drug Strategy, in close consultation with the IGCD and the Chairs of the National Expert Advisory Committees. In respect to this, 'Prevention' relates to measures that prevent and delay onset of drug use as well as those that protect against risk and reduce harm associated with drug supply and use.

It is important to remember that crime prevention cannot be divorced from broader social policy and social justice issues –one of the keys to minimising violence and other harmful behaviours among future generations is to ensure that all children have access to adequate family support, schooling and other cultural and social amenities. It is the combination of these efforts, focusing on preventions and social influences in childhood, as well as those affecting adults, that will enable Australia to continue its efforts to deal with the difficult problems associated with licit and illicit drug use.

# COMMUNITY-BASED REHABILITATION OF OFFENDERS IN SINGAPORE

*Bee Lian Ang\**

## I. LEGISLATIVE PROVISIONS

In Singapore, the community based management and treatment of offenders is governed by at least two pieces of legislation. Young offenders are governed by the Children & Young Persons Act (CYPA) which provides that:

*“Every court in dealing with a child or young person who is brought before it, either as being in need of care or protection, or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings’ and for securing that proper provision is made for his education and training” (section 28).*

Probation is governed by the Probation of Offenders Act. Section 5 provides for the court to make a probation order but not when the offender has committed an offence where the sentence is fixed by law. In making the order, the court takes into consideration the circumstances, including the nature of the offence and the character of the offender. A probation order is made only when the court deems it proper to make it instead of sentencing him/her. A probation order is therefore an order requiring the offender to be under the supervision of a probation officer or a volunteer probation officer for a period to be specified in the order of not less than 6 months and not more than 3 years.

The court may make a probation order if the person:

- a) has reached 16 years old but is below 21 years at the time of his/her conviction; and
- b) has not been previously convicted of such offence.

The court can also require the offender to comply with certain conditions set by it during the whole or part of the probation period. These are conditions made by the court after considering the circumstances of the case and are conditions deemed necessary in helping the offender to have good conduct and *prevent* a repetition by him or her of the same offence or the commission of other offences. An example of such conditions are time restrictions or curfews.

The order may also provide for requirements relating to the residence of the offender. These are again made with due regard to:

- the home surroundings of the offender; and
- where the order requires the offender to reside in an approved institution, the name of the institution and the period for which he/she is so required to reside is specified in the order. The period however will not extend beyond 12 months from the date of the order. (Where the period is more than 6 months, the court will hear a report after 6 months. It will then review the probation order and consider whether or not to cancel the requirement as to residence or reduce the period, and may, if it thinks fit, amend the order accordingly.)

A pre-sentence report is a social report on an offender, put up by a Probation Officer at the request of the court, to assess whether the offender is suitable for probation. It is usually a diagnostic account of the background of the offender and the possible reasons and circumstances that led him or her to commit the offence. (about 75% of pre-sentence report cases are placed on probation.) The Pre-Sentence

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Report helps the Court to identify the offender's problems and needs and to make an appropriate order which will help him/her become a useful and law-abiding citizen.

Before making a probation order, the court will explain to the offender in ordinary language the effect of the order (including any additional requirements) and that if he or she fails to comply or commits another offence he or she will be liable to be sentenced for the original offence; and if the offender is 14 years or older, the court will not make the order unless he or she expresses his or her willingness to comply with the requirements.

Where a woman or girl is placed under the supervision of a probation officer or volunteer probation officer, the probation officer or volunteer probation officer, as the case may be, has to be a woman.

A probationer is required by law to:

- report regularly to the Probation Officer;
- abide by the conditions of the Probation Order (e.g. curfew, CSO);
- participate in the rehabilitation programmes organised or directed by the Ministry.

Where a probationer re-offends or persistently fails to comply with the conditions of his Probation Order, he or she will be brought back to Court to be dealt with for the offence(s) for which he was placed on probation. He/she or she may be sent to an institution or fined. He/she will then have a criminal record.

*Under what kind of circumstances is probation usually granted?*

Before placing an offender on probation, the Court usually calls for a Pre-Sentence report. This Report is prepared by a Probation Officer and entails a thorough social investigation of the offender. The Report provides information on the offender's home/family, his or her character, behaviour and the circumstances, which led him or her to commit the offence(s). For offenders below 16 years of age at the time of the guilty plea or when found guilty by the Juvenile Court, Pre-sentence Report will be called for almost always. For offenders 16 years of age and above, a pre-sentence report is only furnished when called for by the Courts.

*Does granting of probation depend on the nature of the crime? Or does the family background come into play?*

The Probation Officer considers the following factors in his recommendation on a suitable rehabilitation programme for the offender:

- gravity of offence(s)
- role of offender in the commission of offence(s)
- citizenship of offender e.g. a tourist who is here on a social visit and got arrested for shoplifting is not likely to be considered for probation
- character of the offender
- presence of effective/responsible parents/guardian
- education/employment status
- risk of re-offending
- availability of community-based programmes to meet risks & needs
- recommendation by school, social worker, psychiatrist etc.

#### **A. Probation Committees**

The Probation of Offenders Act provides for the Minister to appoint a probation committee(s) consisting of such persons as he or she thinks fit to review the work of probation officers and volunteer probation officers in individual cases. There are two committees – the Adult Probation Case Committee and Juvenile Probation Case Committee.

The terms of reference of the two committees are spelt out in Rule 15 of the Probation of Offenders Rules as follows:

- a) To receive and consider written and oral reports from Probation Officers and Volunteer Probation Officers on the progress of each of the cases under their supervision;
- b) To afford such help and advice to Probation Officers and Volunteer Probation Officers in performing their duties; and
- c) To direct, where necessary, any information furnished to the Committee to be given to the Court.

The APCC meets quarterly to review the progress of probation cases. Reforming and rehabilitating each offender is of paramount importance. Increasingly, there is widespread acceptance that the complexity of crime requires a multi-pronged approach and has to incorporate elements of deterrence, incapacitation and rehabilitation. A balance will have to be struck between the offender's need for rehabilitation, accountability for the offending behaviour, and risks to public safety.

### **B. Tiered Supervision**

Probation is the conditional suspension of punishment while an offender is placed under the supervision of a Probation Officer and given guidance or treatment within the community. In Singapore, the period of probation ranges from 6 months to 3 years and there are 3 grades of probation; administrative, supervised and intensive probation. The level of service and supervision is matched to the level of risks and potential for rehabilitation. Relevant factors include criminal history, motivation for change, school progress and family situation. The conditions imposed as part of the probation order differ in terms of the level of supervision, frequency of contacts, the number of restrictions and the programmes the juvenile is mandated to attend. The probationers may also be subjected to a combination of conditions. The degree of supervision and monitoring increases progressively with each grade.

Split probation may be considered for cases which are assessed to be needing more intensive supervision or intervention only during the initial period. The system of graded probation allows for rational allocation of resources while providing Probation Officers the flexibility to match probation supervision to meet individualised needs. Details of the graded system can be found in Annex II of the "National Standards for the Probation of Offenders and their Rehabilitation in the Community."

Several measures have been taken in the last 2-3 years to enhance the effectiveness of probation and promote its credibility as an effective means of dealing with selected offenders. These include:

### **C. Community Service Order (CSO) as a Condition of Probation**

The CSO was introduced as a condition of probation in December 1996. A CSO is an order of the court requiring an offender to perform unpaid work for a specific number of hours. It can be meted out as a condition of probation or as a stand-alone order.

The objectives of CSOs are 3-fold:

- a) As a rehabilitative measure, CSOs afford an offender a positive experience through community work and this in turn fosters the development of empathy and consideration for others. In the process, the offender gains meaningful social experiences, develops constructive social relationship skills, and regains self-esteem and confidence;
- b) As a punishment, CSOs deprive an offender of his/her leisure hours;
- c) As a form of reparation, CSOs provide the offender an opportunity to make amends for the wrongs / hurt caused by the offending behaviour through service to the community.

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An evaluation of the programme from the viewpoint of probationers and the agencies showed that the objectives of the programme were met. Benefits cited by probationers and agencies include:

- a) Acquisition of new skills
- b) Improved intra-family relationship through better communication
- c) More useful at home; more responsible
- d) More considerate and mindful of others
- e) Agencies generally found the probationers' work good or at the very least, satisfactory.

Besides using the CSO as a platform for vocational development and skills acquisition, CSO placements are also designed to give ample opportunities for offenders to be self-affirmed. In implementing the CSO programme, we strive to establish a nexus between the offence committed and the type of community service an offender is required to perform. For cyber offenders, CSO placement includes a stint of volunteering in projects which demand constructive use of IT savvy-ness for a worthwhile cause eg. developing start-up screens to warn against hacking and consequences of cyber crimes, developing parent education materials on supervising children in internet time, developing IT applications for life-long learning for the elderly or for the disabled to plug into the info-tech world.

#### **D. Programmes**

##### 1. Core & Elective Programmes

In 1998, a structured programme was devised for probationers to augment reporting and casework. Divided into core programmes i.e. those deemed essential and beneficial to every probationer or parent, and elective programmes which target specific risks and needs depending on the offender and type of offence, the programmes were intended to provide:

- a) avenues and measures to benchmark the probationer's progress;
- b) opportunities for probationers to work through lapses of bad behaviour;
- c) avenues for constructive pursuit of leisure time; and
- d) opportunities for specific problems to be addressed.

Examples of the core programme include a group-based induction for new probationers, victim impact, parenting workshops and a pre-termination session. Elective programmes in turn seek to address a variety of risk factors or individual needs of probationers which may undermine progress on probation if left unattended. Programmes targeting alcohol dependency, anger and aggression, secret society involvement, drugs misuse, and personal development programmes like making healthy life choices, study skills etc are some examples.

##### 2. Focused Programmes to Address Specific Risks

To minimise non-completion or re-offending for the more serious or high risk probation cases, specific programmes are put in place in collaboration with various government, non-government organisations and the corporate sector. These include programmes that especially help young offenders to quit smoking and to exercise restrained use of alcohol.

##### 3. Probation Services in Family Service Centres

Efforts to widen probation for young offenders mean that services should be more closely linked to the schools and the community. As such, several family service centres now serve as venues for individual and groupwork for offenders and their families.

##### 4. Employment Development Programmes

Work development programmes have been put in place to cater to out-of-school and offenders who face difficulty staying in school and cannot find a job. Income generating activities through collaborations with the disability sector eg. Bizlink Centre and Metta Welfare Association are ways in which probationers help people with special needs and the elderly to remain competitive in meeting work targets which are sometimes hard to accomplish. The probationers in turn get the opportunity to develop positive work habits and skills within a sheltered work setting.

### **E. The Family as the Basic Building Block of Society and Change Agent**

About 75% of the probation population are below 18 years of age. Of these, about 65% are either in the school or technical education system. 15% come from single parents and about 75% are from nuclear families.

In working with offenders, we continue to hold on to the belief that the family should remain an important resource for the individual. In the case of juveniles, it can be the most important change agent and one that will ensure that any gains from rehabilitation are sustained. Probation is used as an instrument of change to re-shape attitudes, values and behaviours. We work on mending flaws within the individual and family system to empower the probationer and family to sustain changes and build up resilience.

The strengthening families framework used in community-based rehabilitation of offenders begin from the pre-sentence stage right to the end of probation. Family engagement and empowerment include:

- a) negotiated action plan where probation is recommended or for resistant cases, the plan of action is discussed with the parents;
- b) parental bond to exercise proper care and supervision;
- c) attendance at core and elective programmes for parents eg. parents induction, experiential parenting workshops, parents support groups, educational talks on gangs, substance abuse, prison visits (with their offender child);
- d) other specialised services eg. special sessions for parents of young sex offenders;
- e) progress review with the parents and providing feedback on outcome of court reviews;
- f) family conference, solution or problem-focused counselling and other sessions;
- g) pre-termination programme for both probationer and parents.

At each stage of the probation process, the roles and responsibilities of parents and what is expected of them are made clear. Disadvantaged families are given additional help to enhance their functioning. Casework in such instances may include sponsorship of a divorced or widowed parent on a computer course or back-to-work programmes.

### **F. The Many Helping Hands Approach to Community Rehabilitation**

Laws and punishment alone are insufficient to meet the challenge of crime. Effective family support and control can help to prevent offenders from a downward spiral into a life of crime and the consequent economic and social costs to the individual, family and community. Active and caring community involvement will lend impetus to national efforts to combat crime.

Probation offers an alternative to sending a young offender to a correctional facility. However, the challenge lies in ensuring there are adequate support services and interventions at the probation programme level to lend weight to the viability of community-based orders.

Probation, as a community-based rehabilitation programme, works only if there is community support and involvement. The community's acceptance of offenders and their potential for change, understanding of the goals, principles and methods of probation, and their commitment to support reintegration efforts cannot be overly emphasised.

Thus the Probation Service has, since the 70s, and more so in recent years, actively engaged and involved the community in a variety of ways.

### **G. Volunteer Probation Officers: Community Probation Service**

The Community Probation Service (CPS), introduced in June 1971, is now 30 years old. It has over 300 active volunteers at most times. Volunteer Probation Officers (VPOs), complement the work of Probation Officers. By befriending and guiding probationers, VPOs help to steer young people back to the straight and narrow path. For many cases that do well during probation, VPOs make a real difference in re-shaping the lives of young offenders. To put it in the words of a young offender, "I feel so lousy when I don't do my best ... how to face my VPO? She has been so good to me – she is not even paid.....even my parents don't bother as much". Today, this probationer is a well-integrated young person in one of the polytechnics.

Sustaining, supporting and providing on-going training to keep volunteers continually challenged and motivated poses a big challenge. To appeal to the diversity of interests, skills, talents and volunteer aspirations, the CPS offers a wide scope of involvement to cater to the VPOs' interests, skills and training and the various stages of their volunteer life cycle. These include:

- a) casework
- b) project work
- c) preparation of pre-sentence reports, organising of activities for probationers and parents
- d) time restriction checks
- e) Committee and volunteer coordination work
- f) Groupwork

VPOs are currently involved in formulating annual work plans relating to activities for and by volunteers, organising VPO Skills Training Seminars aimed at sharpening skills in working with today's youth, and recently, even developing a guidebook to support VPOs in rehabilitation work with young offenders.

### **H. National Standards for the Probation of Offenders & their Rehabilitation in the Community**

To reap maximum benefits of partnerships with families and the community, it is important that the probation investigation and supervision process is made transparent to all parties including the probationer and family. Transparency and accountability are twin goals that are especially relevant in the probation context where the balance of power is clearly tilted against the offender.

In 2000, the Probation Service made a public commitment to service standards and best practice in probation work through the publishing of the "National Standards for the Probation of Offenders and their Rehabilitation in the Community". The publication, put together jointly by the Service and the Subordinate Courts is a significant milestone in the development of the probation system in Singapore. It also sets the service among the first services to make public its delivery standards.

## **II. CHALLENGES FOR THE FUTURE**

The rapid economic restructuring needed to transform Singapore into a knowledge-intensive economy has began to change employment patterns. Rising structural unemployment, especially among the less-educated workers will pose a serious challenge even for those who work in rehabilitation. The challenge is to ensure that rehabilitation aims to prepare the offenders to get jobs and be gainfully employed and meaningfully engaged in society.

The Service will have to continue to leverage on national policy on continuous learning and easy access to info-technology to better prepare probationers to carve job niches for themselves and reduce re-offending due to economic reasons.

Partners for collaborative research, exchange of executive programmes and other partnerships both with local partners and overseas counterparts to continue to inject dynamism in the management, implementation and evaluation of the Service both at the programme as well as the system level will remain central concerns to stay abreast of current knowledge and know-how.

## RESOURCE MATERIAL SERIES No. 61

Identification of risk assessment and management tools, and data management systems that will help us to achieve better outcomes with less manpower.

Widening the use of probation would invariably mean the challenge of having to meet and deal with more complex needs of individuals and families, and more support to the many helping hands we engage in the rehabilitation of offenders. These issues have to be adequately dealt with at appropriate levels if we are to continue in our drive towards a more progressive treatment of offenders in Singapore.

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**APPENDIX**  
**Conditions and Duration of the 3 Grades of Probation**

Item	Grades and period of probation		
	Administrative probation (6 months to 1 year)	Supervised probation (1 to 2 years)	Intensive probation (2 to 3 years)
Conditions	<ul style="list-style-type: none"> <li>• To comply with time restrictions</li> <li>• To work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip the offender for employment</li> <li>• To make a good faith effort towards completion of his course of study or vocational training</li> <li>• To participate in or comply with the treatment plan of an inpatient or outpatient rehabilitation programme specified by either the court or the probation officer</li> <li>• To attend an attendance centre and participate in anti-secret society talks or prison visits</li> <li>• To attend healthy lifestyle awareness programmes</li> <li>• To be involved in community projects</li> </ul>	<p>In addition to the conditions which may be imposed for Administrative Probation, the following may be imposed:-</p> <ul style="list-style-type: none"> <li>• To maintain regular contact with a probation officer</li> <li>• To allow the probation officer to visit the offender at reasonable times at his home or workplace or any other place</li> <li>• Not to smoke</li> <li>• Not to drink alcohol</li> <li>• Not to associate with or be in the company of secret society members</li> <li>• Not to associate with or be in the company of persons who are engaged in criminal activities</li> <li>• Not to patronise or visit pubs, discotheques, night-clubs, karaoke lounges, billiards saloons or video game arcades</li> <li>• To maintain a neat and proper appearance</li> <li>• To remove tattoos by a medical practitioner within a specified period from the date of the probation order</li> <li>• To refrain from any contact, direct or indirect, with the victim or any other person</li> <li>• To submit to regular drug and/or alcohol tests</li> </ul>	<p>In addition to the conditions which may be imposed for Administrative Probation and Supervised Probation, the following may be imposed:-</p> <ul style="list-style-type: none"> <li>• To reside for a specified period in an approved institution or home or hostel</li> <li>• To be electronically tagged</li> </ul>
Recommended Hours of CSO	Not less than 40 hours	Not more than 120 hours	Between 120 to 240 hours

# **VOLUNTEER MANAGEMENT IN THE PROBATION SERVICE – THE CASE OF SINGAPORE**

*Bee Lian Ang\**

## **I. INTRODUCTION**

This paper should be read in conjunction with the paper on Community Rehabilitation of Offenders in Singapore.

Probation, as a community-based rehabilitation programme, works only if there is community support and involvement. The community's acceptance of offenders and their potential for change, understanding of the goals, principles and methods of probation, and their commitment to support reintegration efforts cannot be overly emphasised.

Thus the Probation Service has, since the 1970s, and more so in recent years actively engaged and involved the community in a variety of ways.

## **II. VOLUNTEER PROBATION OFFICERS: COMMUNITY PROBATION SERVICE**

The Community Probation Service (CPS), introduced in June 1971, is now 31 years old. It has over 350 active volunteers at most times. Volunteer Probation Officers (VPOs), complement the work of Probation Officers. By befriending and guiding probationers, VPOs help to steer people back to the straight and narrow path. For many cases that do well during probation, VPOs make a real difference in re-shaping the lives of offenders.

Sustaining, supporting and providing on-going training to keep volunteers continually challenged and motivated poses a big challenge. To appeal to the diversity of interests, skills, talents and volunteer aspirations, the CPS offers a wide scope of involvement to cater to the VPOs' interests, skills and training and the various stages of their volunteer life cycle. These include:

- befriending
- guide and supervise the probationer and counsel the probationer's family
- conduct time restriction checks on probationers
- conduct group work for probationers
- conduct parenting workshops for parents of probationers
- conduct social investigations and prepare pre-sentence reports
- plan and supervise community service projects
- identify and network with community resources to support healthy youth development
- help in any programmes to complement the above
- project work
- support in formulating annual workplans on volunteers' involvement in activities

### **A. Why is Volunteer Management Important?**

#### **1. The Rationale for Volunteer Management**

In any society, there will always be people who will step forward to give their time and talent to serve the community. But there will never be enough of them. Volunteers often complement the work of professional staff in the rehabilitation of offenders.

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Volunteers choose to serve and an important element of good volunteer management is retaining them and attracting others to join. Well managed, happy and motivated volunteers enhance the service that the public and community receives. Volunteers who are mismanaged will get disillusioned or become ineffective and leave and are a loss to the community.

**B. Volunteer Coordinators as Human Resource Managers**

Volunteers are important people in our community who must be nurtured and developed in a systematic way to bring out the best in them. Volunteer coordinators are the people who do just that. They are human resource managers, the coaches in teams and the coordinators of skills and schedules. The multi-faceted demands of the job of a volunteer coordinator are challenging and require an understanding of what motivates volunteers, how they can best serve and how to take care of their needs.

1. Who Makes a Good Volunteer Coordinator?

While the duties of the volunteer coordinator are similar to those of a human resource manager, an important difference is that a volunteer coordinator must believe that volunteers make a significant difference in the lives of beneficiaries and to the organisation.

Volunteers are people who provide a service to the community out of their own free will and without monetary reward. Volunteering satisfies the human need to belong, to feel competent and to contribute. Volunteering benefits everyone – recipients, organisations, volunteers and the community.

A good volunteer coordinator must enjoy working with people as compared with someone who enjoys managing tasks. Being flexible and adaptable is a good start as it enables you to work with a wide range of people. Other qualities are:

- Ability to communicate and relate well with others;
- Sensitivity to the needs of volunteers;
- Creativity to think up varied and exciting volunteer opportunities;
- Enthusiasm to fan the flame of volunteerism in volunteers;
- Patience when volunteers challenge ideas, make mistakes or are absent;
- Team spiritedness to work in partnership with volunteers;
- Persistence in engaging volunteers in planning and providing services,
- Assertiveness to know when to say 'no' gently and firmly; and
- Commitment in making volunteerism a way of life.

**C. What is the Role of a Volunteer Coordinator?**

Volunteer coordinators wear many hats. Their role extends beyond recruitment, orientation and placement, to motivating, training and developing volunteers. They are responsible for evaluating and recognising the efforts of volunteers and helping them to defer or stop their service when the time comes. In short, they nurture volunteers through the "life cycle" of the volunteer's involvement with the organisation.

A volunteer coordinator is a people mobiliser, a catalyst, an organiser, a facilitator and a mentor. His special responsibility is to develop a climate that frees and encourages volunteers to perform to the best of their abilities.

A volunteer coordinator will ideally do the following:

- Recruit the best person for the job;
- Interview potential volunteers;
- Screen volunteers for their suitability;
- Orientate volunteers to the job, the programme and the organisation;
- Train and develop volunteers so that they "bloom";
- Supervise and support volunteers;
- Help volunteers to build bonds among themselves and with staff;
- Motivate volunteers;

- Provide “broad shoulders” for them to “cry” on;
- Give and receive feedback;
- Recognise and appreciate their efforts;
- Re-channel or discontinue their service when volunteers are no longer constructive; and
- Review and evaluate the volunteer programme to ensure relevance and to meet future needs.

In addition to managing the multiple roles, the coordinator will have to feel the pulse and be in touch with the interests, concerns and problems of volunteers. Performing this role effectively requires the ability to relate well with people and understand both their needs and limitations. Doing this well will result in retaining volunteers and having satisfying and warm volunteer relations.

#### **D. A Good Volunteer Management System**

A volunteer management system refers to a systematic way of developing volunteers. There are two crucial ingredients of a good volunteer management system. The first is having an organisational philosophy towards volunteers.

Consider these questions:

- What is the organisation’s philosophy on volunteerism?
- Are volunteers just an extra pair of hands or are they partners in service provision?

The value the organisation attaches to volunteerism affects the way they are supervised. An organisation that values volunteers recognises them as important people who can make essential contributions to the organisation. It also recognises that volunteers, too, have needs and limitations. As the volunteer coordinator, you should develop and strengthen the volunteerism culture within the organisation and direct the organisation’s philosophy on volunteerism.

The rationale for the volunteer programme should be reflected in the objectives, goals, organisational structure, mission statement or constitution. This provides a sense of purpose in engaging volunteers and their contribution in the organisation.

The second ingredient is a formalised system for working with volunteers throughout the “life-cycle” of the volunteer. A volunteer should not be treated haphazardly and made to do things because no one else is doing them.

It helps volunteers when there are guidelines on the roles, responsibilities and accountabilities of the volunteers and what resources are available for them. This will set the climate for a good working relationship and at the same time provide safeguards for all parties.

#### **E. Recruitment and Deployment**

Before recruiting volunteers, consider what kind of volunteers are needed for the service. A distinction should be made between regular and ad-hoc volunteer needs. This can be done by mapping out:

- (i) the areas of work that volunteers are required;
- (ii) the time period for which volunteers are needed; and
- (iii) the skills and talents involved.

A volunteer recruitment programme would include:

**Planning:** What types of volunteer involvement is your organisation offering to potential volunteers. How much time and resources are expected of volunteers? What will the volunteers benefit from volunteering with your organisation – e.g. training, recognition, status, networking? What types of aptitude, attitude, time, resources and skills are required?

**Promotion:** How can the organisation attract volunteers? Work out appropriate messages and the different ways of delivering them. Where and when should the organisation recruit volunteers?

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1. Meeting for the First Time

Plan the first meeting. A good interview is the basis for a good placement. At the meeting with the volunteer:

- provide information about the organisation and about the volunteer opportunities;
- find out the volunteer's expectations, strengths, skills and limitations. This will help assess his or her suitability for the organisation and the tasks;
- clarify roles and expectations.

**F. Orientation**

New volunteers are like new members in an organisation. They need to be well-orientated to find their place and be comfortable in the organisation. Experienced volunteers and full-time staff should be involved in orientation.

The following points could be covered in orientation:

- familiarise volunteers with the organisation's mission, goals, objectives, structure and activities;
- introduce them to key staff members and other volunteers;
- inform them about the boundaries in their roles and authority in relation to the staff, management, beneficiaries and other volunteers. A clear delineation of roles and responsibilities can avoid potential conflict or misunderstanding.

**G. Training and Development**

1. Training and Helping Volunteers to Develop

A common misconception about volunteerism is that volunteers know precisely how to do the jobs they volunteered for. Regardless of their abilities, it is always useful and essential for volunteers to receive training. This enables them to acquire the know-how to perform their tasks effectively or further develop their skills.

For volunteers who are more committed, the organisation can even map out a "career path" for them in the organisation. It is helpful to train a core group of volunteer leaders. Give them additional responsibilities. When the need arises, you have a ready pool of group leaders.

It may not always be possible to get everyone together for a training session. On-the-job training may be the next best way. Such training also has the advantage of being timely. In such cases, match the volunteer with a staff or senior volunteer who will be the buddy and coach him or her along the way. An on-the-job training programme should be designed for this purpose. When there are more volunteers, a group session can be held.

**H. Guidance**

1. How is Supervision of Volunteers Different?

Volunteers need guidance to ensure that their work is heading towards the right result. They see their voluntary work as something over and above their full-time jobs. Hence providing guidance for volunteers requires a different approach from that of supervision of staff. The volunteer coordinator has to make a fine balance in overseeing and guiding the work of volunteers. It is useful for the volunteer coordinator to put the following into practice:

- Get to know the volunteers' strengths and weaknesses as their work progresses. This will help the coordinator to see how they can improve further and whether or not the assigned task is suitable for them.
- Assess how ready the volunteer is to work independently and then provide the appropriate level of guidance.
- Help volunteers understand that they are held accountable for the voluntary tasks entrusted to them.

- Those who are responsible for directly guiding volunteers in their various tasks should be approachable, empathetic and readily available to listen or provide information.

When the volunteer pool becomes too large, the volunteers can be grouped into smaller groups led by a volunteer leader. Volunteers within the group can attend to each other at a personal level while the group as a whole maintains contact with the main volunteer coordinator.

### **I. Review and Support**

It is important to conduct regular reviews with volunteers and evaluate their performance and progress. This enables volunteers to know whether their work is on the right track and what areas of improvement can be made.

- In the evaluation, consider the volunteers' long term contributions in various areas of their work and not isolated incidents.
- During the evaluation discussion, compliment and affirm the volunteer, and share views in a constructive way.
- In certain cases, it may be necessary to exercise more discipline on some volunteers. This is not something to be avoided at all costs, since it would not be in the offender and his family's interests if what the volunteers do is not helping those they had wanted to help.
- For example, when volunteers make requests to other organisations for monetary or material aid without prior consultation, you will have to alert them firmly of the boundaries of their role and bring the matter to an amiable conclusion.

Volunteers cannot be expected to carry out their work without proper support from the organisation. Whether it is in the form of doing a simple administrative task for them or providing the information they need, the organisation as a whole should give consistent support to its volunteers.

- Demonstrate in practical ways enthusiasm to support volunteers by following up on what the organisation has committed to do to help them in their tasks.
- All staff, in varying degrees, deal with volunteers. It is the responsibility of the volunteer coordinator with support of management to ensure that the staff team as a whole has a coordinated and consistent way of working with volunteers.
- Organisational support like volunteer notice boards and volunteer corners can have a positive effect on the level of volunteer job satisfaction and enhance performance.

### **J. Motivation**

#### A 'pat on the back' goes a long way

Here are some tried and tested ways to motivate volunteers:

- Build positive and meaningful relationships between staff and volunteers, as well as among volunteers by initiating activities to promote group ties.
- Help volunteers grow, learn and benefit from their volunteering experience. Make them feel involved with the organisation. Where possible, include volunteers in planning, brainstorming and decision-making processes. This instills a sense of ownership in the organisation and in its cause. It is also important to keep volunteers informed of changes within the organisation.
- Reinforce in volunteers their sense of contribution to the community. Point out how the volunteer's contribution has improved the service received by the beneficiaries.

## **K. Recognition**

### Everyone gains from being appreciated

Regardless of why volunteers offer their services, a good system of recognition is necessary to acknowledge their contributions and affirm their commitment.

- Establish a formal system of recognition and appreciation to ensure that all volunteers receive the recognition and commendation they deserve.
- Let volunteers know the importance of their contributions and the difference they make to the beneficiaries.
- Volunteer recognition should go beyond just organising an annual volunteer appreciation event. Instead, it should be on-going, from giving a simple pat on the back to providing the volunteer with a testimonial when required.
- Determine what makes each individual volunteer “tick” – what form of recognition is most rewarding to him or her. Recognition may differ from one volunteer to another, and it should, so that each one feels rewarded in his unique way.

## **L. Deferring and Terminating Services**

### Saying goodbye

Do not be discouraged at the departure of some volunteers. It is natural and inevitable that volunteers leave the organisation for one reason or another. As far as possible, ensure that volunteers part on good terms.

- Some volunteers may have been struggling with wanting to leave but feel bad about it. It is important to be able to “let go” and assure them that they can move on or return.
- The volunteer may just need a temporary break due to “burn-out”, time constraints and competing commitments. The organisation can try to re-negotiate the terms of the volunteer’s commitment.
- The reason for leaving may be dissatisfaction with the organisation. Note the areas where improvements can be made within the organisation to better retain volunteers.
- Some volunteers are unsuitable for the organisation. In such cases, provide opportunities for these volunteers to make a polite exit. Where appropriate, recommend and introduce them to other organisations that may be more suitable for them.

## **M. Training for Volunteer Coordinators**

Volunteer management is a rewarding experience and good volunteer management is now gaining more attention. There are now courses, workshops and seminars on volunteer management. These provide useful guidance on the know-hows and skills, and are also opportunities for volunteer coordinators of different organisations to meet and share their experience.

Volunteerism provides a vital reservoir of energy, commitment and experience for the community. Volunteer management is thus an important and challenging responsibility. The organisation's ability to carry out an effective volunteer programme will play a key role in contributing to a dynamic and caring society.

# FROM COMMUNITY SANCTIONS TO RESTORATIVE JUSTICE THE BELGIAN EXAMPLE

*Tony Peters, in collaboration with  
Ivo Aertsen, Katrien Lauwaert and Luc Robert\**

## I. INTRODUCTION

The following text aims at giving a view on the recent developments in the debate about the penal reactions to crime.

In this development there is a clear shift in the focus of the action of punishment. Whereas the classic repressive retributive reaction takes the crime and its qualification in the center of attention, punishment follows as a logical legally defined reaction and as a moral obligation.

Little diversification was provided (18<sup>th</sup>/19<sup>th</sup> century). A fine, a prison punishment or a combination of both, were the available sentences.

The introduction of a rehabilitative complementary approach shifted the interest partly to the offender and has led to a growing number of penal reactions, which allowed it to take the personal characteristics and needs of the offender into account. The rehabilitative model has widened the scope of the action of sentencing and has led to the introduction of a diversified set of measures and sanctions which include community sanctions but also measures of security to be taken against dangerous offenders. Individual and general prevention were the drive behind the new measures and sanctions.

The development of a victimological approach within the context of the criminological sciences has put the victims of crime, the consequences of their victimization and the reparation of the harm provoked by the offence, in the center of the attention.

Victimology and victimological research has imposed on criminologists and other penal scientists to rethink the concept of punishment. The sentencing process has to address the crime, its consequences, the victim as well as the offender and the community in which they function.

This article concentrates the discussion especially around the development of a restorative approach within the context of punishment and the sentencing process.

As a point of departure, a first overview concerns the available community sanctions within the Belgian practice of penal reactions to crime.

The second part is built up around the central point of interest, namely the influence of victimology and the development of a restorative approach and the broadening of the aims and practices of punishment.

In a third part it is made clear that also prison punishment should be the subject matter of a restorative approach. This will be illustrated by presenting the Belgian pilot project on restorative prisons.

The text which follows has been composed making use of three articles written by members of the Research Group on Penology and Victimology, Department of Criminal Law and Criminology of the Catholic University of Leuven, Belgium.

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Community Sanctions and Measures in Belgium by Ivo Aertsen and Katrien Lauwaert, published in *Community Sanctions and Measures in Europe and North America*, edited by Hans-Jörg Albrecht and Anton Van Kalmthout, *Kriminologische Forschungsberichte* 101, Max-Planck-Institut für Ausländisches and Internationales Strafrecht, Freiburg I Br. 2002, pp. 43-77.

Towards 'Restorative Justice': victimization, victim assistance and trends in criminal justice, by Tony Peters and Ivo Aertsen, published in *Crime and Criminal Justice in Europe*, Council of Europe, chapter 2.

How restorative justice is able to transcend the prison walls: A discussion of the project "restorative detention", by Luc Robert and Tony Peters.

This article is based on documents and reports written by different members of the action-research project on "restorative prisons". The text will soon be published in the proceedings of the Tuebingen Conference on Restorative Justice (September 2002).

This overview focuses on community sanctions and measures (CSM's) which are available in Belgium for adult offenders. 'Community' because the offender stays in the community during the execution of these sanctions and measures. The term 'sanctions and measures' indicates that the overview will detail both mechanisms which are imposed before trial by a public prosecutor or a judge to avoid further prosecution or pre-trial detention, as mechanisms imposed by court decision, and mechanisms used after trial to enforce part of the prison sentence in the community.

## **II. THE DEVELOPMENT OF COMMUNITY SANCTIONS AND MEASURES IN BELGIUM**

The introduction and the development of community sanctions and measures has been influenced by the changing perceptions on what crime is and how society should react to it. Most of the CSM's currently existing in Belgium were designed according to the way of thinking about crime and crime control which was predominant at the time they were introduced (Peters, 1996). Fines are imposed in accordance with the repressive-retributive model. Conditional release, suspension of the sentence, postponement of the execution of the sentence, probation and praetorian probation were adopted in accordance with the rehabilitation model. Penal mediation was introduced in accordance with the victim-oriented model. Some community sanctions and measures, however, have been introduced for mainly very pragmatic reasons, such as the growing overburdening of the courts and the overcrowding in the prisons. This is true for provisional release, transaction and conditional pre-trial release.

### **A. Community Sanctions and Measures Regulated by the Law**

#### **1. The Fine**

The fine was introduced in the modern Code of Criminal Law in 1867 (Lauwaert, 1998). At that time, punishment was meant to inflict pain and to deprive the offender from illegally acquired advantages. The fine was the main form of punishment that was executed while the defendant was staying in the community (Peters, 1996).

A fine is a punishment which consists of the payment of a certain amount of money to the State. The amount of the fine depends on the legal categorisation of the offence. The criminal code always indicates a minimum and a maximum amount. Between these boundaries, the judge can freely determine the exact amount. Doing so he can take into account the objective seriousness of the crime, the kind of crime, the legal past of the offender and his financial capacity. Each time the judge imposes a fine, he also has to pronounce an alternate prison sentence. This alternate sentence will be executed if the offender does not pay the fine that was imposed on him. In Belgium there is no system of day-fines.

#### **2. Conditional Release**

Mainly under the influence of the social sciences, the person of the offender became the focus of attention from the end of the 19th century. Crime control became a matter of removing from society dangerous and 'incurable' offenders. Harmless or occasional offenders received milder punishment, which had to be adapted to their circumstances. In this context the 'conditional release' was introduced

by the law of May 31, 1888. After different piecemeal changes, the system of conditional release has been completely revised in 1998. The new regulation has improved considerably the position of the victim in the conditional release procedure.

Conditional release is a transitional phase between being in prison and complete freedom, during which the convicted person finds himself in a 'supervised freedom'. Being released under conditions is a privilege, not a right.

Three major conditions need to be fulfilled for a prisoner to be released conditionally. *First*, the prisoner must have served one third of his prison sentence with a minimum of three months. If the sentence was imposed for a repeated offence, conditional release can be granted after he has served two thirds of the prison sentence, with a minimum of six months and a maximum of fourteen years. Prisoners serving a life sentence can be released conditionally after ten years or, when convicted for a repeated offence, after fourteen years. *Second* (and this is new), the prisoner has to present a 'rehabilitation plan' which shows his willingness to reintegrate in the community and establishes the efforts already made in this regard. *Third*, there must not be counter-indications, which show that a release entails a serious risk for the community or which reasonably obstruct the social reintegration of the prisoner. These counter-indications concern the possibility of rehabilitation of the prisoner, his personality, his conduct during imprisonment, the risk he will commit new offences or the attitude of the prisoner towards the victim(s) of the fact(s) for which he has been convicted.

Unlike previously, when the minister of Justice was competent to decide conditional releases, since 1998 the decisions about conditional release are made by a commission. This commission consists of a judge of the court of first instance, an assessor-expert in the execution of sentences and an assessor-expert in social reintegration. No appeal of the decision of the commission is possible. In certain cases the commission will hear the victim (or his rightful claimant when the victim is deceased) when he/she requests this and can show a legitimate interest. The hearing will only concern the conditions that should be imposed in the victim's interest.

### 3. Provisional Release

Provisional release is another form of releasing prisoners before they have served their full prison sentence. It concerns mainly prisoners with short sentences who can not benefit from the system of conditional release. This mechanism has never been regulated by any statutory provision, but is a praetorian measure, which has been set out in a number of Ministerial Instructions.

### 4. Suspension of the Sentence, Postponement of the Execution of the Sentence and Probation<sup>1</sup>

After World War II the idea that the sentence should be adapted to the person of the offender and should serve his or her reintegration was further implemented. This was done through the introduction, by the law of June 29, 1964, of the system of suspension of a sentence, postponement of the execution of a sentence, and probation (which consists in the attachment of conditions to one of the two previous possibilities). These modalities stimulate the offender to make amends under the threat of pronouncement or execution of the sentence. The suspension of the sentence prevents the stigmatisation which is inherent in 'not having a blank criminal record'. The postponement of the execution prevents de-socialising effects such as loss of a job, separation from one's family, etc. The attachment of conditions of probation allows the imposition on the offender conduct which will help him to not re-offend and/or to reintegrate. In 1994, the scope of application of these three modalities has been considerably enlarged and the possibility of imposing community service or training as probation conditions was inscribed in the law (10.02.1994).

A suspension of the sentence means that the sentence will not be pronounced and the prosecution will be ended provided that the defendant is not sentenced to a criminal punishment or a punishment of at least one month during a probationary period of one to five years following the judgement. The judge can impose a suspension of a sentence of up to five years of correctional imprisonment and when the defendant has previously not been sentenced to a criminal punishment or a correctional prison sentence of more than two months. The suspension of the sentence can not be imposed without the consent of the

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<sup>1</sup> Demet, 1998

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defendant. The suspension of the sentence can be revoked if the defendant is sentenced to a criminal punishment or a punishment of at least one month during the probationary period.

The postponement of the execution means that the sentence is pronounced, but will not be executed provided that the defendant is not sentenced to a criminal punishment, or a correctional punishment of more than two months without suspension of the execution, during a probationary period of one to five years following the judgement. The postponement of the execution is possible for sentences of up to five years and when the defendant has previously not been sentenced to a criminal punishment or a prison sentence of more than twelve months. The defendant needs to consent to it. The postponement of the execution is automatically legally revoked when the defendant is sentenced to a criminal punishment or a correctional punishment of more than two months without suspension of the execution during the probationary period.

Probation means that the judge imposes either a suspension of the sentence or the postponement of the execution of a sentence and attaches conditions the offender has to respect during the probationary period. The conditions necessary to impose probation are the same as for a suspension of the sentence or a postponement of the execution. This means that each time the judge imposes either a suspension of the sentence or a postponement of the execution, he can attach probation. When probation is attached the grounds for revocation stay the same, but in addition there can be revocation when the probationer fails to respect the conditions imposed and when the probation commission considers this serious enough to bring it to the attention of the prosecutor. Probation can only be imposed when the defendant agrees to the proposed conditions. It is left to the discretion of the judge to decide which conditions he will impose. The law just indicates the possibility of imposing training or community service and describes under which conditions this can be done. Community service can, for example, be imposed for a minimum of 20 hours and a maximum of 240 hours and has to be executed within twelve months during the spare time of the probationer. For training a maximum duration is not indicated, but it also has to be followed during spare time and within twelve months.

A suspension of the sentence, with or without conditions of probation, can be imposed by the investigating courts and the trial courts (except for the Assize Court). A postponement of the execution of the sentence, with or without probation, can be imposed by all the trial courts (including the Assize Court).

The probation assistants and the probation committee are the two entities which monitor the respect of the conditions by the probationer.

The prosecutor, the investigating judge, the investigating courts and the trial courts (except for the Assize Court) may have a probation assistant prepare a social enquiry report. This can be done at the defendant's request or with his consent. When the judge wants to impose training or community service as a condition for probation, a prior social enquiry report is obligatory.

#### 5. Penal Transaction

The mechanism of transaction (provision 216bis Code of Criminal Procedure) was introduced in 1984. A new vision of criminal policy was not at stake here. The transaction had been introduced almost solely to fight the backlog in the courts after the political pressure to do something about that problem had escalated. This measure does, however, also serve the interest of the victim. The enlargement of its field of application in 1994 meant a further accommodation for the victim.

In a penal transaction the prosecutor proposes not to prosecute the offender if he/she agrees to pay a certain amount of money for the benefit of the State. If the offender accepts the proposal and pays, the public action is dropped formally. The offender must have compensated the victim before a transaction can be proposed.

6. Conditional Pre-Trial Release<sup>2</sup>

In 1990 the Belgian parliament voted for a new law on pre-trial detention (20.07.90). The aim of its introduction was the reduction of the high number of inmates in pre-trial detention in the Belgian prisons. This same law introduced the system of conditional release in its provisions 35 through 38.

Conditional pre-trial release is a measure by which an investigating jurisdiction, an investigating judge or in certain situations a trial judge, instead of locking a suspect up or keeping him in pre-trial detention, decides to leave this person in the community or to release him under certain conditions. It is a substitute measure for the pre-trial detention.

The law does not give a limited list of conditions the magistrate can impose. But, there are some restrictions. The law itself states that the magistrate has to show that the conditions he imposes serve to prevent that the suspect would commit new crimes, would flee, would try to destroy evidence or would organise a collusion. According to the Council of State, conditions that concern the physical and/or the psychological integrity of the suspect (e.g., undergo drug rehabilitation treatment) can only be imposed if the suspect agrees to it.

Different instances control whether the offender respects the conditions imposed. When pre-trial release is granted by an investigating judge or an investigating court, it is the investigating judge who is responsible for this control. When pre-trial release is granted by a trial judge, the prosecutor's office is responsible for its control. In practice, the supervision is done by the police when the conditions have a character of merely controlling the conduct of the offender (e.g., not leaving a certain area, not consuming drugs or alcohol, keeping away from football games...). When the conditions relate to getting social assistance (e.g., undergo detoxification, meet weekly with a social worker), the supervision is done by a probation officer, who works personally with the offender or keeps in contact with the social service who works with the offender.

7. Penal Mediation<sup>3</sup>

Since the 1980s, victimology, victim movements and certain public events have led to more attention to the plight of the victim. In addition to providing a quick social reaction to common city crime, this concern was at the basis of the introduction of 'penal mediation' (provision 216ter Code of Criminal Procedure) (10.02.1994).

In penal mediation the prosecutor can propose that the suspect fulfils one or more conditions. If the suspect accepts the proposal and fulfils the conditions, the public action will be officially extinguished.

Penal mediation is possible for offences for which the prosecutor deems a penalty of more than two years of correctional imprisonment or a more severe penalty is not necessary. This means that, through application of mitigating circumstances, penal mediation can be applied for offences for which the Criminal Code provides twenty years of (correctional or criminal) imprisonment.

The conditions under which the prosecutor can propose penal mediation are the following:

- (i) reparation of the damages caused to the victim or restitution of certain goods; in this case the prosecutor may convoke the victim and the offender for a mediation to settle the case;
- (ii) undergo medical treatment or a suitable therapy, if the offender attributes the offence to a disease or to an alcohol or drug addiction;
- (iii) follow a training programme of up to 120 hours;
- (iv) execute community service of up to 120 hours.

The maximum time to carry out the proposed conditions is six months for measures 2, 3 and 4, and undetermined for measure 1.

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<sup>2</sup> Lauwaert, 1998

<sup>3</sup> Aertsen, 1998

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In order to implement penal mediation, three new positions have been created, all three within the prosecutor's service. In each court of first instance a deputy public prosecutor has been designated as liaison magistrate for penal mediation ('mediation magistrate'). He/she is not doing the concrete mediation work, but is responsible for the selection of cases, the supervision of the mediation work and the final session at his/her office. In the public prosecutor's service of these same courts, one or more social workers function as 'mediation assistant'. They are doing the practical work for the four possible modalities of penal mediation: contacting the parties, preparing the conditions, mediating in cases where a victim is involved and follow-up of the agreements. At each court of appeal, within the prosecutor-general's office, two 'mediation advisers' have been appointed to co-ordinate the work of the mediation assistants, to support them and to develop a criminal policy for mediation.

While the mediation assistant does most preparatory and mediation work, the mediation magistrate leads the formal session which concludes the procedure. Both the offender and the victim have the right to be assisted by a lawyer and the victim can be represented. The stipulations of the reached agreement or conditions are laid down in an official report (a *procès-verbal*). When the offender fulfils the conditions, a second *procès-verbal* is drawn up, stating that the public action is extinguished. If he does not fulfil the agreement, the mediation magistrate can summon the offender to appear in court but he has no legal obligation to do so.

## **B. Application and Evaluation Data**

### 1. General Findings

In Belgium, community sanctions and measures are rarely used compared to what is legally possible. One exception may be the fine, which constitutes about 70% of all sentences. Only the public ministry at the police level applies the penal transaction in a considerable way, and this mostly for traffic offences. At the level of the court of first instance penal transaction remains a rather marginal practice.

There is very little or no tracking of the use of conditional pre-trial release. From explorative interviews with practitioners we do know, however, that generally, conditional pre-trial release has a very low implementation rate.

Data on the conditional pre-trial release decisions that were referred to the probation service for follow up are presented below. Table 1 shows a rising number of those referrals in the period 1994 to 1997.

**Table 1. Number of Conditional Pre-trial Release Decisions Referred to the Probation Service**

	Number of cases referred
1994	514
1995	609
1996	no data
1997	1209

### 2. Suspension, Postponement of the Execution and Probation

The yearly number of sentences with suspension or postponement of execution, and certainly with probation, is rather limited. In the year 1994 14,758 sentences with postponement of the execution were registered, of which 1435 (10%) accompanied by probation conditions. The number of suspended sentences in the same year was 6146, of which 689 (11%) were with probation. Nevertheless, the total number of probationers has increased significantly in the 1990s, as Table 2 shows.

**Table 2. Number of Probationers**

December 31 of the year:	Number of probationers:
1980	2287
1985	2754
1990	3733
1995	5664
1996	6533
1997	7007

3. Penal Mediation

Penal mediation has developed quite fast and in a quantitative way it is successful. This may be explained by the localisation of penal mediation within the prosecutor's office. Tables 3 and 4 provide an overview of cases selected for penal mediation in the first years: from November 1, 1994 (when the law on penal mediation came into force) until December 31, 1997. From this data we can conclude that one mediation assistant deals on average with more than 100 cases a year.

**Table 3. Number of Cases for Penal Mediation**

	offenders	files
Nov. 1994 - Dec. 1995	5393	4839
Jan. - Dec. 1996	5880	5266
Jan. - Dec. 1997	6738	(-) not available

**Table 4. Type of Cases in Penal Mediation (November 1994 - December 1996)**

	%
property offences	37,0
violent offences	33,5
drug offences	14,5
sexual offences	3,0
other	12,0
total	100

Table 5 below shows which measures or conditions are imposed, in order to obtain an extinction of the public action.

**Table 5. Measures Applied in Penal Mediation (November 1994 - December 1996)**

	%		%
Only one measure	74,6		
	specification:	reparation	33,7
		treatment	12,4
		training	8,7
		community service	9,9
		other	10,2
Combination of measures	25,4		

Despite the success of penal mediation in a quantitative way, there are important concerns, most of which are formulated by the mediation advisers:

- The law on penal mediation lacks clear and uniform objectives. Different rationalities underlie the law and its application in practice: to demonstrate a visible reaction to minor offences, to help victims, to restore the confidence of the public in the criminal justice system, and, to a lesser extent, to handle the overcrowding of the prison system.
- Practice shows that penal mediation is highly offender-oriented and tends to confirm unilateral punitive approaches. The first modality of penal mediation (reparation to the victim) is applied in only about 50% of the cases. Reparation concerns almost exclusively the financial aspect of the damage. Mediation is rarely done face to face. The mediation session with the magistrate is often carried out in a moralising way; in most cases there are no victims involved at all. An increased number of failures to respect the combined conditions has been reported.
- Finally, the advisers stress the risk of netwidening. There are indications that penal mediation is primarily applied as an alternative for an unconditional waiver, and not as an alternative to prosecution.

#### 4. Community Service

As was explained above, since 1994 community service can legally be ordered in two ways: as a condition for penal mediation or as a condition for probation. We try to summarise some general findings about the application of community service in the two models together. Table 6 is indicative for the modest, but growing quantitative success.

**Table 6. Total Number of Community Service Orders**

Year	
1994	199
1995	487
1996	1002
1997	1738

## C. Discussion on Further Perspectives

### 1. Ambiguous Developments

The preceding parts of this overview refer to some fundamental problems regarding the origins, the conceptualisation and the implementation of community sanctions and measures, which have wider applicability than Belgium alone.

First, community sanctions and measures are, overall, used in a very limited way. The reasons for this are not always clear and have to do with a mix of factors. Among these are the attitudes towards and the restricted knowledge about alternatives for police, prosecutors, judges and lawyers. A second reason lies in the weak co-operation between judicial authorities and non-judicial agencies. A repeatedly mentioned problem concerns the classic, punitive way of thinking shared by different professional groups in the criminal justice system. Whereas Belgium experienced more than three decades of under-utilisation of the legal probation system until now, the new alternative measure of penal mediation has been implemented quantitatively in a fast and significant way within less than two years since legislation.

But even from the perspective of an increased use of community sanctions and measures, we have to face some fundamental questions. Do we know sufficiently how this multitude of new programmes is operating in practice? Which groups of offenders are reached? What is the nature and the quality of the intervention? What about the effects on the persons involved, on their surroundings and on public opinion? How do these alternatives relate to the formal justice system? What is the impact on incarceration rates? For the Belgian situation essential information about most of these questions is missing. There is no doubt about one point: community sanctions and measures do not currently function as an alternative to custody. Their introduction did not curb the increasing prison population rates in Belgium. On the contrary, findings suggest that community sanctions and measures, by the effect of unintended mechanisms, have become one of the facilitating factors for the expansion of the prison sentence. In the near future, we may expect a further increase in the prison population (Snacken, 1997).

One of the effects of the implementation of community sanctions and measures referred to in the last paragraph is that they may indirectly cause a supplementary prison input, since these alternatives keep a structural or a de-facto link with the prison sentence. This might be the case with Belgium's measures and sanctions of penal mediation and probation because they may impose on offenders who failed to perform their community sanction, a conditional or an effective prison sentence. The provisional conclusion of this paradoxical development seems to be that an increased use of community sanctions and measures goes hand in hand with an expansion of the prison population.

In Belgium, community sanctions and measures are applied mostly for relatively minor offences. The legal conditions for transaction, penal mediation and probation link the applicability of these measures or sanctions to certain upper limits of a possible prison sentence in a given case. And even when the legal range is relatively broad, prosecutors or judges tend to use these alternatives in a restricted way, limiting them to less serious crimes, to first or young offenders, or to petty drug offences. The overall result of this is a 'two-track development'. Community sanctions represent the soft option; they are seen as a favour or a last offer to the delinquent who committed a rather minor crime. 'Serious' cases then, such as violent offences and organised crime, are dealt with in a harsh way, because these cases are not deemed appropriate for a community approach. The evolution of the Belgian prison population – an increase of long-term inmates with sentences of five years and more – seems to confirm this dualism in penal reactions. In any case, practice shows that even community sanctions can be executed in a very punitive and stigmatising way.

### 2. The Need for a New Approach

During previous decades, a new element has entered in the debates on crime and criminal justice: the attention to victims of crime. This is totally new in criminal justice policies, compared to the unilateral orientation to the offender in both the traditional repressive and rehabilitative models. This evolution might have far reaching consequences. In all western societies the care for victims of crime is present now, sometimes in a pronounced way. Victimology and the victim movement indubitably have

affected the way society and penal systems react to crime. The recent laws on penal mediation (1994) and penal transaction (1994) have clearly been influenced from this perspective. The new Belgian Code of Criminal Procedure (1998) and the new Law on Conditional Release (1998) also integrate the position of the victim in their procedures. Talking about sanctions or alternative sanctions without taking into account the position of the victim has become hardly possible (Dignan and Cavadino, 1998). The victim is also represented in the European Rules on community sanctions and measures (Recommendation R(92)16), where Rule 30 stipulates: *'The imposition and implementation of community sanctions and measures shall seek to develop the offender's sense of responsibility to the community in general and the victim(s) in particular'*. The interest of the victim as well as the importance of community involvement are also stressed by the U.N. Standard Minimum Rules for non-custodial measures. The so-called Tokyo-Rules (1990). For example Rule 1.2.: *'The Rules are intended to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society'*. The rights of the victims are mentioned in several Rules, dealing with the legal safeguards, pre-trial dispositions and the avoidance of pre-trial detention, sentencing dispositions and conditions of non-custodial measures. Rule 8.1. on sentencing dispositions stipulates: *'The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender; the protection of society and the interests of the victim, who should be consulted whenever appropriate.'*

There is, of course, the risk that the attention to the victim and the strengthening of his position within criminal justice procedures again reinforces the retributive justice model. Therefore, a balanced approach is needed, which guarantees the right concern for the victim, the offender and the society. This new model might be found in the concept of *'restorative justice'*. Restorative justice is not a new sanction, measure, or a programme. Restorative justice refers to a set of principles and values, which represent a specific way of defining crime and elaborating adequate social reactions. Crime is no longer seen as a violation of abstract state rules, but as a conflict, which causes harm to people and relations. Within this rationale, the answer of the criminal justice system should primarily focus on the needs of victims and local communities.

### III. VICTIMOLOGY AND RESTORATIVE JUSTICE

This part aims to give a clear and well articulated view on victimization, its consequences and the answers developed by the criminal justice system. These topics, presented in a European context, refer to complex developments in the criminological sciences and in social and criminal policy during the last three decades.

It is our intention to discuss the policy changes as resulting from scientific analysis and research. More than other parts of the criminological sciences, victimology became an outspoken applied approach. This includes a great diversity of practices and actions oriented towards the protection, the support, the assistance and the strengthening of the legal position of the victims of crime. These practices have been realized within different policy frameworks and offer legitimacy to several types of groups of professionals and citizens to have their say in this field. Victimology and restorative justice are on top of being an important field of application in the criminological sciences, a battlefield or meeting place where many interest groups clash.

When developing this overview references are in the first place made to what happens in Europe, putting the accent on Western-Europe. Nevertheless we will also have to discuss North American practices and policies, partly to reintegrate the origins of the victimological thinking, partly to contrast European approaches with the North-American way of working.

#### A. Victimology and the Victim Movement

##### 1. A Short Historical and Anthropological Comment

The fact that victimization since the last two decades became a topic of first criminological interest and is given a top priority on policy agendas is only remarkable because the opposite, the absence of a victim perspective, has been a general rule in the proceeding years. Of the three protagonists of crime,

the offender, the victim and the community, criminal justice has always focused on the relation between the offender and society (Verstraeten, 1990). Research in criminal justice mainly focuses on the problems of legal protection of the suspect or on the problems of the effectiveness of the system. The interests of victims of crime have been for a long time “*quantité négligeable*” (Van Dijk, 1988). Punishment and the social reintegration of the offender polarize the powers of criminal justice (García-Pablos, 1991). From the moment of denouncing the offence the victim experiences *a victimization by administrative runaround* (Ash, 1972). *Once a case enters the criminal court system, the victim-witness becomes susceptible to a myriad of problems and needs* (Knudten, Meade a.o., 1976).

However, the history of the administration of criminal justice shows that in non-state societies the victim had an equal position compared to the offender. To finish or to avoid vendetta, revenge and even war, the private arrangement of the damage, taking into account the talio principle (proportionality) became a usual practice in which mediation was not an exception. *Once the state monopolized the right to criminal prosecution and converted the “wergeld” or the compensation, that used to be paid to the victim, into a fine destined to the King's coffers, the victim became the “forgotten figure”, a legal nonentity* (Fattah, 1992). *The reduction of the victim to an inconsequential figure coincided with the emergence of the public prosecutor* (Gallaway and Hudson, 1981). *The real decline started with the emergence of a criminal law which viewed the criminal act not as an offence against the victim but as an offence against the Sovereign and later the State* (Fattah, 1992).

## 2. The Etiological Victimology

The first systematic criminological attention given to the victims of crime was subordinated to the traditional etiological questions (about the causes of crime) of the positivistic criminology. Since the forties some criminologists, who are now seen as the “founding fathers” of the victimology, focused their research on the role of the victim in the construction of a criminal act. Mendelsohn and Von Hentig developed a victimogenetic typology (the process of becoming a victim) in which the degree of guilt or innocence and the degree of resistance to or collaboration with the offender became the criteria to distinguish between the victims (Mendelsohn, 1956; Von Hentig, 1941 and 1948). *“The study of the victim, his characteristics, his relationships and interactions with the victimizer, his role and his contribution to the genesis of the crime seemed to offer great promise for transforming etiological criminology from the static, one sided study of the qualities and attributes of the offender into a dynamic, situational approach that views criminal behaviour as the outcome of dynamic processes of interaction.”* (Fattah, 1979). Mendelsohn proposed victimology “as a new branch of science” concerned with the study of the factors which influence the behaviour of the victim (Shafer, 1968). Ellenberger (1954) analysed the victimogenesis like the criminogenesis and studied factors such as social marginality and social isolation which diminishes the protection of a potential victim. One of the important phenomena he was interested in was the changing roles of offenders becoming victims and vice versa.

The empirical approach of the victimological perspective in the positivistic criminology has been the study of Marvin Wolfgang (1958) “Patterns of criminal homicide” in which he develops the concept of “victim precipitation” to express the contribution of the victim in the realisation of the crime. Using the same concept in a study of rape by Amir (1967) provoked strong negative reactions from the side of feminism. His study was not seen as an objective analysis of the relation between offender and victim but as a moral judgement of blaming the victim. That was the end of the etiological victimological approach and an important step in the direction of a new victimological movement typified by Fattah (1979) as “from a victimology of the act to a victimology of the action”.

The further development of victimology has been influenced during the sixties and seventies by two different backgrounds. Next to feminism as a political movement, criminography through “dark number” research turned into its victimographic basis.

## 3. From Criminography to Victimography

Since the sixties there has been a clear shift within the criminological sciences from a clinical-psychological to a sociological-interactionist perspective. One of the important critical reflections concerned the study of the quantity of crime in society. The classical sources of crime statistics have been questioned in a fundamental way by the social reaction approach of crime (labelling theory), which concentrated on the understanding and analysis of the selectivity of the action of the police and the

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criminal justice system in dealing with crime. The statistical model as developed during the 19<sup>th</sup> century by Quetelet and Guerry, portrays the functioning and intervention capacity of "criminal justice institutions", which has to be distinguished from the reality of the types and quantity of crime (Van Kerckvoorde, 1995).

To be able to measure the crime phenomenon researchers embarked on the so called "dark number of crime", using self report studies in which a citizen is approached as a potential offender who is asked to report about eventually committed crimes during the last 6 or 12 months. Discussing the results of these studies and especially the methodological problems when trying to get adequate information from potential offenders resulted in a step further in the direction of asking citizens to report as potential *victims* of crime. After a short time a fast growing practice of "victim surveys" developed.

Nevertheless the fact that victim surveys mostly concentrate on surveying traditional property crime, violent and other street crime and have few or no relevance for measuring sexual aggression and especially for intra-family violence (Van Kerckvoorde, 1986, 1995; Zedner, 1997), victim surveys have generally been accepted as "the least worse measure of crime" (Phipps, 1987). Step by step victim surveys became important for victimology as a part of criminology. Victim surveys have been filled up with questions concerning the different experiences of victims, the consequences of this victimization, the reactions to the victimization by the police, the prosecutor, the judge and the attitude of potential victims towards crime, insecurity in the neighbourhood and feelings of fear. Victim surveys become full fledged instruments of victimological research and allow an extended victimographical analysis which is much richer than a pure measurement of crime. However, crime analysis remains an important function of the victim survey.

Special attention has to be given to the International Crime Victims Surveys introduced and coordinated by the Dutch Ministry of Justice. They have been organised in 1989, 1992 and 1996 and have the exceptional advantage that an important number of countries from different continents have participated in its implementation.

#### 4. Feminism and Victimology

Feminism is a political emancipative movement which had a decisive influence in the shift in the content of victimology in the seventies. Amir, a disciple of M. Wolfgang, provoked with his study on forcible rape (1967) strong negative reactions from the side of the feminists. They defined that type of victimology as "the art of blaming the victim" (Clark and Lewis, 1977). The shift in the victimological thinking can be defined as an explicit orientation of victimology towards actions and interventions in favour of women-victims of sexual aggression, of intra-family violence and of rape. At the same time there was the growing attention for the many ways of neglect, abuse and maltreatment of children. The action oriented approach of the victim did hardly distinguish the ideological moment from the academic one. Victimology was the same as victimagogy (Van Dijk, 1984). Theorists and empirical researchers have been directly confronted with the social facts which stimulated research concerning the moral, material, physical and psycho-social consequences of the victimization (Martin, 1989). The thematic development of the cultural legitimation of the victimization of women unmasked the socio-cultural justifications of physical violence against women as a part of the socialisation of men and the prejudices among police and justice personnel as its correlative (Weiss and Borges, 1973).

### **B. Victims and the Role of International Organisations**

#### 1. Victims and the Council of Europe

The victims' of crime interests and needs have been answered and taken care for from the early seventies in Europe as well in North America by local initiatives in which at the beginning feminist inspiration and conviction have determined its flavour and colour. From the eighties victim assistance made its way under the wings of national umbrella organisations which acted as the partners of the government. In Europe different national organisations started their international meetings as soon as 1986 and founded a European umbrella organisation, "The European Forum for Victim Services".

The Council of Europe has, already from an early moment, played a role in supporting the development of victim compensation schemes, of victim assistance and of orienting police and the

judiciary towards the problems of victims of crime. We consider this development as a dialectical process in which the eminent and pro-active role of the Council of Europe has to be recognized. Taking into account Resolution(77) 27 of the Committee of Ministers of the Council of Europe on the compensation of victims of crime, the member states have been invited to sign the “European Convention on the Compensation of Victims of Violent Crime” of November 24, 1983. While in some member states there were already laws on victim compensation available (e.g. in Great Britain, The Netherlands, France) and in other countries like Belgium the debate was still going on, the convention functioned as a type of minimum standard for victim compensation. Countries lacking such a regulation have been strongly stimulated to introduce their own compensation scheme. Belgium accepted a state compensation law for victims of intentional violent acts on the 1<sup>st</sup> of August 1985.

Another important initiative from the side of the Council of Europe is the foundation of a group of experts which reported in an extensive way about its investigations and observations concerning the situation of victims of crime in Europe (Council of Europe, 1985). This state of the art of the research on the consequences of victimization has given a strong impulse to the communication among scientists and policy makers. The publication offered a substantial basis of knowledge for the future scientific research and for the development of a victim policy in Europe. In 1985 the Committee of Ministers of the Council of Europe adopted Recommendation R(85)11 concerning the position of the victim in the framework of criminal law and procedure. In 1987 the committee of Ministers adopted Recommendation R(87)21 concerning assistance to victims and the prevention of victimization.

## 2. The Role of the UNO

The ideas and concepts for a victim policy as developed by the Council of Europe since 1977, translated in a convention and two recommendations, have also inspired the UNO. Thanks to the preparatory work of the World Society of Victimology held in Milano in August 1985, the victims of crime problems have been introduced during the 7<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The General Assembly of the UNO adopted the recommendation of the congress on the 29<sup>th</sup> of November 1985 (General Assembly Resolution 40/34). The recommendation includes, like the convention and the recommendations of the Council of Europe, a plea for a better access for victims to the criminal justice system. There is a call for a more just treatment, for the use of restitution, compensation and the development of psycho-social assistance. More preventive measures are recommended against crime and against the abuse of power. Next to all what was already present in the European recommendations, the UNO-declaration opens a broader perspective for the protection of victims of ideological, political and cultural abuse of power.

In the U.N. Standard Minimum Rules for non-custodial measures (the Tokyo-Rules, 1990), there is also an explicit recommendation to care about the victims of crime when alternative (non custodial) sanctions are imposed. The same concern about victims is included in the Council of Europe Recommendation R(92)16 on community sanctions and measures.

## 3. The Role of the International Victimological Conferences, Societies and Revues

In 1973 I. Drapkin organised in Jerusalem an International Symposium during which scientific discussions and exchanges concentrated on the definition and the state of victimology and its relation to criminology. Questions about the policy of victim prevention, victim restitution and victim assistance received broad attention. Similar meetings have been organised on a three yearly basis in Boston-USA (1976), Münster-Germany (1979), Tokyo/Kyoto-Japan (1982), Zagreb (1986), Jerusalem (1988), Rio de Janeiro-Brazil (1991), Adelaide-Australia (1994), Amsterdam-Netherlands (1997), Montreal-Canada (planned for the year 2000). During the International Symposium in Münster (1979) the World Society for Victimology was founded. In 1976 Professor E. Viano at The American University in Washington started the revue of “Victimology. An International Journal”. He has organised many international victimological seminars and published the proceedings. The World Society of Victimology has published since 1993 The International Review of Victimology and the proceedings of the different International Symposiums.

### **C. The Impact of Victimization**

#### **1. The Fear of Crime**

A first important remark is the fact that the theme of the fear of crime not completely coincides with the problems of the consequences of victimization. Research has clearly demonstrated that it is an entirely new area of criminological inquiry. Zedner refers to research of Maxfield (1984), Garofalo (1979) and Skogan (1986) which confirms that "fear of crime is now recognized as a distinct social problem extending well beyond those who have actually been victimized, to affect the lives of all those who perceive themselves to be at risk" (Zedner, 1976, 587). Measuring crime by crime surveys, the construction of special prevention projects and neighbourhood watch, all seem to sharpen the sensibility for problems, especially among certain groups of the population taking into account the age, the gender, the neighbourhood and ethnic belonging. Zedner (1997) stresses in this context the so called non rational fear of women. She refers to Stanko (1988) who says that women, more than it is demonstrated by victim surveys, are confronted with "hidden violence" from the side of people they know, which is a more acceptable explanation of their fear.

#### **2. Consequences of Victimization**

The consequences of victimization are not easy to estimate on the basis of the seriousness of the crime. Victim surveys have widely demonstrated that the majority of the people interviewed experience no or few consequences following a victimization, since what happened is mostly not something very serious. However qualitative studies demonstrate that in a limited number of cases the consequences may be very serious also in the long run and difficult to survive and to cope with (Gottfredson, 1989; Lurigio and Resick, 1990).

The characteristics of the victims, their behaviour and coping capacities, their possible experiences with crime, even in the past and the eventual influence of other emotional problems are, combined with the social context in which they live, the most important factors which determine the impact of the victimization. However, the risks of far reaching consequences are in the first place dependent on types of crimes such as murder, homicide, violence, abuse and rape. These crimes provoke almost always a cumulation of effects ranging between the loss of life, serious physical damages, the loss of psychological integrity and financial or other material consequences. Often these effects provoke an irreversible loss or the quality of life for the victim and his milieu.

The results of research carried out by Maguire (1980) and Maguire and Corbett (1987) show that the impact of burglary is comparable with the effects of crimes of violence (feelings of intrusion and emotional upset) and of rape. The consequences of rape and other sexual crimes have been detected, analysed and described in the context of initiatives by feminist groups in favour of victims. The attitude of distance of these action groups in relation to government and governmental policy has, however, curtailed the development of scientific research in this area (Mawby and Gill, 1987; Mawby, 1992). A mainly theoretical research which has described, analysed and discussed in great detail and in depth the results of many different publications on victimization is the standard piece of work published by Ezzat Fattah, "Understanding Criminal Victimization", of 1991. Victimization has been approached as a dynamic interrelational phenomenon and human experience.

### **D. Victims and the Criminal Justice System**

Whereas the early victim movement in Canada and the USA has concentrated its actions on the problems of the legal rights of victims and their position in the administration of criminal justice, the same happened in Europe lately, during the nineties. However, there have been initiatives taken before which forecasted already this interest.

#### **1. State Compensation**

Programmes of State compensation were introduced first in Great Britain (1964) and elsewhere since the late seventies (e.g. in Holland and France). At this moment most European countries have followed these examples. These practices introduced by law aim at financial compensation for victims of (intentional) violent crimes in case the offender remains unknown or insolvent. Although remarkable differences exist between the many national systems especially when defining the group of victims who may receive compensation and the maximum compensation, there are however clear points of

resemblance. The most important one is that no one of these programmes gives the victim a formal right to financial compensation. State compensation for victims of crime is based on the principle of solidarity. The financial compensation is a discretionary decision of a commission which judges on the basis of fairness. These principles have been consolidated also when some of the countries changed the law (some several times) in the direction of more flexibility towards the compensation (e.g. through providing an advance loan).

Critics remain everywhere almost the same. State compensation is a complex, long lasting procedure leading to a successful result in a rather limited number of cases. Frustrating for victims are the many administrative obligations, the uncertainty about the decision, the long lasting waiting and the lack of information about the determination of the amount of the compensation. All this is added to the frustration which many victims experience in their contacts with the police and the judiciary (court system), the state compensation procedure is often a continuation of the 'secondary victimization'.

'Secondary victimization' as a concept refers to a continuation of negative experiences of the victim following the first shock at the moment when the crime is committed. The way the immediate surrounding of the victim, but especially official institutions, react to the "primary victimisation" often provokes negative effects which may be more traumatizing than the initial crime experience. These phenomena are extremely important and belong to the total picture of the consequences. Research focusing on the problems of secondary victimization has been the basis for the demand and the construction of a legal position for the victim in the procedures of criminal justice.

## 2. The Role of the Police and the Criminal Justice System

Depending on the type of crime, victims report their victimization between 20% (for sexual aggression), 88% (for burglary) and 91.4% (for a stolen car) (figures of the International Crime Survey 1992), it is evident from this that contacts with the police are of paramount importance. They are the gate keepers of the system. The access to justice for victims starts with contacting the police. That is why these contacts have been in the center of the attention of victim policy since the eighties. The European Recommendation R(85)11 concerning the victim in the framework of criminal law and procedure explicitly discusses what should be done by member states at the level of the police, the level of the prosecutor, the questioning of the victim and at the level of the court proceedings. The main message is the duty of information. At all levels the access to information about the way the case is handled is the basic expectation of all victims. During the last decade there has been a lot of work done in preparing, training, supporting the police and more recently prosecutorial services are concerned about the way victims are received, treated, informed and when necessary referred to more specialised services.

Recommendation R(87)21 concerning assistance to victims and prevention of victimization stresses the need to coordinate the relations between victim assistance and the agencies of the criminal justice system. More recently Recommendation R(98)13 on intimidation of witnesses and the right of the defence the accent is put on the development of appropriate legislative and practical measures to protect witnesses, often the victims of crime, to be able to testify freely. Special attention is given to problems experienced in relation to organised crime and in cases of crime within the family.

Especially at the level of the training of the police a lot of progress has been made. The general opinion is that all police officers have to receive basic training about the way they work with victims of crime. Care for victims is everybody's concern in the system, not just the special duty of some specialists.

## **E. Victims and Restorative Justice**

### 1. A Response to Victims' Needs

Research on victimization and the practice of victim assistance have revealed specific needs of victims in their relation to the offender (Dignan and Cavadino, 1996; Peters and Goethals, 1993; Reeves, 1989; Young, 1996). For victims of violence, at least as important as obtaining financial compensation is to find answers to questions concerning the offence and the offender. Victims in general express a need of understanding about what happened and in many cases they wish to make clear to

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the offender the consequences of the crime. These elements are often important issues in coping with the event and its aftermath. When questioned about the desirability and the possible consequences of a meeting and discussion with the offender, a significant group of victims confirm that they would like to make use of such an opportunity. Several studies show figures between 30 and 50 per cent of all victims interviewed, and this percentage is still higher when the possibility of indirect (not face-to-face) mediation is offered (Aertsen and Peters, 1998).

Initiatives regarding mediation between victim and offender have been solicited by the above mentioned Council of Europe Recommendations R(85)11 and R(87)21. The interest for mediation was in line with the content of the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985). Above all, we must refer to Recommendation R(99)19 by the Council of Europe concerning mediation in penal matters. The recommendation recognizes, *inter alia*, “the legitimate interest of victims to have a stronger voice in dealing with the consequences of their victimization, to communicate with the offender and to obtain apology and reparation”. One of the benefits of mediation can also be that the victim “may get a more realistic understanding of the offender and his or her behaviour”. Victim-offender mediation need not be limited necessarily to a diversion practice. Whereas in victim assistance programmes the victim mainly stays in an external position vis-à-vis the justice system, mediation allows him or her to integrate his/her needs and interests into the criminal justice process. “Mediation therefore shows that satisfying the interests of the victim, the offender and society at large is not incompatible. The conciliatory nature of mediation can assist the criminal justice system in fulfilling one of its fundamental objectives, namely contributing to a peaceful and safe society, by restoring balance and social peace after a crime has been committed.” (Commentary on the preamble of the recommendation). The recommendation states that victim-offender mediation should be a service available at all stages of the criminal justice process. Besides a definition of victim-offender mediation and the mention of some general principles, the recommendation deals with the necessity of a legal basis for mediation, the relation to criminal justice and the operation of mediation services. Much attention is given to the qualifications, selection and training of mediators and the development of standards of practice.

## 2. Victim-Offender Mediation Programmes

The recognition of specific victim issues, together with the search for a more meaningful and effective way of working with offenders, led to the creation of victim-offender mediation or reconciliation programmes in many countries. After the first initiatives came about in Canada and subsequently in the USA in the 1970s, at the beginning of the 1980s the movement spread to Europe. This was visible first in Britain. However, it must be noted that some Nordic countries simultaneously developed initiatives in a more or less independent way. Norway and Finland are now two countries with an extensive mediation practice that in both cases strives for a volunteer model. Members of the local community are active in mediation – both in criminal and civil cases – and are supported by a paid co-ordinator from the municipal services.

Whereas in Norway and Finland mediation has developed apart from probation and victim assistance programmes, we find that in Austria, Germany and the U.K. probation services have taken the lead in organising victim-offender mediation. Austria has played a pioneer role in developing a mediation model for juveniles and has created a well-organised network of services for “*Aussergerichtlicher Tatausgleich*”. The largest number of mediation services, however, is found in Germany: some 300 services for “*Täter-Opfer Ausgleich*”, of which here also the large majority (260) are directed to young delinquents.

The fact that in some countries offender-oriented services such as probation have been the driving force behind the early developments has initially placed the victim movement in a somewhat defensive position. Victim Support in England, for example, but also in the U.S., initially exhibited much resistance to mediation. The fear was that the victim could be “used” in furtherance of the interests and the treatment of the offender. As the practice of victim-offender mediation progressed and mediation methods were tailored more to the needs of the victim, and research results about the positive effects for the victim were made known, this resistance decreased. In France, victim support has played the most important stimulating role from the beginning in founding mediation services. In addition, in

Belgium a mediation model has been developed for more serious crimes, with as a point of departure, with the focus being largely the needs of the victim.

Besides the above mentioned European countries where victim-offender mediation has undergone the strongest development, other countries have taken initiatives in the form of pilot projects. Included here are Denmark, Ireland, Italy, Luxembourg, the Netherlands, Spain and Sweden. Central and East European countries in recent years have been active as well and started mediation programmes: for example Albania, the Czech Republic, Poland, Russia and Slovenia.

A large majority of victim-offender mediation cases in the European countries concern relatively minor property offences or less serious violence committed by juveniles who are mostly or often first offenders. Violent or more serious crimes by adults or youngsters, however, are not excluded, and some programmes focus especially on these types of cases (Aertsen, 1999). But it must be admitted that the quantitative impact of victim-offender mediation programmes in the different European countries remains rather limited (Weitekamp, 1997).

In a number of European countries victim-offender mediation has received a legal basis, as a part of the Juvenile Justice Act (Austria, Germany, Finland, Poland), the Code of Criminal Procedure (France, Belgium, Finland, Poland), the Criminal Code (Germany, Finland, Poland), or as an autonomous "mediation law" (Norway).

Concerning the process and the effects of victim-offender mediation, much evaluative research data, both of a quantitative and a qualitative nature, has become available (see, for example, Dünkel, 1996). We cannot go into detail here, but the most important and promising findings concern the degree of satisfaction of the parties, the willingness to participate, the number of agreements reached and the content of the agreements, the compliance rates, the effect on re-offending, the work and time intensive process of mediation and the cost-effectiveness.

### 3. Restorative Justice

This new development of bringing together the victim and the offender often has been identified with "restorative justice". But the concept of restorative justice, as there is a growing consensus in the last few years in literature and practice, is a broad one (Bazemore and Walgrave, 1999; McCold, 1998; Wright, 1996). This concept, Anglo-Saxon from origin, is not restricted to a concrete method, a programme or a technique, but goes rather in the direction of a new paradigm or a global vision, a "changing lenses" (Zehr, 1990). What is meant here is the (pursued) development of another view, not only of the social or criminal justice reaction that must follow a crime, but also and primarily of the nature of the crime itself. A crime is not seen so much in terms of violating abstract rules of law but rather as a violation of persons and relations. Based upon this vision, the fundamental reaction is then also aimed at the restoration of the damage: the damage to the victims, their environment and possibly to the wider society, and also the damage which the offender provoked in his own social surrounding. For many "restorative justice" is a "third way" resolutely to be chosen in place of (neo) retributive criminal law and after the collapse of the rehabilitation model (Peters, 1996; Walgrave, 1995).

A generally accepted definition of restorative justice is given by Tony Marshall in an overview of restorative justice published by the U.K. Home Office (Marshall, 1999): "*Restorative justice is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future*". Or put another way: "*Restorative justice is a problem-solving approach to crime which involves the parties themselves, and the community generally, in an active relationship with statutory agencies. It is not any particular practice, but a set of principles which may orientate the general practice of any agency or group in relation to crime.*" Also helpful in clarifying the concept is the objective put forward in its standards by the British Restorative Justice Consortium (1998): "*Restorative Justice seeks to balance the concerns of the victim and the community with the need to reintegrate the offender into society. It seeks to assist the recovery of the victim and enable all parties with a stake in the justice process to participate fruitfully in it*".

From these definitions it is clear that "restorative justice" is not a movement alongside or against the current criminal justice system. More and more voices can be heard to maximally integrate this

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approach within the existing criminal justice system in order to modify the foundations of the system itself. A second clarification concerns the growing tendency to de-individualise restorative justice. Where in the beginning restorative justice was strongly associated with victim-offender mediation, we now see models that not only involve the two immediate parties to the conflict but also a number of persons or bodies from their surroundings. Nevertheless, within Europe, victim-offender mediation is by far the most important expression of restorative justice. Group-oriented models of restorative justice such as "Family Group Conferences", initially developed in New-Zealand and Australia, in 1999 are only operating in an experimental way in England.

Restorative justice in Europe at present meets with at least three important challenges. The first one is the threatening recuperation of this line of thinking into the dominant conceptions and methods within the administration of criminal justice. A second challenge in the actual realisation of restorative justice lies with the possibility of expanding victim-offender mediation to more categories of (also serious) offences and offenders and applying a victim approach in the successive stages of the administration of criminal justice, including corrections and after-care. A third task concerns the further establishment of legal frameworks and safeguards and a clarification of the relation of restorative justice programme towards, or the position into, the criminal justice systems of the different countries (Van Ness, 1999).

4. Mediation for Redress. A Belgian Example of Restorative Justice

'Mediation for redress' started in 1993 as a local programme in Leuven and was extended to other judicial districts by the end of 1998. The programme deals exclusively with crimes of a certain degree of seriousness and operates parallel to prosecution. The central objectives of the programme were initially the development of an appropriate methodology for mediation in serious crimes and the verification of the effect of mediation on the sentencing process. The mediator focuses on in-depth communication and exchange (of information) between victim and offender. Through several separate contacts with victim and offender, the mediator carefully prepares a direct meeting. The result of the mediation is laid down in a written agreement, which contains all elements of the material and immaterial restoration. The programme operates in a close relationship with the public prosecutor's service and with the investigating judges, but the mediation itself is done independently from the judicial system. The mediators are professionals and their work is organised and supervised by an independent local steering committee, consisting of representatives of all partner-agencies. 'Mediation for redress' is recognised as one of the 'national pilot programmes' for alternative sanctions and measures, which implies full financing by the ministry of Justice. The programme is run by the Flemish non-governmental organisation 'Suggnomè'.

The total number of files in the experimental project 'mediation for redress' remains limited: 140 selected cases (files) in the period 1993-1997. This relatively limited number is due to the time consuming mediation work in this type of case and the restricted staff (two full time mediators, no volunteers involved). In table 7 the types of cases are mentioned.

**Table 7. Type of Cases in 'Mediation for Redress' (1993-1997)**

	N	%
violent offences	69	49.3
property offences	57	40.7
sexual offences	14	10.0
total	140	100

When calculating the average number of contacts per file, excluding administrative contacts (making appointments, sending a first information letter, locating a person ...), we find the following figures for 1997: 6 home visits per file; 1.4 meetings at the mediation office; 9.2 telephone contacts; 6.3 contacts by letter.

Of all cases in 'mediation for redress', 50% result in a written agreement. The contents of these agreements can be categorised as follows: information about the offence, its reasons and circumstances; the personal meaning of the facts and their consequences for the victim, the offender and their surroundings; each party's (changed) perception of, and attitude to, the other party; the issues and possibilities of reparation or compensation; the amount of financial restitution or the way material or symbolic reparation should be done; the preferred reaction from the judicial system. Excuses can be offered and accepted by the other party. The agreement can mention that the victim is prepared to drop the claim for compensation.

Evaluation interviews, after a first experimental period, with involved victims and offenders demonstrate a high degree of general satisfaction with mediation for redress. This result is congruent with what was found in most evaluative research. The Leuven programme however showed that mediation in more serious crimes is workable and that it puts specific elements in the communication between the victim and the offender, and also that this kind of mediation offers opportunities to implement a new relationship between the justice system and citizens.

#### IV. RESTORATIVE DETENTION – A BELGIAN PILOT PROJECT

Since the beginning of 1998 the pilot project 'restorative detention' has been active in six Belgian prisons. In 2000, quicker than expected, the policy makers saw to it that the project 'restorative detention' had 'taken root' in the global Belgian penal establishment. We will only briefly sketch the start up and development of the project 'restorative detention'.

The project name itself, 'restorative detention', seems to embrace a *contradiction in terms*. It is also clear that the introduction to and the underlying vision for such a 'provocative' project requires explanation. That is done in the first part. The second part sheds light on a few aspects of the purpose of the pilot project. To provide the discussion of the project with more 'substance', we will then focus our attention on a range of activities at the level of the prison. We will then conclude with a few considerations.

##### A. The Contextual Framework of the Project 'Restorative Detention' <sup>4</sup>

This project did not appear out of the blue, but is situated within a *research tradition* and a *policy on criminality*. On the one hand the project represents a 'logical' step in the development of the research activities at the Katholieke University Leuven (KU Leuven) concerning mediation and restorative justice. On the other hand external influences play a significant role in the genesis of this research project. Continuous reciprocity between internal and external influences has given the project the form it currently has.

##### 1. The Internal Run Up to the Project

The initiative for 'restorative detention' came from the penology and victimology research group. The somewhat strange sounding combination of punishment-oriented and victim-oriented research is part of a tradition that spans 3 decades.

In the beginning the scholarly focus of the research group was on studies of the prison system, studies of punishment in general and also – as a forerunner to the present, attention was given to restorative justice initiatives – the (too marginal) use of community sanctions was subjected to critical reflection.

With the study and analysis of violent property crimes the need arose for *victimological* research. Beginning in 1986, the victim-oriented approach attracted much attention. Both qualitative and quantitative victimisation studies brought into view the problematic position of the victim in the administration of criminal justice. Especially victims of violent property crime were the focus. The judicial marginality of the victim was one of the most important policy themes. One of the first Belgian victimological handbooks received the title 'the reverse side of criminality' due in part to establishing the neglect of the victim (Peters en Goethals, 1993).

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<sup>4</sup> Peters, 2001

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A shift in the approach taken in research occurred around 1990. Based upon the experience obtained and findings in victimological research, beginning in the 1990s a more *proactive* approach was taken. On one hand thematic development was initiated of new practices designed to meet the needs of victims. On the other hand an examination was made of how criminal prosecution practice can be influenced and how the routine answers to criminality could be challenged.

The *action research* method implied a change in course in the approach to research. Action research is concentrated on the development and evaluation of new practices and is also focused upon the fine tuning or restructuring of existing practices. This allows the researchers to approach the criminal justice system from a more problem solving point of view. At the same time, this method has also won approval due to its *inclusive* character. Action research allows several (all) parties to be actively involved in the (search for a) solution to the problem. This method was employed until the end of 2000, also in the project 'restorative detention'.

Reflections concerning imprisonment led to the realization that while for many years prison had appeared as a last resort in the government rhetoric, the actual practice revealed a completely different picture. Many Western countries, led by the U.S.A., have been acquainted with the phenomenon of a 'prison tree' for several years now (Cayley, 1998). The administration of criminal justice in Belgium is also far from immune to the excessive use of the deprivation of liberty.

The *stock* in the Belgian prison system has increased by almost 40% in the last decade. The 1980s were characterised by an average of approximately 6,000 prisoners. During the last 10 years this has increased to approximately 8,500 prisoners. The *flux* decreased from around 22,000 prisoners per year in the 1980s to 14,000 in the previous decade. From this it can be concluded that the average prison sentence has increased significantly. Suspects are on remand up to 30% longer, while the group with the longest prison sentences (more than 3 years) grows steadily. Thus by no means can we speak of prison as a last resort. Actual practice in Belgium differs little from that in neighbouring countries.

Among the research group penology and victimology, the view is prevalent that to deal constructively with criminality an appeal must be made to both the offender and the victim, and that the criminological and the victimological cannot be separated from each other. To that end, answers in the direction of restorative justice constitute the initial pretext for action in the reaction to criminality. Restorative justice is a remedy for a number of shortcomings in the 'retributive' criminal justice system, which is strongly characterised by a profound dichotomy between offender and victim. This dichotomy still receives its strongest manifestation in the prison. The societal exclusion of both victim and offender confirms this.

The research group has thus gradually evolved into an *integral* restorative justice approach to criminality. For the moment, the project 'restorative detention' is here a final link. When imprisonment is unavoidable, then the means must still be made available to victim, imprisoned offender and the broader societal context in which they are located, to search for a constructive problem solving approach. In other words restorative justice may not be allowed to end with punishment or at the walls of the prison.

## 2. External Motivation

The start-up of a project in which restorative justice penetrates the furthest corners of the criminal justice system, can be seen as the ultimate test for the restorative justice movement. Such an enterprise only has a chance of success against the background of a *policy on criminality* that is favourably disposed to restorative justice. Here a short clarification of a few of the steps in restorative justice thinking in the context of Belgian criminality is appropriate.

Before the Dutroux affair took hold of Belgium, the then Minister of Justice had injected new life into the government's discourse on punishment. With his 'Orientation Memorandum on Penal and Prison Policy' of 19 June 1996, the wind suddenly changed directions. The ministerial memorandum made clear the basic objectives of imprisonment (ensuring safe and dignified punishment; preparation for reintegration and the prevention of relapse) and subsequently associated itself with the ideas of restorative justice.

This important document allows us to deduce that restorative justice thinking is slowly but surely seeping into government discourse. For that matter, the present Minister of Justice also considers restorative justice of paramount importance. In the 'Federal Safety and Detention Plan' of 31 May 2000 he endorses the view that the criminal justice system, including the prison system, must have a restorative orientation across the board.

At all levels of the criminal justice machine for that matter, the cogs are beginning to demonstrate an affinity for victims. And although the Dutroux affair as a catalyst has quickened certain developments, many victim-friendly initiatives saw the light of day before August 1996. Thus article 46 of the Act of 5 August 1992 on the Duties of the Police, for the first time in the history of Belgian police legislation mentions the task of assisting the victims of criminal offences. The Act of 12 March 1998 improved the position of the victim at the level of the investigation and judicial inquiry. The search for new regulations concerning parole was also begun before the Dutroux crisis, but it certainly received a boost from it. The acts of 5 and 18 March 1998 put into force a more victim-sensitive arrangement for parole. As already mentioned, a victim must be informed if the offender requests parole. Also the Parole Commissions may consult the victims in reaching a decision regarding the granting of parole.

This enumeration of shifts in policy on criminality provides the framework in which the project 'restorative detention' saw the light of day. At the same time it demonstrates the setting of the project in a changing approach to punishment. In addition, a number of foreign restorative justice initiatives have already found their way to the '*society of captives*'. Among others, the *Wiedergutmachungsprogramma* of the Swiss penitentiary of Saxerriet and certain *Victim Offender Reconciliation Programmes* (VORPs) in Canada, England and the U.S.A. provided examples of a restorative justice approach that transcended the prison walls.

The project 'restorative detention' has developed its own character precisely due to the important link with and reciprocity between policy and research.

## **B. The Purpose of the Project 'Restorative Detention'**

Before making the jump to the action research, restorative justice still needs some conceptual clarification. A strong definition comes from the hand of Tony Marshall (1998): "*Restorative Justice is a process whereby parties with a stake in a specific offence resolve collectively how to deal with the aftermath of the offence and its implications for the future*". Restorative justice can thus be understood as "the interaction between offender, victim and society, in which all parties make an effort and an investment in order to arrive at a certain level of pacification via communication". The local community, the broader society and the societal institutions (as representative of the society) may be constructively involved in this.

Central to the pilot project is the search for an answer to the question concerning how punishment in general and the prison context in particular can contribute to a more just and more balanced administration of criminal justice for offender, victim and society. This central issue can be reduced to the challenge to give imprisonment a more victim-focused and restorative justice orientation.

The project took the form of action research. The point of departure was always the specific context of each penal institution. The action research was carried out in 3 Dutch-speaking prisons in Belgium. The researchers required a good view of the operation of 'their' respective institutions, before proposing focused initiatives. Each of the three Dutch-speaking prisons thus functioned as an experimental site for concrete restorative justice initiatives. And that brings us to the importance of the method used.

In action research, the two dimensions of action and research are connected to each other like Siamese twins. The '*action*' dimension is aimed at the phased or cyclical implementation of change. The '*research*' dimension is focused upon both the procedure and the result. The action is regularly evaluated and fine-tuned if needed. Action research thus makes it possible to react quickly to changing situations.

Not only does regular reflection on the action taken form an integral part of this approach to research, but the interaction between theory and practice also contributes to a process of *theory formulation*. The research has a direct impact on the actors in the field (e.g., prisoners, victims and

prison personnel). They are able to gain new (learning) experience, which then affects the *agodic* aspect of action research.

### C. Activities at the Level of the Prisons

In order to constructively influence the prison context, all aspects of the '*prison community*' need to be addressed. Essential here is a *restorative justice prison culture* in which not only a few key figures are involved but in which restorative justice is supported by all aspects of prison life.

From this follows the importance of the initiatives with respect to *prison personnel*. This constitutes the subject matter of a first point. Prison personnel make a large contribution to the success or failure of 'restorative detention'.

A second sub-section shifts the accent to the *prisoners*. Several activities designed to stimulate responsibility appeal to the prisoners regarding their (potential) perception of and processing of guilt. The accomplishment of this includes ensuring the presence of a victim dimension in the punishment.

Moreover, restorative justice may not be an isolated event. This implies a deliberate linking of the project to the *periphery* of the prison, the 'outside world'.

A final point of interest focuses upon a specific issue, namely the *financial problems* of prisoners (insolvency, impoverishment, debts, fines, legal costs, the civil action settlement and the lack of possible remedies). It is not without reason that this problem has received much attention.

#### 1. Education of Prison Personnel

For restorative detention to have any chance of success, personnel from all prison departments must be personally and constructively involved. During the first years of the action research project, much attention and energy also went into the education of personnel in the three pilot prisons.

The first steps of the project can be reduced to an *introduction* to the theme 'restorative justice during detention'. Providing information and sensitising prison personnel was given form in various ways. In the three pilot prisons much importance was attached by the project workers to *informal* contacts with prison personnel. At the same time, somewhat *formally*, information days were organised and introductory texts drawn up. Information was disseminated via the existing channels as much as possible (for instance via an internal newsletter, an existing study group,...).

Demand quickly surfaced for more information regarding victimisation and restorative justice. An educational programme 'victims and restorative justice' was the answer to this. This course had 4 objectives. First and primarily the programme should provide prison personnel with the knowledge and insight concerning the issue of victimisation. The development of restorative detention was also explained regarding vision, objectives and methods. A third objective to this extra programme was providing a forum for discussion and reflection concerning the issue discussed. In addition, the course provided a good opportunity to explore and stimulate the interest, openness and readiness to take action among prison personnel.

The educational programme 'victims and restorative justice' consisted of three different parts. Regarding methodology the choice was made to make the theoretical explanations as lively as possible. Thus among other things victims came to testify. The evaluation forms that the participants filled in after the course indicated that it was precisely this testimony that made the greatest impression.

'Victims and restorative justice' was able to count on an enthusiastic audience. Yet the researchers chose to change this course. The unilateral introduction of (more) victim sensitivity to prison personnel contained a possible negative effect, a more repressive attitude with respect to prisoners. Another motivation for changing the focus comes from E. Fattah (1991). He states that "yesterday's victims are today's offenders and today's victims are tomorrow's offenders". Moreover, restorative justice consists precisely in bringing together both dimensions, victim and offender. "It is important that in addition to a victim focus, there is also an offender focus and that personnel deal respectfully with prisoners". The course was also then renamed 'offenders and victims'.

The Psychosocial Service also underwent a degree of reorientation with this project. The Psychosocial Service is responsible for detention guidance and until recently has been focused exclusively on the world of the offenders. It is not easy within this offender-focused world to obtain a victim-oriented dimension in dealing with individual prisoners. For them it indeed comes down to introducing the victim dimension without harming the trust – or at least the level of cooperation with the prisoners.

The staff members of the Psychosocial Services in the three 'restorative detention' experimental sites thus also had questions concerning methodological support. This has led in the first place to the development of an educational programme based upon the *contextual therapy* of Nagy. Furthermore a training session on *systems theory* provided an opportunity for a response to the methodological challenge.

To provide the Psychosocial Service staff with an instrument that allows incorporating the perspective of the victim in working with the offender, an appeal was made to a fundamental attitude in contextual therapy. *Multilateral bias* locates a person within the context and the relations in which s/he lives. This framework allows the social worker to alternate between positions of bias for his or her client and bias for other parties.

A contextual therapist led a three-day training programme for the Psychosocial Service staff members of each of the three prisons. In addition a day was also organised around the theme 'Introduction to multilateral bias'. These programmes were also open to social workers from the judicial social work sector who assist offenders, and to social workers who assist victims.

Systematic thinking provided another framework to integrate the newly introduced victim dimension into offender-focused activity. In systems theory the person is seen as a junction of relations imprisoned within a complex of communication systems, various meaning-giving systems and social expectations.

For three half-days, a staff member of the Interaction Academy provided commentary and answers were sought to pressing questions.

Both training programmes, given in 1999, brought with them additional requirements. By improving the recognition of psychological problems among prisoners, referrals could be more focused. But precisely here was the rub. The counsellors were not sufficiently aware of the therapeutic offerings available. Furthermore, the need also arose for skills training to motivate the prisoners to make use of the therapeutic offerings.

## 2. Activities for Prisoners

The essence of imprisonment lies in the fact that the basic right to move where they want and to participate in a self-selected part of society is taken away from people.

Imprisonment can then also be best described as 'a total sanction'. A series of 'processes of mortification' attack the identity of the prisoners in a thorough way. Their environment is reduced to the immediate prison context.

The introduction of the victim and the community leaves the door open to prisoners for processing what has happened and taking up responsibility. To throw the door to restorative justice wide open, structural aspects of the Belgian prison system need to be readjusted. This was already moderately seized upon in the action research. A number of initiatives already provide prisoners with the possibility to give their punishment a restorative justice touch.

In the first year of the action research, the approach to the prison personnel was at the center. Only a few sporadic activities took place with the prisoners. Via the Leuven Auxiliary prison newsletter and in a presentation to the central group of prisoners at the Hoogstraten Penal Educational Center, restorative justice and the role of the project worker/researcher were introduced. At the same time, education on victimisation and the needs of victims was organised. In Leuven Auxiliary there was a

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discussion evening held on mediation for redress. Using role-playing, the 15 participating prisoners received an experiential interpretation of empathy and victim perception. Other offender-oriented initiatives concerned a discussion evening with volunteers from the Victim Support Service, making juridical office hours available to prisoners and initiating the course 'The Portrayal of the Victim'.

In 1999 and 2000 the level of activity with the prisoners was increased. After a first year of operation, the time was ripe to approach the prisoners in a more focused way. Thus to provide information to as many prisoners as possible and to increase sensitivity, attention was in the first place firmly focused upon providing both general and specific *information*. Posters and brochures relating to 'restorative detention' were disseminated in each of the three trial prisons. This gave prisoners immediate access to information concerning the project. Via information evenings, specific information was provided on topics that included the redress fund, civil action and mediation for redress. Furthermore, the action researchers tried to sensitise prisoners by showing and discussing films with themes such as victimisation, the needs of the victim and restorative justice.

Secondly, the *juridical office hours* were the subject of further follow-up. This met a number of basic rights of the prisoners, more specifically, the right to information regarding their juridical situation, while juridical advice and procedural assistance was also provided for.

Parallel to the personnel training, prisoners were given the opportunity to become acquainted, in a non-confrontational way, with the experiences of victims. In 1999 the *course* still bore the name 'victims and restorative justice', but the following year this programme received the name 'offenders and victims'. This shift in accent was here motivated by the fact that it was also desirable to give prisoners the space to be able to reflect on their own life and experiences and on their own victimisation.

With respect to content, the course consisted of examining and discussing a film on themes around the issue of victimisation. Video testimony and the contribution of a volunteer from the Center for Victim Support increased the impact of the programme. This programme was open to all prisoners.

The two-day *workshop* 'victims and restorative justice' emphasised the importance of the dialogue between the prisoner and his victim, while also underscoring the importance of dialogue between the prisoners and the criminal justice system. This rather short workshop had a higher level of intensity and more selective entrance qualifications.

An increase in knowledge and insight on the one hand, and stimulating the ability to empathize on the other, were the primary objectives. At the same time communication skills were emphasised and the workshop attempted to stimulate a change in attitude with respect to victims and restorative justice.

The first day of the workshop included an introduction, a proposition game, looking for associations with the word 'victim' and a reflection on one's own experience as victim. During the second day, a police officer explained the restorative justice approach at the police department and victims testified regarding their experiences and needs. Evaluations by the participating prisoners and victims indicate that the workshop was always held in high esteem.

Then we focused our attention on the intensive *course* 'The Portrayal of the Victim', a course that asks much of its participants. This was organised for the first time in 1998 at Hoogstraten Penal Educational Center, but during the following project year the course was also given at the two other project prisons.

Before prisoners may participate in 'The Portrayal of the Victim', an admission interview takes place. Thus each prisoner is evaluated regarding his suitability and motivation regarding the course. The course 'The Portrayal of the Victim' generally covers 7 days. There are phases. First comes the acquisition of knowledge and insight, then the strengthening of the ability to emphasize. A third phase is focused upon bringing about a change in attitude among the prisoners. The *consciousness-raising of the offender* regarding the effects of his or her offence functions as *leitmotiv* throughout the three phases of 'The Portrayal of the Victim'. To that end use is made of newspaper cuttings, video

testimonies, group discussions, discussions with guest speakers up to and including the writing of a letter to the victim.

3. Working at the Periphery of the Prison or 'Introducing Society'

'Restorative detention' as a project, and since the Ministerial Circular of 4 October 2000 as a new objective of prison *praxis*, will only succeed if supported by 'the outside world'. The project must then also strive to stimulate interaction between the prison milieu and 'the outside world'.

In discussing the periphery of the prison, two major components are relevant. On the one hand there are a number of external *services* for (forensic) social work and work in socio-cultural education, whose contribution within the framework of a more restorative justice oriented detention can be significant. On the other hand, possibly more significant, '*fellow citizens* from free society' can become involved with the project. We will discuss both components.

Already before the pilot project there was of course collaboration between the internal prison Psychosocial Services and external social services. This collaboration received an enormous boost by adding the victim to the picture at the level of the punishment. Indeed, until then care for the victim and a client-centric treatment of the offender were strangers. Via this project the researchers were charged with the task of finding initiatives to bridge the gap. This task is now further filled in by the restorative justice consultants.

During the first project year, the main goals were bringing the social workers 'from within' and 'from without' in *contact* with each other, *informing* them as much as possible, allowing them to reflect on the project, its positioning, the methodological and deontological problems and obstacles and to search for feasible forms of collaboration.

A *consultation platform* provided the required space to sensitise the relevant actors, to assess their attitude regarding restorative detention and to achieve feasible forms of collaboration. Partners in communication around this consultation table were the Psychosocial Services of the involved prisons, the directors of the Psychosocial Service at the level of the Directorate-General of Penal Institutions, the services for Victim Attention at the offices of the public prosecutor and the centers for Victim Assistance.

Social workers dealing with victims and counsellors of prisoners quickly experienced the need for methodological support. In this respect it was already indicated that a search was underway in the field of contextual therapy and in systems theory. Both approaches were explained by external organisations. Here again reference can be made to the 'open' character of this *educational activity*. Thus the three-day training on contextual thinking was followed by two mixed groups, namely on the one hand the Psychosocial Service workers from the pilot prisons and a group of social workers who work with offenders from the community and on the other hand a number of social workers who deal with victims.

Several 'external' organisations were mobilised primarily to tackle the issue of debt among prisoners. This is treated in more detail below, but it can already be stated here that the project constitutes a significant bridge between the prison and the *Public Social Welfare Center*. Thanks to the Social Stimulus Fund, beginning September 2000 a social worker has been working on the debt issue half time at Leuven Auxiliary.

The reciprocal communicative repositioning of offenders, victims and society is a objective that in the course of the project was realised by concrete initiatives designed to bring 'people from outside' in touch with the prison world.

At the start of the project, the Hoogstraten Penal Educational Center was the experimental site par excellence to bring 'society' inside. The Penal Educational Center indeed enjoys a strong reputation regarding regime and a tradition of volunteer help. The first initiative brought volunteers from a Center for Victim Support to the Hoogstraten Penal Educational Center. After this followed two discussion evenings between prisoners, prison personnel (the board, Psychosocial Service and prison

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officials) and visitors. Each discussion was a window into the world of the discussion partner. Contrary to the often-heard cry for more severe punishments and the complaint about prisons being three star hotels, many volunteers were impressed with the prisoners' stories. In the evaluations of these evenings, only positive reactions were heard from all corners.

The following year a further step was taken. The group of volunteers from victim support was expanded to include teachers, persons from youth protection, punishment mediators, a lawyer, police officers and some ten direct or indirect victims. Concerning the participants from the prison system, it seemed more interesting (at least based upon the evaluation) to involve a number of prison officials and prisoners. The participating parties were prepared for the discussion evening. The evaluations indicated again that the initiative was well received.

A final initiative worthy of mention concerns the layout of an information brochure on various aspects of the prison sentence. The inspiration for this came from Canada, where the brochure 'Questions and answers on the prison system and parole' has been used since 1993.

The brochure has a two-fold purpose: meeting the need for information on the part of the victims of the crimes for which the offender is behind bars, and sensitising and broadening the outlook of victims. A survey informed the researchers about the most important themes of specific interest to the victims in connection with the punishment. The surveys revealed that victims desire more information on the differing conditions relevant to the punishment and especially on the decision concerning the early release from prison.

In a press conference on 20 October 2000, the Minister of Justice presented the brochure "When the offender disappears behind bars ...What to expect as victim?"

#### 4. The Issue of Debt Among Prisoners

In our modern society the prevailing method to quantify damage is in terms of money (loss of income, work disability, value of stolen articles). While in the personal experience of victims certain losses are irreplaceable (due to the high emotional value attached to them), in the official discourse everything receives a monetary value. This is also the case with criminal offences.

When a person who commits an offence is convicted by the criminal judge to the payment of compensation to one or more civil parties, then the offender is obliged to pay this compensation. Given that it concerns a civil conviction, in the settlement of this payment, the rules of civil law apply. Central here is the principle that 'debt payment is feasible'. If the convicted person does not spontaneously pay, the aggrieved party must then take legal steps to force payment.

From the beginning of the project 'restorative detention' a number of important decision makers have emphasised that payment of compensation is a form of restorative justice. The researchers themselves underlined the fact that the payment of the civil action settlement *can* be only a part of restorative justice activity, and that compensation implies a sign of admission only if it is also the result of *commitment* on the part of the prisoner. Similar views constitute the foundation for the initiatives concerning civil action.

When the researchers in the three trial prisons also involved the civil action in their approach, a number of bottlenecks were quickly identified. These were brought together in a 'civil action bottleneck memorandum'. Payment of the civil action settlement from prison is problematic, if only because prisoners are *poorly or not at all informed* of their civil sentence. Furthermore, reference can also be made to the *insolvency* of many prisoners, the high *rate of unemployment* in the prisons and the *low salary levels*. In addition, prisoners often have other debts to pay and in their eyes the support of their own family is often a higher priority.

The attention paid to these problems is thus fully justified. We will successively examine two initiatives that address a number of aspects of the debt issue. First the redress fund and then we will focus attention on the 'debt settlement' project.

Redress oriented working within the prison context means, among other things, the creation of possibilities for prisoners to assume their responsibilities. The project 'restorative detention' checked whether it might not be possible, to establish a fund for prisoners. After a preliminary investigation, the not-for-profit organisation Welzijnszorg (Care for Welfare) came forward as sponsor for a fund and a 'redress fund committee' was established that would handle the preparations required to finally start a *redress fund*.

The committee decided to locate the redress fund with the not-for-profit organisation Suggnomè. The reasons behind this are easy to understand. It seemed better that a neutral external organisation decide upon the admissibility of an application.

The fund is meant to provide prisoners with the possibility for some degree of rapprochement with their victim. The amount that can be granted remains limited to half of the amount owed, with a ceiling of 1,250 EURO. This limitation is after all in line with the principles of restorative justice. The first objective of the redress fund is the promotion of communication between prisoner and victim. The limit emphasises the *symbolic* significance of the repayment, not the immediate paying off of the civil action settlement.

If a prisoner wishes to appeal to the fund, she can submit an application to that end to the committee. When the committee approves an application, the prisoner must perform a number of hours of community service in exchange for the money.

If the committee gives its blessing, a mediator is appointed who will submit the proposal to the victim. The decisive voice lies finally with the *victim*. If a positive answer is forthcoming from this side, the prisoner may begin the community service. The prison must do all that is required to make the community service possible.

If the prisoner completes the community service successfully, the committee will pay the amount agreed to the victim. If both offender and victim desire direct contact, this can be organised by the mediator. Further settlement of the balance of the debt can also be arranged in an indirect way by the mediator.

To date the redress fund remains framed in an experimental setting. An attempt is made to engage as many prisoners as possible in the making and distributing of folders, the organising of information evenings and the hanging of posters. The initial findings provide a completely positive picture of this initiative.

Another activity strikes back at the entire burden of debt borne by prisoners. An initial requirement in tackling one's own debt is to obtain an overview and to come to grips with it. In the Auxiliary Prison of Leuven there was the desire to make the burden of debt manageable and to include the civil action settlement in the list of debtors. But managing the debt, negotiating with creditors and the drawing up of payment plans is an almost impossible task for the staff members of the Psychosocial Service.

This was the occasion for initiating a 'debt settlement' project that was a bridge to the Public Social Welfare Center of Leuven. The intent was to work out whether it was possible from prison to manage debt, negotiate with creditors and draw up payment plans.

Within the framework of the 'debt settlement project', the Public Social Welfare Center actually takes upon itself the assistance and education at the level of the individual. In addition to individual assistance, there is also an educational package that treats themes connected with budgeting. It is after all the intent to provide prisoners with sufficient instruments to manage their budget as independently as possible.

## V. A FEW CLOSING REMARKS

This broad ranging and yet still superficial – i.e. too selective – description of the project 'restorative detention' perhaps leaves the impression that the penal context itself does not have many problems.

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With a prison system derived largely from the 19<sup>th</sup> century, we encounter enormous structural shortcomings. Most Belgian prisons were built according to the philosophy of cellular confinement. Too many of these old buildings must still be modified to finally allow elementary comforts such as running water and a toilet in the cell. Moreover, due to this history, possibilities to organise communal activities are often lacking. A considerable number of prisoners spend more than 20 hours per day in their cell.

That also the Belgian prison system continues to suffer from a crisis of legitimacy (Peters and Goethals, 1981) can best be understood when one realises that within the last decade alone the prison population has increased by 30%, while work continues on initial basic legislation regarding the principles of confinement that safeguard the basic rights of prisoners.

At this moment the restorative justice consultants already have ample knowledge of prison *praxis*. They are charged with an enormous task in which expectations are equally as great. That is why they are always able to count on support from the universities. But the research teams have few ready-made answers. The actual position of 'restorative justice' in Belgian 'detention' situations must gradually receive form in collaboration with restorative justice consultants and research teams.

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# THE COMMUNITY SERVICE ORDER IN KOREA

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The Community Service Order (CSO), which requires an offender to serve for the benefit of the community without monetary reward, is now widely available as an alternative option in sanctioning criminals in Korea. This measure endorses non-custodial sentences, allowing offenders to exercise social functions, and bringing managerial efficiency into the operation of the criminal justice system. Moreover, it is an integrated form of criminal sanction from the perspective of punishment, restitution, and reintegration, which the criminal justice system has aimed for, for a long time.

The amendment of the Juvenile Act in Dec. 1988 and the prescription of the probation Act enabled us to apply probation (CSO, Attendance Center Order (ACO), and Reg. Probation) to juveniles first, and its application was extended to adults by the revision of the Criminal Law in December 1995. It was implemented on December 1, 1998. Moreover, the fact that the CSO, which has been seen as an additional disposition of probation, only applicable to the juvenile, now is becoming a distinct and independent sanctioning device, implies significant growth and development of our criminal justice system. Since the application of the CSO, there has been remarkable development in our society. Its achievement and contribution are quite noticeable.

However, we have also witnessed many barriers that are hindering our evolutionary efforts. The major problem areas are seen in the structure of manpower, budget, service philosophy, and theoretical models. This manuscript, prepared for the 121st Training Course, discusses the CSO in Korea in the following aspects: legal basis, background, outline of the CSO, organisation, measures taken for breaches, statistics, and problems and evaluation.

## **A. The Legal Basis**

The legal characteristics of the Community Service Order in Korea are viewed in two aspects: Juvenile Act and Criminal Law. The Community Service Order in the Juvenile Act is regulated as an additional disposition of short-term probation and regular probation sanction. (Juv. Act. Art.32-3). With a revision of the regulation, 4057, in Dec. 1988, the Juvenile Act adopted the Probation, Community Service Order, and Attendance Center Order as a part of the protective decrees in juvenile protection cases and it was activated effective on July 1, 1989.

Therefore, the major dispositions like short-term probation and regular probation sanctions are viewed as a transformed execution of criminal sanctions, and the Community Service Order as an additional disposition is also seen as a structural component of a part of them. Hence, the legal characteristics of the Community Service Order in the Juvenile Act (law) is a transformed means of the execution of criminal sanction as an additional disposition of short-term and regular probation.

The Community Service Order in Criminal Law, however, needs to be viewed in a somewhat different way. The Community Service Order in Criminal Law is not an additional disposition of probation sanction, but is seen as an equal. With the revision of regulation 5057 in December 1995, the Criminal Law adopted the following: probation to be placed on the deferred sentences, probation, Community Service Order, and Attendance Center Order in the case of the suspended sentence, and probation in the case of early released offenders. These were activated on January 1, 1997.

The Criminal Law prescribes that the cases of suspended sentence on the penal servitude and confinement can be placed on probation, Community Service Order, or Attendance Center Order (Art. 62, Sec.2-1). The Criminal Law equates the Community Service Order with probation and the attendance center order.

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Chronologically, the Community Service Order was created as an alternative form of sentence that is free from confinement, it is also subject to a guilty finding, imposing labour as an obligated condition, and revoking the suspended sentence in case of violation of the obligated condition. These are therefore seen as strong implication of sanctioning element as a transformed execution of criminal sanction.

However, this is a system that includes the combination of the suspended sentence selectively and possesses the condition of the suspended sentence and additional dispositional character. Therefore, this can't be pronounced as an independent court judgment from the suspended sentence and subject to the pronouncement simultaneously with the suspended sentence. Since it contains the character of the suspended sentence condition, a violation of a Community Service Order invites revocation of the suspended sentence and execution of the criminal sanction.

In the Juvenile Act, the Community Service Order requires the subjects to be juvenile and they should be subject to assessment as a juvenile protection case. Thus a juvenile who is indicted can't be placed on a Community Service Order. The subjects for the protection cases are juvenile delinquents and juvenile offenders. A juvenile offender is one who committed the crime as a juvenile (Juvenile Act. No. 4, Sec.1-1). They are the ones notified by the school principals, the social welfare agencies (the same Act. No. 4-3), cases referred to the juvenile court by a prosecutor who judged the crime committed deserved less than a fine or the need for a protection disposition (the same Law, No. 49), or a case that the court referred to the juvenile department due to an identification with the reason of criminal indictment (the same Law, No. 50).

Delinquent juveniles are juveniles who are identified as either those who tend to present an habitual disobedient demeanour to the guardian's supervision, a juvenile over 12 years of age who would be apprehended for the possibility of impeding criminal sanction due to behaviour influenced by personal character and his/her surrounding environment and with either conditions, or a juvenile who is referred or reported to the court by the chief of police, the school, or the director of protection facilities (The same law, No. 4, 1-3, 2, 3).

In the Juvenile Act, imposition of a Community Service Order requires the court disposition of short term probation or a regular probation sanction (Art. 32-3). For the investigation and evaluation of the protection cases, the Juvenile Department of the Family Court requires a recommendation from psychiatrists, psychologists, social workers, and other professional and the juvenile classification committee (Art. 12).

However, the Community Service Order can't be imposed in all cases of a short term and regular probation disposition but only to juveniles who are 16 years or older can be considered, at the court's discretion (Art. 32-3). Under the Criminal Law, the Community Service Order should satisfy the element of the suspended sentence of punishment. The suspended sentence of punishment should have a considerable reason for the circumstance in case of the imposition of less than 3 years of penal servitude or confinement according to the Criminal Law Art.51 sec.1. Accordingly, a fine does not qualify for a suspended sentence. There is no age limit in terms of imposing a suspended sentence. Hence, in contrast to the juvenile Act, the Community Service Order can be in a theoretical sense imposed on the juvenile whose age is under 16 years. However, because of the nature of the Community Service Order, it is not desirable for a juvenile under 16 years of age to be sentenced to a Community Service Order. In the case of the suspended sentence of punishment, the imposition of probation or Community Service Order and Attendance Center Order is applicable (Art. 62-2-1). In this regulation, a question is raised about the relation between probation and a Community Service Order and Attendance Center Order, the issue being "Is the imposition of probation a prerequisite for a Community Service Order as in the case of a juvenile?"

There is a theory that the combination of these may be necessary in the case of a suspended sentence. First, it is a view that probation only might be ineffective in the prevention of the recidivism, and Community Service Order & Attendance Center Order only may be a limited range of the execution of conditions imposed by authorities. Second, in other countries like England, the combination order was adopted in her revised Criminal Justice Act (1991). This view basically reflects the diversified aspects of penal sanctions and the judges' discretion in the disposition of criminal cases.

However, according to other practitioners of law, the above view is seen as the result of a misinterpretation of the major ground of the Community Service Order (Chung, Dong-Ki, 1997). In the Criminal Law of Korea, probation, Community Service Orders and Attendance Center Orders are an independent means of control added to the suspended sentence. The Community Service Order and Attendance Center Orders are especially burdensome to the probation service. Therefore, combining these can be exercised only if the law regulates its necessity.

As seen in England's practice of the Community Service Order, it was operated as an independent criminal sanction. Although it was later revised that the combination order can be imposed if needed (1991), there still has been argument in the practice of this as a combination order. The United States also utilizes Community Service Orders as a part of probation conditions. However, it is an issue of legal policy but not a legal interpretation.

Chung Dong-Ki, a senior prosecutor, argues that the above mentioned "a lack of prevention in recidivism and a limited execution of condition" are a matter of policy-decision issues, but not an interpretative issue of legality in the Community Service Order. He also posits the view that violent sex offenders can be good candidates for combination orders.

## **B. The Introduction of the Community Service Order**

In Korea, probation was first legalized as a form of protective decree in juvenile protection cases by the amendment of the Juvenile Act in 1963. But it has not been fully incorporated into our legal system due to the lack of procedural regulations and organisational structure. In the late 1980s, an important transition was brought into the operation of probation as a legal system. A full revision of the Juvenile Act was completed in July 1988. The Probation Regulations were enacted by the Juvenile Act in 1988. The systematic operation of probation was enforced on delinquent juveniles along with the combination of a Community Service Order & Attendance Center Orders in 1989.

With the amendment of the Social Protection Law in 1989, the parolee from the protective custody center became a subject for probation (post release supervision). The amendment of the Punishment of Sex Offenders, and the Victim Protection Law in 1994 brought an opportunity to consider the imposition of probation to the adult criminal for the first time in our legal system. In 1995, Congress passed the revised Criminal Law concerning Probation, Community Service Orders and Attendance Center Orders. This was enacted as law on January 1, 1997 after a one year trial period of operation.

## **C. The Background to the Introduction of the Community Service Order**

### **1. Why a Community Service Order was Needed?**

The background that affected the birth of the Community Service Order along with the system of probation is deeply grounded in western philosophic orientations. Professionals both in the academic and the legal community began to reexamine the efficacy of our penal system as a whole in the 1980s. The major rationale behind the reflection of our criminal justice system seemed to be associated with the wide range of disillusion on the current exercise of our criminal sanctions such as penal servitude and confinement as the basic penal sanctions. More specifically by the late 1980s, it had become widely recognized that custodial sentences were generally ineffective as a deterrent against further offending and the rehabilitative efficacy of institutional treatment was increasingly questioned. Imprisonment had, moreover, been recognized as having detrimental effects upon individual offenders and their families and concern was being expressed at this time both about the levels of overcrowding in penal institutions and the high cost of maintaining the prison system.

Other movements were concern for the needs of the victim and the desire for penal sanctions to serve to reconcile victim and offender. The Community Service Order, as recommended and introduced, was the result of the confluence of these factors. The most attractive feature of the Community Service Order was the opportunity it gave for constructive activity in the form of personal service to the community and the possibility of a changed outlook on the part of the offender. It was hoped that offenders would come to see it in this light, and not as wholly negative and punitive.

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The above are reasons why the Community Service Order emerged as an attractive penal option and the process by which the Community Service Order were translated from an idea to a sentencing option.

The practical implication in the operation of the Community Service Order in our legal system aimed at the following elements:

First, the need for more stringent criminal sanctions: The Community Service Order might have been seen in the public eyes as a lenient measure against crime. At the time of an increasing crime rate, which resulted in overcrowding situations, the system required more reliable means to reduce the custodial population by which public safety may be enhanced at a measurable level.

Second, the need for reparation: Traditionally, the notion of restitution was focused on the victim him/herself, however, gradually the general notion of reparation came into practice in relation to society. Therefore, the Community Service Order is seen as a transformed restitution to the community through offenders' labour without monetary compensation.

Third, the need for reintegration and community involvement: The balance between general deterrence and rehabilitation of offenders has long been an issue in the administration of the criminal justice system. The offenders are in need of treatment in relation to the community from which he/she came. Society is also encouraged to participate in giving them opportunities for their needs. The best result anticipated would be a reconciliation of the offender and his/her community as the prime objective of the penal system. This exercise would play a leading role in delabeling the offender so that they can be grounded again in their communities. Within these perspectives, it is seen that the offenders recognize the sense of responsibilities and altruism to become a normal citizen.

From an administrative standpoint, the background on the introduction of the Community Service Order is as follows:

(i) *Failure of juvenile protection*

Since the enactment of the Juvenile Act on July 24, 1958, (No. 3047), the ideal of the Juvenile Act protection was not properly exercised by the court personnel due to a lack of understanding of the procedural regulations. For example, first, the juvenile police devised their own regulations regarding juvenile delinquents and most of them were released by the police after some counselling without referral to the juvenile court. This caused the release of juvenile delinquents unprotected by the Juvenile Protection Act. Second, the prosecution department interpreted the protection disposition as a compromising position between the suspension of indictment and sentencing by the court. This resulted in the lack of consideration for juvenile protection.

(ii) *Limited application of protection disposition*

Before the 3rd amendment of the Juvenile Act, there were six protection dispositions in the Act (Art. 30-1):

- Referral to guardian supervision (Disp. No. 1)
- Referral to juvenile protection group, temple, or church (Disp. No. 2)
- Referral to hospital or sanitarium (Disp. No. 3)
- Sending to a reformatory facility (Disp. No. 4)
- Sending to juvenile detention center (Disp. No. 5)
- Imposing probation (Disp. No. 6)

Disposition No. 4 was nullified due to the closure of the reformatory facilities in 1961. Disposition No. 2 was also rarely utilized due to the insufficient number of juvenile protection groups. Consequently only disposition No. 1 and No. 5 were utilized. This became critical in terms of the application of the juvenile protection disposition as a programme in the Juvenile Act.

(iii) *More focus on formality rather than substantive content*

The probation disposition (No. 6) was introduced at the time of the first revision of the Juvenile Act in 1963. However, the regulation concerning procedures and contents of probation was not enacted. Therefore, the court enforced rules concerning the court investigators' report as the probation disposition.

The Juvenile Judgment Rule was enacted by Supreme Court rule No. 823 on December 31, 1982. This rule regulated various procedural stages and necessary conditions to be utilized in dealing with the juvenile cases as protection dispositional sanctions. The details are discussed later in the section on procedures and contents of the Act.

From the above development, the necessity for the rearrangement of the protection disposition was discussed. Consequently, disposition No. 1, in which the juveniles were released to a crime-breeding environment without any condition, was nullified. With the disuse of disposition No. 4, disposition No. 6 was activated by adding a short-term period of probation (6 months to 2 years) along with the combination of a Community Service Order and an Attendance Center Order.

2. Supporting and Opposing Arguments to its Introduction

The Ministry of Justice held the 5th seminar on the issue of youths guiding answers in May 22, 1987, and asked professionals in various fields regarding the contents of the revised Juvenile Acts. A considerable degree of opposition was raised. At the time, the Supreme Court opposed the rearrangement of the juvenile protection disposition. The Association of Korean Lawyers suggested the following to be rearranged:

- (i) Protector guide referral disposition.
  - Group guide referral disposition
  - Probation referral disposition
- (ii) Treatment referral disposition
- (iii) Juvenile Center sending disposition

On the basis of suggestions and recommendations from professionals in academic and legal fields, the revision of the Juvenile Act was enacted in June 18, 1988. The newly revised Act was passed in congress as a new Juvenile Act (Art. No. 4057). During the process of revising the Juvenile Acts, especially juvenile disposition No. 1, the Ministry of Justice attempted to nullify No. 1 due to its ineffective administration practice, the Supreme Court and the congressional law makers committee opposed this disposition because the legal interpretation on the efficacy of this disposition was different from the Ministry of Justice. The Association of Korean Lawyers also suggested views that were incongruent with the Ministry of Justice. This was because the association believed the juveniles would be interfered by the guiding objectives toward the right direction by imposing a Community Service Order and an Attendance Center Order. The enforcement of the newly revised Juvenile Act became effective on December 31, 1989, since its enactment on July 24, 1958.

**D. An Outline of the Community Service Order**

1. Definition

The Community Service Order is an alternative sentence by which offenders who are sentenced to a Community Service Order work without monetary compensation at public, private or nonprofit agencies in the community for a certain period of time. They are therefore allowed an opportunity for repentance while leading a free life in lieu of incarceration.

2. Purpose

The major elements of the Community Service Order are reflected in the consolidation of punishment, reparation/ restitution and reintegration. Offenders and society both draw benefits from the Community Service Order by: providing offenders with a sense of fulfillment and satisfaction; allowing offenders an opportunity for repentance and restitution; producing budget-saving effects along with retribution effects; fostering good work ethics and self-esteem; and helping offenders return to the

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community as law-abiding citizens. Communities and victims also benefit out of the restitution paid by the offenders.

3. The Criteria for Imposing a Community Service Order

(i) The minimum age requirement for applying a Community Service Order was discussed in an earlier section of this manuscript. In relation to the age of criminal responsibility as an adult, it is not limited by law.

(ii) The number of hours of service imposed on the juvenile is different from the adult. In the Juvenile Act, the Community Service Order is no more than 200 hours in the case of probation and no more than 50 hours in the case of short-term probation. The minimum number of hours is not regulated (Art. 33-4). There are no empirically based research results determining the limit on the number of hours. However, western country practices have been employed as comparative criteria. The 50 hours or less service order is available only in regard to a short-term probation case because the probation period is only for 6 months. The number of Community Service hours is determined by the juvenile court judge when the juvenile protection disposition is determined (juvenile Judgment regulation Art. 32-1).

Under the Criminal Law, the Community Service Order is no more than 500 hours (law concerning probation Art. 52-1). The Community Service Order (in criminal law) must take into account the upper limit of 5 years for the suspended sentence.

Regarding the time limit of the Community Service Order, in the case of short-term and regular probation, the Juvenile Act requires the Community Service Order to be executed within 6 months and 2 years, respectively. If the Community Service Order is not executed within the limited time, it will expire at the end of the short-term and regular probation (Art. 33-4).

However, the juvenile court judge can extend it for one year, but only when a probation officer requests it (Art. 33-3). The Community Service Order is required to be executed within the period of the suspended sentence (Criminal Law, Art 62. Sec. 2-3). Accordingly, the case of a one year penal servitude along with 2 years suspended sentence is subject to the Community Service Order to be executed within 2 years. This stipulation might create an inefficacy in the implementation of the Community Service Order because the law emphasizes only the legal time limit rather than the realization of the substance of it.

For example, an offender, who is required to do 500 hours of Community Service within a 5 year period might request that it be delayed due to personal reasons. In this situation the major effects of a Community Service Order may be lessened because offenders are not complying with the requirements in a speedy manner, which may result in less fulfilled obligation of reparation and reintegration from the task perspective. Therefore, it is suggested that the Community Service Order needs to be executed in relation to the time limit of the suspended sentence.

(iii) Kinds of offences suitable for a Community Service Order

The rules and regulations concerning probation, Community Service Orders and Attendance Center Orders, both in criminal and juvenile cases. The following are introduced as selection criteria for those who are subject to the Community Service Order:

a) Adult offenders

1. Those who put themselves down, conduct purpose-less lives, or fail to recognize their usefulness.
2. Those who isolate him/herself from society or present a fragmented life style.
3. Those who lack the spirit of labour, lust other people's properties or receive inappropriate benefits in relation to his/her official tasks.
4. Those who drive while intoxicated, drive without a proper license, or violate the traffic rules.
5. Those whose cases are judged to be proper for the imposition of a Community Service Order.

b) Juvenile offenders

1. Those who possess a self-centered and an exclusive personality influenced by their parents over protection.
2. Those who lack the experience of destitution
3. Those who lead an idlers' life and lack the spirit of labour.
4. Those who are under the influence of an enjoyment of a decayed life and over consumption.
5. Those who are isolated from the family due to repeated misdemeanours.
6. Those whose cases are judged to be proper for a Community Service Order.

c) Inappropriate offenders

1. Those who commit a felony due to addiction to drugs and alcohol
2. Those who commit a felony by the repeated and severe use of force or sexual perversion
3. Those who are mentally ill or have severe mental retardation.
4. Those who are unable to perform the assigned tasks due to their physical disability.
5. Those who commit public safety crimes that are subject to probation.

Seen in this regard, the kinds of offences suitable for a Community Service Order are not just limited to minor offences. In the execution of the Community Service Order, it is enforced without the consent of the defendant, in our system.

(iv) Applying guidelines for the Community Service Order

In order to apply the Community Service Order to the subject, the law requires the completion of the pre-sentence investigation report on the designated subject. At the court's request, the probation officer conducts investigations on the offenders' environment and the cause of the crime. The major function of the pre-sentence investigation is to provide the sentencing authority, the court, with reference information for the imposition of the right amount of time to be served and for the individualized services. The major task of the investigation includes the records of the offender's crime and criminality, family background, educational data, employment history, financial assets, physical and mental conditions, the motive for the crime, and victim-related information. These data are obtained by means of an in depth interview, psychological test, and verification of the relevant factual information.

One of the core elements in the system of probation is how the probation guidelines are appropriately applied to the subject. Under the Juvenile Act, the Community Service Order is an additional disposition of probation and the probation guidelines are applied to the juvenile subjects too.

First of all, the subject for the Community Service Order is responsible to report his/her status to the local probation office where the subject resides within 10 days after the court disposition. Second, the subject is obligated to follow the supervising probation officers instructions regarding the execution of orders. Third, the subject should notify the supervising probation officer regarding a change of residence or travel if it is longer than one month. Fourth, the subject should follow the special conditions which the court imposes to fit the circumstances of each case.

In addition to the above conditions, the court can impose special conditions to fit the circumstances of each case, for example, visiting a pleasure street is prohibited, drinking any alcoholic beverage is prohibited, possession and using any narcotic, dangerous or restricted drugs, are prohibited, and familiar responsibilities should be maintained.

## **E. Enforcement Organisation**

### **1. Agencies Responsible for the Enforcement of the Community Service Order**

The Bureau of Social Protection and Rehabilitation in the Ministry of Justice is divided into 5 divisions: the protection division, the investigation division, the probation and parole division, the 1st Juvenile division, and the 2nd Juvenile division. The Bureau is functioning to accomplish the following:

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to establish comprehensive planning for social protective custody cases, and to operate the community protection committee which examines the parole of protective custody inmates. The Bureau also manages and supervises the operation for the probation offices, the parole examination committee, the juvenile training school, the juvenile classification offices, the psychiatric institution, and the Korean Rehabilitation Agency. Since the launch of the Social Protection and Rehabilitation Bureau in 1981 with the enactment of the Social Protection Law, the function of the bureau has continued to expand its services to the community-based operation of probation and parole. Currently, the Probation and Parole Division is in charge of operating the system of probation including the Community Service Order.

2. The Personnel Involved in the Monitoring of Offenders are Probation Officers

To be assigned as a probation officer, although no special qualifications are required, he/she should be competent at his assigned task with a good range of professional knowledge in various fields of social science such as criminology, criminal policy, social welfare, pedagogy, psychology that are supportive intellectual resources for the supervision duties.

Volunteers in the supervision system also take a role along with the probation officer in their assigned tasks. They are appointed by the Minister of Justice upon the recommendation of chief probation officers. Qualifications to become a volunteer include good character, high moral integrity, a sense of responsibility that promotes social betterment, good health and social service orientations.

The probation officer and volunteer are guiding those under supervision in order to promote their well-being by rehabilitating them, providing necessary support to ensure the person's self-reliance, such as helping him/her to find employment for job training and generally improving the person's environment.

3. The Types of Community Service Orders which are Currently being Implemented are as follows:

- Activities for ecological conservation such as sweeping up garbage waste.
- Services at botanical gardens such as watering flowers and tending to flowers.
- Services at libraries such as arranging books
- Services at historical sites and ancient places such as preserving and repairing the sites and guiding visitors.
- Services at judicial and correctional institutions such as directing traffic and assisting in patrols for crime prevention.
- Services at institutions for the handicapped, the elderly and the weak such as assisting the disabled.

4. Benefits from the Operation of the Community Service Order are as follows:

- It provides offenders with a sense of fulfillment and satisfaction.
- It allows offenders an opportunity for repentance and restitution.
- It fosters good work ethics and helps to recover self-esteem
- It helps offenders to return to the community as a law-abiding citizen.
- It has budget saving effects and retribution effects.

5. The site of the Community Service Order

The selection of the field and the place of the Community Service Order is determined by the probation officer on the basis of the offenders crime, the distance between work and his/her residence, and his/her familiar environment. But since the court has primary designating authority in this regard, many cases follow the court direction on the selection of work site and field.

As seen in the types of the Community Service Order above, some sites are as follows:

- Basic living aid such as wallpapering, bathing, and house cleaning for the aged living alone, the disabled or orphans.
- Social welfare facility aid, which includes helping children, senior citizens, the disabled, orphans, or eating assistance.
- Public work aid such as guidance of public order, repairing of equipment at public places like railroad stations, parks, children's playgrounds, etc.

- Rural farming and village aid by harvesting fruit and rice.
- Natural disaster recovery aid.

## **F. Measures Taken for Breaching the Conditions of the Community Service Order**

### **1. The Possibility of the Revocation of the Community Service Order**

The probation officer can terminate the process of the Community Service Order if those under supervision violate the condition, present a considerable reason to believe that the subject might breach the condition, show no consistent residence, fail to respond to a writ of summons, escape, or seem to escape.

Consequently, a warning, a court warrant for arrest, detention, or revocation might be activated. In detail, before a revocation, the probation officers can initiate the investigation of the breach of conditions and issue a warning. If the offender fails to comply with one or more conditions of the Community Service Order, the offender is subject to appear before the court. A judge exercises his authority to issue a warrant on the written information provided by the probation officer that the offender has failed to comply with any of the condition in the order. If the judge believes that the information is valid, he may issue a warrant for the arrest of the offender and the Community Service Order will be cancelled and the offender imprisoned.

In an urgent situation, the subject may be brought into custody without a court warrant. Those arrested should be either released or detained by the court within 48 hours.

Supervision terminates upon the occurrence of any of the following: expiry of the term of supervision, nullification of suspension of sentence, revocation of suspension of execution, revocation of parole or of early release from training school, modification of protective disposition and a decision to terminate indeterminate imprisonment.

### **2. The Possibility of Imposing Another Sanction**

Administratively, there is no possibility of the continuation of the Community Service Order once a breach of conditions is identified by the probation office. However, only when the court is not satisfied that the offender has failed without reasonable cause to comply with the conditions of the order, the continuation of the order is possible.

### **3. The Possibility of Continuation**

There is a possibility of imposing additional sanctions, that is, the extension of the time of the order, only when the offender commits another offence(s) during the period of the Community Service Order. Committing an additional crime requires the court to suspend the criminal disposition in Criminal Law and change the protection disposition in the juvenile Act. Consequently, the extension of the time of the order or other criminal and juvenile sanction is imposed as an additional sanction.

## **G. Legal Effect of the Completion of the Community Service Order**

In the Juvenile Act the completion of the Community Service Order with the ending of short term or regular probation means that the Community Service Order is an additional disposition of probation. Since the closure of the major protection disposition is made, the extension or remainder of the major protection disposition is not a valid exercise. In a situation where the residual amount of time is considerable, the offender is subject to the cause of change of the protection disposition. Also, when the Probation Examination Committee orders an early discharge of the order, the Community Service Order ends the execution of the order (Juvenile Act Art. 33-4). If the early lifting of the order is cancelled, then it seems reasonable that the execution of the order resumes.

In addition, the execution of the Community Service Order ends when a change of the protection disposition is required due to the violation of any of the conditions or the possible breach of the order due to inappropriate conduct.

Under the Criminal Law, the execution of the Community Service Order ends in cases where the designated time served is incomplete even after the duration of the suspended sentence. This is because

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the Community Service Order implies the nature of an additional disposition or a conditional sanction of the suspended sentence. As indicated in Criminal Law, Art 62-2, the suspended sentence can be terminated if the offender purposely exercises negligence, malicious intention, or escapes with the purpose of postponing the execution of the ordered time. In Criminal Law, the cancellation of the suspended sentence is applicable to the offender whose breach appears to be of a serious nature only and less serious violators are not subject to this legal control. This has been raised as a legal issue in the execution of the Community Service Order. It is therefore desirable that these cases need to invite additional sanctions like a fine or detention as measures to control this problem.

**H. Statistics on the Community Service Order**

1. Number of Cases Imposed Since its Introduction

The Community Service Order has been a widely available sentencing option in Korea for almost 15 years. The application of this measure has been gradually increasing and by the year 1997 the number of offenders subject to Community Service Order has drastically jumped. On average, 3,000 probationers daily are assigned Community Service at 1500 sponsoring local agencies throughout the nation. The current state of Community Service Orders as of April, 2002 is as follows:

**Table 1. Current Status of Community Service Order Since Its Application**

Year	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Total
Number	121	2,107	2,860	3,546	3,811	5,331	5,405	8,019	23,528	40,430	36,174	42,761	33,927	43,361	251,381

As of June, 2002, ninety seven officers, out of a total of 543 probation staff were exclusively engaged in the enforcement of this order. The major supervising force for the subjects in the field are local citizenry as volunteers. The heavy reliance on local agencies has brought various problems. First, the quality of supervision was in question due to differing degrees of the difficulty of the services asked by sponsoring institutions. Second, the sponsoring agencies are limited to certain areas of services of which the result is the work doesn't always use the skills possessed by the offender.

In order to resolve the above mentioned problem, the bureau launched a new programme entitled "The local community service center" in 5 major probation districts; Seoul, Inchon, Kwangju, Changwon and Cheju in July 2000 on a trial basis.

The Local Community Service Centers are (directly quoted from Reforms in Protection and Rehabilitation Administration in Korea, published by the Ministry of Justice, 2001) "composed of the Community Service Demand Research Department, the Community Service Order Enforcement Department, and the Volunteer Pool Management Department. The Local Community Service Center grasps the service demand either by visiting the scenes or through requests from civilians, organisations, or corporations. Confirmed service demands are then classified according to content, time, and period and are processed through the Probation Integrated Information Service and then automatically linked to the saved information on the aptitude and qualifications of the subjects under probation. In this process subjects are assigned to places or fields where services are needed.

Enforcement of Community Service Orders by Local Community Service Centers are broadly speaking, divided into 1) basic living support areas for the low income class such as house repairing, papering, and boiler construction, 2) social welfare facilities support areas such as tending to the blind and the elderly with imbecility, 3) public work support areas such as resource recycling and environmental cleaning, 4) agriculture service areas such as rice-planting and fruit harvesting, and finally 5) disaster relief activities areas such as storm, flood, heavy snow, and wood fire relief activities.

2. The Outcome of the Community Service Order

It has largely been considered to be a successful programme as an alternative sentencing option. Those who failed to comply with the conditions during the Community Service Order period were subject to warning, arrest, detention, cancellation of the suspended sentence and family protection disposition, change of protection services, or extension of time service.

**Table 2. Subjects Who Poorly Performed or Violated the Order (December 2001)**

		Total	Warning	Arrest	Urgent arrest	Detention	css <sup>1</sup>	cfpd <sup>2</sup>	cpd <sup>3</sup>	ets <sup>4</sup>
Total		7,593	6,250	462	70	506	140	0	152	13
Juvenile	Sub total	3,061	2,365	219	38	250	26	0	151	12
	Criminal Law	681	545	48	8	55	25	0	0	0
	Juvenile Act	2,368	1,811	170	30	194	0	0	151	12
	Sex offence	12	9	1	0	1	1	0	0	0
	Domestic violence	0	0	0	0	0	0	0	0	0
Adult	Sub total	4,532	3,885	243	32	256	114	0	1	1
	Criminal Law	4,390	3,749	241	32	254	114	0	0	0
	Sex offence	33	29	2	0	2	0	0	0	0
	Domestic violence	109	107	0	0	0	0	0	1	1

1. cancellation of the suspended sentence
2. cancellation of family protection disposition
3. change of protection disposition
4. extension of time served

The majority, 35,768 (83%) out of 43,361 (2002), completed their order successfully (see Table 1). 7,593 offenders (17.5%) were returned to court for failure to comply with the requirements and had their orders revoked.

The majority of breaches occurred as a result of repeated failure to attend to work as instructed and in some cases combined with a failure on the part of the offender to notify the Community Service Order of a change of address, the execution of sentences, and other unidentified reasons.

As shown in Table 3, the failure rate is very minimal, 2.8%. This figure shows the number and the rate of the cases of recidivist after the offender completed the orders.

**Table 3. Current Status of Recidivism**

	2002			1989 to 2002		
	Completion	Recidivist	Rate	Completion	Recidivist	Rate
Total	38,131	846	2.2	190,111	5,311	2.8
Juvenile	8,590	510	5.9	83,535	4,236	5.1
Adult	29,541	336	1.1	106,576	1,075	1.0

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**Table 4. Community Service Order by Categories of Offence (1999-2000)**

Category	Year	1999	2000
	Total		35,433 (100.0)
Community Service Order	Act of Violence	9887 (27.9)	9383 (25.2)
	Larceny	6711 (18.9)	6205 (16.6)
	Sexual Perversion	1238 (3.5)	1297 (3.5)
	Robbery	1671 (4.7)	1518 (4.1)
	Hallucination Drug	975 (2.8)	1119 (3.0)
	Traffic	8363 (23.6)	10779 (28.9)
	Threat	146 (0.4)	167 (0.4)
	Fraud	2373 (6.7)	2509 (6.7)
	Environment	476 (1.3)	548 (1.5)
	Civil Disobedience	48 (0.2)	8 (0.0)
Others	3555 (10.0)	3762 (10.0)	

As shown in Table 4, out of 37,295, traffic related offences are the highest (28.9%), the next is acts of violence (25.2%) and larceny (16.6). This is similar to the previous year in number of offences. The reason we believe so many felons are given a Community Service Order is that the law aims to help offenders realize the value of hard work through participating in community services so that they can change their attitudes.

3. Category of Community Service

Information regarding the categorical classification of community service is limited to only 5 major probation districts where a new programme entitled “the local community service center” is under operation. The nationwide data by category of community service is not available. The results of the operation of the local community center from July 1, 2000, to September 30, 2001 is as follows:

**Table 5. Category of Community Service (Type of Work Performed in Agency)**

Classification	Total	Seoul	Inchon	Kwangju	Changwon	Cheju
<b>Total</b>	25,065	10,522	5,210	3,054	3,185	3,094
<b>Basic Living Aid</b>	5,790	1,962	994	724	843	1,267
<b>Social Welfare Facility Aid</b>	5,516	2,743	917	413	519	924
<b>Public Project Aid</b>	9,712	4,923	2,397	993	867	532
<b>Relief Activity Aid</b>	1,867	376	476	347	399	269
<b>Agricultural Activity Aid</b>	2,000	413	397	572	511	102
<b>Volunteer Pool</b>	180	105	29		16	

As seen in Table 5, 25,065 subjects who received the Community Service Order have been assigned to community work. Those ordered to the services are classified by the type of community service in which they were engaged in. Public work, such as parks and subway cleaning predominated. The reason for the highest number of participation in this field is that the work was available year round,

and no special qualifications was required. Practical tasks, such as domestic work (kitchen and cleaning duties), house repair, general handiwork and garden cleaning were also fairly common. Certain types of personalized work, such as care duties (bathing the old and helping out outdoor activities), driving/escorting and befriending were common too. The numbers taking part in relief and agriculture were low. This is due to the demand of services that are required in an emergency or in a particular situation focused on a short-term assignment.

Most agencies felt that the work the offenders were engaged in brought them into direct contact with their clients/users. Not surprisingly, offenders who were involved in work of a personal nature had high levels of such contact than those employed on other tasks.

Most of the agencies seemed to believe that the assistance provided by offenders on community service was of direct benefit to the individuals or groups for whom the agency provided services. Personal tasks were seen as being of more benefit than was practical work.

### **I. Evaluation and Future Prospects**

The yearly average population of convicts in Korea is about 204,000. Sixty eight percent of those are under the supervision of the probation system. As of December 2001, 31 percent of those who are placed on probation are currently doing community service. As seen in Table 1, the number of offenders who are sentenced to Community Service has been gradually increasing since its application in December 1989. In 1997, the numbers drastically jumped and thereafter increased substantially. It can be partly accounted for by the incremental development of community service in Korea, with additional schemes being developed each year such as the Local Community Service Center. This trend indicates that prison is no longer a major reservoir for the convicts and we are at the stage of transforming our population structure into an alternative to traditional custodial measures.

Undoubtedly it is clear, almost 15 years on, that the Community Service Order as an alternative criminal sanction has more than a symbolic appeal, but has become firmly established among the repertoire of the court dispositions available in Korea's criminal justice system. The operation of the Community Service Order has greatly contributed toward the objective of reducing the prison population.

Although we have strived to focus both on the reduction of the prison population and returning offenders into the community, we have faced many challenges in this regard.

First of all, we are in need of restructuring the operating organisation by its number, manpower, budget, and theoretical models.

There are 12 main probation offices along with 16 branches in the nation. It is far short of the number of prosecutors offices. Maintaining a similar ratio between them seems to be desirable for more accountable system operation. The manpower involved in the operations, compared to the advanced countries, is in a miraculous situation. As of today, the total number of staff involved in the system is 543. The number of probation officers at rank 5 or above is only 125. The others are ranked from 9th to 6th along with the clerical staff. The average caseload per probation officer ranges from 500 to 600. The effectiveness and the efficiency of the operation of a system which largely depends on the quality of managing staff are limited to the extent in which the expectation is fulfilled. The problems mentioned above are mainly associated with two factors. First, the lack of funding from the government which is due to the government having set certain policies in terms of recruiting government officials. Each year only a few are allowed to be incremented in each department of the government. With the current rate of government incremental policy, it is almost impossible to have recruited enough qualified probation officers. Therefore, the dependency on the public sector is visibly increasing with the full recognition of the government objectives by the citizen's perspective. Second, the title of probation officer is only given to 5th rank personnel, not allowing other lower ranked staff to engage in the quality supervision of the Community Service Order. Thus, it is desirable to restructure the force of the probation officers along with the other lower ranked staff in the system operation. Therefore it must be said that the current success of the system is the result of a considerable amount of support from the local collaborating

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civilian agencies which supplied most of the major manpower resources required for in the field supervision.

Secondly, due to the government recruiting policy, probation officers must pass examinations that cover areas of knowledge in social sciences with special emphasis on Criminal Law and correctional administration. There is less emphasis on a social work orientation in the recruiting processes.

This exercise is far different from other advanced countries' recruitment policies where a stronger educational background is given to social work. Therefore, theoretical models that lead the practitioners from an ecosystem perspective which values the transaction between the individual and his/her immediate environment as a major intervening strategic tool are lacking, thus resulting in an imbalance in treating offenders.

Although it is beyond the scope of this manuscript, there are areas to be addressed as problems. Those are the definition of the concept of probation in relation to procedural rules and regulations in the enforcement of the Community Service Order in the probation system and the legislative concerns in terms of providing a precise direction for the administration regarding Community Service.

In addition to these, there are some concerns among the prosecuting attorneys led by Chung, Dong-ki, a senior prosecutor at the prosecution department, in terms of regulating the Community Service Order as a distinct and independent sanctioning means in our criminal justice system. The pros and cons are still ongoing on this issue. It is the position of the author that the Community Service Order is in need of having full legal empowerment so that the implication of this operation is accountable as originally designed in our criminal justice system. In conclusion, it is our hope that the Community Service Order as symbolic restitution, involving redress for victims, less severe sanctions for offenders, offender rehabilitation, reduction of demands on the criminal justice system, and a reduction of the need for vengeance in society, or a combination of these will be realized. We also hope that the community benefits out of the restitution paid by the offenders, offenders benefit because they are given an opportunity to rejoin their communities in law-abiding responsible roles, and the courts benefit because sentencing alternatives are provided. Achieving these hopes are our challenges and outlook for the future in the operation of the Community Service Order in our criminal justice system.

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# THE VOLUNTEER PROBATION OFFICER SYSTEM IN KOREA

*Woo Sik Chung\**

It is believed that we cannot examine the probation system without mentioning the important role played by volunteers. For many people who have other occupations with different life experiences, one way to be involved with human services is to volunteer. The willingness to help others, without the motive for profit, is characteristic of human societies and is expressed in the activity of thousands of people who share their time, energy, and talents to make this a better society. It was from efforts to prepare volunteers to provide more accountable services that the crime prevention volunteer organisation became a recognized social entity and, now, a significant helping civilian force in Korea.

This manuscript prepared for the 121st Training Session discusses the volunteer system of the probation operation in Korea in the following aspects: the legal basis, background, activities, recruiting, training, and problems and their solutions.

## **A. The Legal Name**

The legal name of a volunteer probation officer in Korea is currently “a member of Crime Prevention Volunteer Committee.” Originally, there were three volunteer groups of organisations in relation to our criminal justice system: the Rehabilitation Aid Committee started in 1961, the Juvenile Guidance Committee in 1981, and the Protection Committee in 1989. During the course of their involvement as a major force of volunteers, many conflicts among those invited a new development that created a significant change in their organisational structure, which combined the above three volunteer groups into one in 1996. This newly created body named “the Crime Prevention Volunteer Committee” was put under the direct control of the Deputy Prosecutor General in the Supreme Public Prosecutor's Office.

## **B. The Legal Basis (Laws and Regulations Concerning Volunteer Probation Officer System)**

One of the most distinct features of the probation system is the citizen's involvement in the operation of the system. Criminal Law concerning the probation system clearly indicates that the purpose of its operation is 1) to prevent recidivism through a systematic community treatment, 2) to promote the offender's return to the community, and 3) to develop crime prevention activities (Art. 1). And also all citizens must provide the nation with their full cooperation on the basis of their status and capacity toward reaching the goals, and the nation and the local authorities should be responsible for the growth of the guiding activities for the offenders (Art. 2). This is because the prime objectives of the probation system, that is, preventing recidivism and returning offenders to the community, can only be achievable by a joint venture of the governing authority and the citizen.

In other words, collaborative efforts with the citizens, the nation, and the local authorities are required to accomplish the originally designed objectives of the probation system.

The function of the Crime Prevention Volunteer Committee is to conduct crime prevention activities and support the activities of the probation and the rehabilitation aid (Art. 18-1). The administering regulation of the probation concretely prescribes that the function of the committee member is to:

1. Deploy crime prevention activities in the community
2. Provide the offender with counselling
3. Assist job search and financial aid
4. Comply with other related concerns regulated by the Minister of Justice (Art. 10).

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Accordingly, the Crime Prevention Volunteer Basic Regulations (No. 363) describe specifically the function of the committee members as follows:

1. Deploying the prevention activities for school violence and crime by establishing a mentor relationship with the delinquent juvenile
2. Providing counselling and special instruction for those who have the suspension of indictment under the condition of guidance
3. To aid the probation officer's task in the areas of guidance, supervision, Community Service Order, pre-sentence investigation, and background investigation
4. To support job search, vocational training, care, and financial aid

Criminal Law concretely prescribes that members of the Probation Examination Committee (Art. 7), members of the Crime Prevention Committee (Art. 18), and the Rehabilitation Aid Workers (Art. 67) are encouraged to participate in the operation of the probation system. This law should not be interpreted in a limited sense that the citizen can only participate in those categories mentioned above. Rather it invites them in a variety of forms on the basis of their competencies and strengths so that contributions they might bring toward the system goals can be made. In practice, the citizens' involvement, like a mentor programme, is currently under the operation in the activities of the crime prevention committee as a transformed shape, in the activities of the Community Service Order and the Attendance Center Order as a form of collaborative agency in the operation of the probation system.

As a matter of fact, however, in 1990, 19,934 offenders were placed on probation, 2,107 on Community Service, and 1,347 on Attendance Center Order in the early stage of the development of the probation system. Now, with the extended application of probation sanctions to adults, there are about 90,000 probationers, about 40,000 on Community Service, and about 10,000 on attendance order in 2001. In spite of a significant increase of those numbers, the activities of the crime prevention volunteers committee remain in similar fashion without revitalization of its functions, which was considered to be a problematic organisation. Hence, the design that promotes the citizen's involvement along with members of the Crime Prevention Volunteers Committee seem to be imperative.

The number from the probation division in the crime prevention volunteers committee is small in comparison to the other two volunteer organisations. Broadly speaking, the Rehabilitation Aid Committee is a part of the probation system but not directly related to the daily operations of probation due to their limited engagement only in cases of the completion of the execution of sentence. Therefore, this manuscript covers only the system of the crime prevention volunteers committee that is directly associated with the probation system in Korea.

### **C. The Introduction of the Volunteer Probation Officer System**

Since the introduction of the probation system to Juveniles in Korea in 1989, civilian volunteers began to participate in the task of offenders' rehabilitation by assisting the probation officers. As briefly mentioned earlier, the Protection Committee that started in 1989 was the main resource in providing the assistance for the probation operation as a civilian voluntary organisation. This was considered to be the first involvement of the volunteers in the system operation.

### **D. Background of the Volunteer Probation Officer System**

Since its birth, the probation system has been mainly operated by the probation officers whose ranks(5th or higher) are relatively high in the government organisational structure. The rationale behind this criteria was that the probation officers should be well equipped with the professional knowledge and skills in various fields of social science as well as criminal law in order to provide offenders with more efficient, effective, and relevant ways of guidance. However, the occupational positions like this rather contributed to less accountable consequences due to the difficulty of recruiting more probation officers caused by the stringent governmental budget policies. In addition to this problem, the probation officers were very limited to field work trips due to the shortage of manpower which were necessary functions for the proper supervision of offenders. As of today, the total number of probation officers is 125 with the number of probationers at a little over 140,000. This kind of operational situation caused the necessity of citizen's involvement in the probation system.

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Another aspect that required the volunteers' participation is that probation is a form of community-based sanction that is characterized by societal involvement and collaborative efforts. Moreover, the probationers are residing in the community. With the probation officer's supervision, it is hard to expect the anticipated goal to be achieved. Volunteers' involvement becomes the necessary component of the system's success.

The probation system also aims to reform or rehabilitate the offenders within the community, thus, its effectiveness is closely related with the cooperative manpower resources. Hence, the civilian volunteers cooperation is considered to be a critical system component that partially replaces the main responsibilities of the heavily loaded probation officers' tasks.

Since the success or failure of the probation system is largely dependent on the degree of the intensity of the volunteers' participation in the system's operation, its importance and necessity become more valuable:

First, a) because both the volunteers and the probationers are in the same residential boundary, this makes it easier for them to contact each other whenever necessary, b) the volunteer can come up with a proper plan for the offender's needs since he/she is familiar with the matters in the community, c) the volunteer can seek cooperation from the residents without difficulty, and d) the maximum utilization of the community resources are readily available.

Second, a) the volunteer is not an authority-laden official figure. His/her civilian status enables him/her to approach the offender's family in a comfortable manner, b) they can establish a mutually respectable relationship.

Third, the probation officer's supervision and guidance designated to a certain offender is not always continuous due to the fact that officers are often relocated, but the volunteer is relatively stable in his/her residency so that continuous assistance is almost guaranteed.

## **E. An Outline of the Volunteer Probation System**

### **1. Definition**

The members of the Crime Prevention Volunteer committee are not government officers, but conduct the activities of crime prevention, support the probation activities and the rehabilitation aid works (Criminal Law, Art. 18-2). They also assist the probation officers and take the responsibility of background screening and guidance activities for those who are subject to supervision, instruction, and support due to probation. They are appointed by the Minister of the Department of Justice from those who are respected socially as reliable people and possess a passionate spirit for service. The position they are holding is reputation-laden in its nature and they are entitled to be paid in part or in full for their volunteer works (Art. 18-3). They are issued certification with a badge, and paid for their actual expenses and entitled to be compensated for any damage.

### **2. Purpose**

As described above, the main purpose is to assist the probation officer in the way that offenders are guided, supervised, and cared for, so that the objectives of the probation system are fulfilled, that is, rehabilitating and returning them into their communities where they came from.

### **3. The Criteria for Appointment as a Volunteer Probation Officer**

#### **(i) Qualification**

The administering Regulations of the Probation Law, No. 8-1, prescribes the criteria for appointing members of the crime prevention volunteer committee. The qualifying criteria to become a crime prevention volunteer committee member is as follows:

1. Those who are considered as socially reliable in their character and conduct.
2. Those who possess a passionate attitude for social services.
3. Those who are healthy and active.

4. Those who are not subject to the deficient criteria of the Government Official Recruiting Regulation No. 33.

The same regulation, No. 8-2, also prescribes the disqualifying criteria as follows:

1. Those who neglect the assigned tasks or produce no practical performance as a crime prevention volunteer committee member.
2. Those who exhibit delinquent conduct in relation to his/her duty.
3. Those who are considered to be an inappropriate person due to the damage made on the dignity of the volunteer mission.

Regarding appointment and disqualification as a member of the Crime Prevention Committee, the Crime Prevention Guide Committee is established in the local public prosecution office and its branches. The committee is composed of the deputy public prosecutor, crime prevention public prosecutor, the district probation office head, the head of the rehabilitation aid committee, and the crime prevention volunteer committee members. The committee examines the following (The basic regulation, No. 10-1):

1. Recommendation of appointment, reappointment, and disqualification, and remuneration for the crime prevention volunteer committee members,
2. Analysis of crime trends in the community and establishment of crime prevention strategies,
3. Establishment of the crime prevention task plan, and
4. Support and revitalization of the crime prevention volunteer committee members.

On the basis of recommendations made by this committee, the minister of the Ministry of Justice makes the final decisions. The ratio of appointing the Crime Prevention Volunteer Committee member is generally one volunteer per 1,000 population. In addition to this ratio, other circumstances such as crime trends in the community and population density, are considered in the selection of the volunteers.

(ii) *Age limit and remuneration*

There is no age limit set to be appointed a crime prevention volunteer, however, it is recommended that they be over 30. Those who are too old are discouraged due to the generation gap between the offender and the committee member. As indicated in the Administering Regulations of the Probation Law, No. 18-3, members of the crime prevention volunteer committee are entitled to be paid in part or in full for the tasks performed. They are also entitled to be compensated for damage incurred during the performance of their duty.

4. The Status of the Volunteer Probation Officers

The term of appointment is three years and is renewable (Crime Prevention Volunteer's Rule, No. 4). There are no special guidelines regarding the reappointment of committee members. However, the record of successful engagement of volunteering tasks is an indication of a good candidate for the reappointment. The minister of the Ministry of Justice appoints the committee members, however, the minister can entrust the authorizing power of appointing the committee members over to the chief public prosecutor in the local public prosecution offices (The same rule, No. 5).

The chief of the probation office can appoint a person, who is qualified, as a special crime prevention member if he/she is specially related to the offender (The same Art. 8-1).

**F. Activities of Volunteer Probation Officers**

1. Major Activities

According to the Probation Law (regulation No. 10), as described earlier, the crime prevention volunteer committee member is supposed to conduct the following:

1. Engage in the activities of crime prevention in the community
2. Provide offenders with counselling
3. Assist offenders in job placement and financial aid

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4. Comply with other related concerns regulated by the Ministry of Justice

The Crime Prevention Volunteer Basic Regulation (No. 400-3) also prescribes the following to be performed to:

1. Provide counselling and special instruction for those who have a suspension of indictment under the condition of guidance
2. Aid the probation officer's tasks in the areas of guidance, Community Service Orders, and background investigation
3. Support offenders for job placement, vocational training, care, and financial aid
4. Engage in the activities of school safety and prevention of school violence
5. Aid with basic medical care and medicine
6. Engage in other activities preventing crime in the community

In order to perform the above, the committee member can, if needed, request the agencies' collaborative inquires in relation to a fact finding situation involved with the offence (No. 400-6).

The committee can also have the local collaboration committees as branch organisations in order to promote its function more efficiently. The local committees are operated in the offices of cities, provinces, and municipal areas (the same regulation, No. 13-2). The local public prosecutor office and its branches can also operate the district committee to perform the same functions mentioned above (the same regulation, No. 13-1). The district committee performs the following tasks:

1. Propelling plans and strategies established by the committee
2. Recommending for appointment, disqualification, and remuneration of the committee members
3. Adjusting and planning the committee members' tasks
4. Educating, researching, and collecting data regarding the committee's tasks
5. Activating public relations for the crime prevention committee including the local committees
6. Other necessary concerns that are considered to be effective for the activities of crime prevention

If the chair of the local committee recognizes the necessity of establishing divisions for probation, rehabilitation aid, school violence prevention, counselling, and medical support, the divisions can be operated under the committee administration (the same regulation, No. 20-1) and the special committees for finance, women, and education can additionally be put into action (No. 20-2).

In order to support the nationwide crime prevention activities and to adjust the local committee's tasks, the committee can also establish the national association for crime prevention (the basic regulation No. 22-1).

As of December 30, 2000, the total number of Crime Prevention Volunteers was 18,039. By each field: 2,438 were in the school violence division, 10,138 in the guidance and counselling division, 2,976 in the probation division, 1, 893 for job placement and the finance division, and 651 for the medical division. The greater shortage is seen in divisions of probation and job placement and finance. The first three divisions mainly focus on juveniles who are placed on suspension of indictment under the conditions by the public prosecutors. The other two deal with adult probationers and parolees.

## 2. The Procedure for Assigning a Case to a Volunteer

The operation of the probation system is closely related with the cooperation of the volunteers. With the probation staff only, it is difficult to exercise its full range of engagement for the execution of the probation, the Community Service Order, and the Attendance Center Order. Therefore, the system is in great need of assistance from volunteers as well as the neighbouring local agencies as a collaborative force.

There are two ways of assigning the case to the volunteer: direct assignment from the probation office and an assignment through the local committee.

## RESOURCE MATERIAL SERIES No. 61

### (i) *Direct assignment from the probation office*

- Starting the classification of the offender who notified his/her status to the probation office
- Assigning the case to volunteers who appear to be proper after consideration of the residence, the nature of charge, and the family background of the offender
- Notifying the fact that the volunteer is assigned to the case with the necessary official documents
- Notifying the offender's parents that the case is assigned to the volunteer and that they are encouraged to assist the subject follow the volunteer's counsel and instruction
- Beginning the enforcement of probation after an initial interview with the offender and his/her parents
- Reporting to the probation office once a month concerning the results of counselling in an official form, "the probation process report"

### (ii) *An assignment through the local committee*

- Listing the general subjects among the classification subjects
- Sending the list of the general subjects to the chair of the local committee and requesting an appointment of a proper volunteer to the case
- Notifying the probation office that a volunteer is recommended as a proper person to be assigned to the case after the consideration of the residence, the nature of the charge, sex, family background, and other conditions
- Making a decision by the chief of the probation office in assigning the recommended volunteer to the case unless he/she shows any defect
- Notifying the offender and his/her parents of the fact that a volunteer is assigned to the case
- Beginning the probation process with an initial interview between the offender and the volunteer
- Sending the results of counselling to the chair of the local committee in an official form, "the probation process report"
- Sending "the probation process report" prepared by the chair of the local committee to the chief of the probation office after recording it on file

Regarding the collaboration from the local agencies, there is no legal ground for its utilization, however, we have selected 1,505 local agencies as the collaborative institutions to assist the execution of Community Service Orders in the areas of public sector, administration sector, welfare sector, medical sector, and others. There are also 133 local collaboration agencies to serve those who are given an Attendance Center Order due to their need of care and supervision from the problems of drug addiction, careless driving, psycho therapy, family violence, sex violence, and others. These are inevitable situations we have now since the probation staff is greatly limited in terms of fulfilling their official duties.

The current status of its operation shows that, in the case of Attendance Center Orders, among 3,803 offenders, only 43.5 percent were executed by the probation staff and 56.5 percent by volunteers from the local collaborating agencies as consigned institutions. If we look at each execution field, 30 percent was for careless drivers, 18.5 percent for drugs, 4 percent for psychotherapy, 1.8 percent for family violence, 0.2 percent for sex violence, and 1.7 percent for others (The Ministry of Justice, probation inspection analysis, 2000). In the case of Community Service Order, as of April 2002, among

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34,907 offenders, 17.3 percent were executed by the probation staff and 82.7 percent by volunteers from the local collaborating agencies. The execution by the probation staff was increased compared to last year's 10.2 percent. The areas volunteers covered were the welfare field (34.8), the public field (26.6%), the administration field (11.5%), the medical field (6.5%), and others (3.3%). Although assigned works, such as cleaning domestic and public places, agricultural assistance, natural disaster repairs, and others, are not required for close supervision by the qualified staff, 17.3 percent execution is very small. Heavy reliance on volunteers' assistance must be considered as a major problematic issue.

3. The Way the Volunteers Report to the Probation Office

The reports prepared by the volunteers brings a lot of valuable and insightful information that is useful for the development of intervening strategies in the management of the offender's situation. The ways the volunteers report their assigned works are carried out through either an interview with the offender or visiting the residence of the offender.

The ordinary manner of conducting the supervision and guidance is in the use of interview skills. If the case requires special attention, the volunteer makes a personal visit to the offender's residence or workplace.

The following are a few points of concern that need attention:

- The date of the report should be clearly indicated
- The writing needs to be simple and clear using easy expressions and the contents should be concrete
- Detail description is required regarding the subject's various circumstances
- The use of demeaning language is discouraged and the use of Chinese characters needs to be precise in writing
- Facts or opinions that are not certain or doubtful are discouraged
- Reporting should be based on factual information, not on assumptions or personal experiences
- Valid and objective information should be the major criteria so that the probation officer can come up with a reliable intervening strategy in the management of the case
- In the case of the need for a change in management level, such an opinion should be expressed

More specifically, the following are essential points:

1. The case number  
the number of the case should be written on the subject's managing card
2. Name  
Korean, if possible, in Chinese characters and a nickname
3. The period of probation  
the period which is legally binding on the subject written on the management card received from the probation office should be used
4. Address  
address used by the family members, if possible, and any change of address
5. Telephone  
telephone numbers of home, employment, relatives, and cellular phone needs to be listed

6. Date  
the dates that the volunteer actually contacted with the subject
7. Place  
listing the names of places that the volunteer met with the subject, the guardian, and significant others
8. People  
listing names of people with whom the volunteer met for the purpose of guiding and supervising the subject
9. Activities for guidance and care  
listing the contents of counselling, identification of recent situations, career guide, and improving peer relations for the subject along with the contents of support to resolve any financial difficulty
10. Change of personal and life situation  
listing any changes that occurred during the probation process in the areas of family environment, peer relations, school, and employment
11. The possibility of recidivism  
listing the possibility of committing other crime(s) during the probation process after careful observation of the subject's behaviour (e.g., the subject is responding regularly to counselling, but exhibits repeated night activities by associating with unsound peers and stays overnight with them)

The probation process reports that include the detailed descriptions of supervision and guidance are sent to the probation office once a month by the following means:

1. Through direct mail or hand delivery, and
2. Through the chair of the local committee which, forwards it to the probation office

The time for submission of the report is that:

1. The date is not set, but it is customary practice that the first part of each month is used to submit the report of the past month's guide and supervision to the probation office
2. Reporting once a month is required, but the number of times is not limited

Payment

1. The volunteer is paid about \$5.00 per month per case after he/she reports the results of guidance and supervision of the subject to the probation office
2. Each quarter of the year the volunteer gets his/her payment through bank transaction

## **G. The Procedure for Recruitment**

### **1. Finding New Candidates**

There is no formal procedure for the recruitment of the volunteers. According to a recent survey (April, 2002) conducted by the Protection Division in the Ministry of Justice, the volunteers who responded on the item of "How did you know about the crime prevention volunteer committee", they said that they were predominantly informed about this through the surrounding significant others' admonition (67.2%), the advice of a related agency (14.9%), and self-motivated interest in crime prevention activities (24.9%). This data indicates that the majority of the current volunteers were recruited by means of informal procedures.

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2. The Procedure for Recommending a Candidate

The current exercise of recommending a candidate goes through the following stages:

- The initial stage of recommendation starts from the district committee chair
- The second stage goes to the local committee screening
- The third stage goes to the investigation division
- The fourth stage goes to the chief public prosecutor in the juvenile section
- The fifth stage goes to the guide committee examination
- The last stage goes to the Ministry of Justice

3. Who Makes a Final Decision?

The authority to make the final decision on the selection of volunteers is in the purview of the minister of the Ministry of Justice. However, in practice, the decision is made by the head of the Protection Division.

**H. Training Programmes for Volunteer Probation Officers**

1. Training Programmes

The Crime Prevention Volunteer Basic Regulations prescribe that the Minister of Justice, the chair of the crime prevention committee, and the chief of the probation office should provide the crime prevention volunteer members with the necessary education for effective duty performance (The Basic Regulation, No. 7-1). Three stages of education are offered for the crime prevention committee members: education for new members, professional education, and advanced or reeducation (The same Regulation, No. 7-3). New members are required to take education after six months of their appointment. Professional education is offered both to the crime prevention committee members and general citizenry by dividing it into probation, rehabilitation aid, and school violence prevention. The citizen who participated in the professional education can be appointed as the crime prevention committee member before the completion of this educational programme (The same Regulation, No. 7-3, 4).

The outline of education is as follows:

1. Education for new members is administered by the Guide Committee for the purpose of introducing the basic education necessary for the crime prevention activities.
2. Professional education is offered both to the Crime Prevention Committee members and general citizenry by the Guide Committee, the Probation Office, and the Rehabilitation Aid branch. The purpose and contents of this programme are education in guidance and prevention, probation, and rehabilitation aid.
3. Advanced or reeducation is targeted at the Crime Prevention Committee members so that they can enhance their knowledge and communities' pending issues in relation to crime. The administering body for this programme is the Guide Committee, the Probation Office, and the Rehabilitation Aid branch.

The educational plans above have not been systematically operated up until recently due to various circumstances. In Oct. 2000, eight probation districts started the professional education programmes for the crime prevention committee members and general citizenry. The total number who participated in this programme was 1,298 in the year 2000 and 728 in 2001. Education for new members is currently discontinued, and advanced or reeducation programmes were not offered due to lack of programme planning.

2. The Programme Contents for Professional Education

Field	Curriculum	Contents	Hours
General	Special Lecture	Probation Related Contents	1
Law	Criminal Law	Criminology, Punishment Theory	2
	Criminal Lawsuit	Procedure, Basic Principles	1
	Probation Law*	Probation Related Regulations	2
	Youth Protection Law	Interpretation	1
	Juvenile Act	Disposition Procedure	1
	Youth Policy	Policy Outline	1
Guidance	Youth Leadership	Delinquency, Causation, Guidance	2
Counselling	Youth Delinquent*	Counselling Theory and Cases	1
	Psychotherapy*	Guidance Skills for Each Delinquent	2
	Guidance Skills for Various Delinquents*	Case by Case Guidance Skills	2
Practice	Probation System*	Basic Theory for Probation System	3
Education	Probation Practice*	Probation Practice Skills	5

\* Required courses

Lecturers and instructors for training programmes are composed of university professors in the field of law, social work, psychology, psychiatry, and criminology. In the government sector, the public prosecutor and the probation officers participate in the programmes.

**I. Commendation System for their Activities**

The commendation system in the probation operation is a very important component in the enforcement of the probation operation's rules and regulations. This system enhances the motivation of the volunteers' service spirits, which activate their strengths and competencies so that the offender they serve can be empowered to become a law-abiding citizen.

There are two types of commendations: the government and the volunteer.

1. The Government Commendation

Last year, 25 people received government commendations:

- Four Decorations or marks of honour
- Four Awards
- Seven Presidential Recognition's
- Seven Prime Minister's Recognition's

This year we are planning to increase the number of government commendations as follows:

- Five decorations or marks of honour
- Five Awards
- Nine Presidential Recognition's
- Nine Prime Minister's Recognition's

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As of June 8, 2002, the following government commendations were awarded :

- 15 for Decoration
- 11 for Awards
- 23 for Presidential Recognition
- 11 for Prime Minister's Recognition

2. The Volunteer Commendation

Last year we had nine persons for the Certificate of Merit for Volunteer as follows:

- One person for the Great Merit (\$3,000)
- Three persons for Regular Merit (\$2,000)
- Five persons for Special Merit (\$1,000)

This year's plan is the same as last year. As of June 8, 2002, the number of candidates are

- 8 for Great Merit
- 5 for Regular Merit
- 7 for Special Merit

**J. Volunteer Probation Officer Statistics**

As shown in Table 1, the status of the crime prevention members by occupation is predominated by people who are engaged in the field of commercial and manufacturing businesses (41%).

It is somewhat surprising that people we anticipated from religion (2.6%) show less participation in the role of volunteer service. More astonishing is the lowest rate for volunteer service from the legal professions (0.7%). People expected their greater involvement in the volunteer services since they are the most knowledgeable experts in terms of dealing with the problems associated with offenders.

**Table 1. Current Status of the Crime Prevention Volunteer by Occupation (2001)**

Year	Total	Agriculture	Commercial	Corporate Employee	Government Official	Legal Profession	Medical Doctor	Pharmacist	Religious People	Educator	Retired Educator	Social Worker	College Student	Others
2001	17,741	1,093	7,298	1,740	273	123	764	384	472	705	119	515	42	4,243

The following is an analysis of the data of the survey conducted on the crime prevention volunteers committee members by the protection division of the Ministry of Justice in April, 2002:

1. Demographic Characteristics of the Volunteers

The age of the volunteers range from 30 through 79. Seventy four percent of the volunteers fall in the ages between 40 and 59. Sex ratio wise, men make up eighty five percent and women fourteen point seven percent. Forty four percent of volunteers reside in medium and large cities, thirty four percent in the metropolitan cities and twenty one point six percent in municipal areas.

**Table 2. Volunteers by Category of Sex, Age, and Region**

	<b>Respondent</b>	<b>Number</b>	<b>Ratio</b>
	Total	3058	100
<b>Sex</b>	Male	2607	85.3
	Female	451	14.7
<b>Age</b>	30-39	319	10.4
	40-49	1139	37.2
	50-59	1128	36.9
	60-69	436	14.3
	70-79	36	1.2
<b>Region</b>	Metropolitan	1041	34
	Mid/Small city	1356	44.3
	Municipal area	661	21.6

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**APPENDIX  
PROBATION PROCESS REPORT**

Year      Month      Date

Subject	Case No.:		Name:		Probation Period	
	Address:				Tel:	
Contents of Probation	Date:			Place:		
	People Met:	Relation:	Name:	Method:		
	Guidance and Aid Activity	Guidance/Counselling (    )    Aid (    )				
		Additional Information:				
	Change of Personal Status	Moving (    )    Relocation (    )    Transfer (    )    Others (    )				
Concrete Contents:						
Possibility of Recidivism	High (    )    Normal (    )    Low (    )					
	Special Circumstances:					

Name of Volunteer:

Address:

2. The Areas where the Volunteers want to Serve

There are five fields in the Crime Prevention Volunteer Committee: 1) the Safe School Movement Division (preventing school violence); 2) the Youth Counsel and Guide Division (cases of suspension of indictment under condition of guidance); 3) the Probation Division; 4) the Rehabilitation Aid Division (released offender from prison); and 5) the Financial Aid Division (supporting crime prevention activities). Over 80 percent of volunteers expressed their interest in the first two areas of which functions are mainly focused on the juvenile. Twenty six percent of them showed their interest in probation activities, 8.8 percent for the rehabilitation aid, and 5.5 percent for financial aid activity. This shows that the volunteers' greater interests are in juveniles than the adjudicated offenders.

**Table 3. Interested Fields**

Respondent		Number	Safe School Movement [%]	Guidance/Counsel [%]	Probation [%]	Rehabilitation Aid [%]	Finance Support [%]
Total		3058	42.8	41	25.9	8.8	5.5
Sex	Male	2609	42.7	40.3	25.9	8.5	6.1
	Female	451	43.5	45.2	26.7	10.2	2.2

3. Regarding Hours of Activities and Amount of Cost Involvement

The monthly average hours of services the volunteers offer for the offenders is mostly under 12 hours. Fourty one point five percent of volunteers spent under 6 hours, 32.4% between 6 and 12 hours, and 15.7% between 12 and 24 hours.

Fourty nine point three percent of the volunteers spent within the amount of \$80.00 per month and no cost involvement was 34 percent. These amounts are the volunteers personal pocket monies.

**Table 4. Monthly Hours**

Respondent		Number	Within 6 hours [%]	Between 6 & 12 hours [%]	Between 12 & 24 hours [%]	Over 24 hours [%]
Total		2848	41.5	32.4	15.7	9.4
Sex	Male	2436	40.8	32.6	16	9.8
	Female	412	45.9	31.8	14.1	7.5

**Table 5. Monthly cost**

Respondent		Number	No cost [%]	Less than \$80 [%]	Less than \$250 [%]	Less than \$400 [%]	Over \$400 [%]
Total		2843	34	49.3	12.1	2	1.8
Sex	Male	2436	33.7	48.6	12.8	2.1	1.9
	Female	412	35.7	55.4	8.5	1.2	0.7

4. On the Method of the Volunteers Selection

The volunteers were asked which method of selection they preferred: 1) an examination of the application form only (50.7%); 2) through public announcements (12.8%); 3) through recommendations from the public prosecutors and the probation officers (12.5%); and 4) through officials and interviews

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(23.5%). The majority of the volunteers were in favour of the first method, which might indicate less sincerity about the role of the crime prevention activities.

**Table 6. Selection Method**

Respondent		Number	Self screen [%]	Public announcement [%]	Recommendations from officials [%]	Interviews [%]
Total		3058	50.7	12.8	12.5	23.5
Sex	Male	2607	51.6	12.2	12	23.7
	Female	451	45.5	16.2	15.1	22.2

5. On the Items of Education

Ninety four point four percent of the volunteers thought that education was necessary. The areas of education they prefer are guidance and prevention for the juvenile (62.9%), probation (26.7%), and the rehabilitation aid (7.9%). Predominantly, the volunteers were in favour of the juvenile's situation. This may indicate that the volunteers think the juvenile is more easily approachable and has a greater chance of being rehabilitated if properly counselled.

**Table 7. Education**

Respondent		Number	Yes [%]	No [%]
Total		3058	94.4	5.2
Sex	Male	2607	94.1	5.5
	Female	451	96.7	3.1

**Table 8. Areas of Education**

Respondent		Number	Guidance/ Counselling [%]	Probation [%]	Rehabilitation [%]
Total		2848	62.9	26.7	7.9
Sex	Male	2436	62.9	26.9	7.8
	Female	412	62.8	25.7	8.5

In summary, the data reveals that the involvement of senior citizens is less than the other age groups. The community could be benefited by utilizing the retired who had been well educated, served, and experienced during the course of their life. An effort of cultivating this age group seems to be a good resource in the management of the volunteers' activities in our criminal justice system. Women's involvement compared with men's is considerably low. Considering women's service activities in religious sectors, the ratio of their activities between the community and the church is not comparable. With women being more involved than men, this may reflect that women are more concerned with their own personal and self-interest than the public and societal issues.

The metropolitan areas where more people reside reveals less participation than the other cities. Since more problems occurred in heavily populated areas, it was thought that we would have more people who may be interested in volunteering some of their time in our criminal justice system. But our anticipation was not met. Are citizens in this area busier than other places? Are they more self-centered? Are they more indifferent about social issues? We do not know unless we have a critical interpretation on this issue studied.

These phenomena may reflect our citizens' distrust of our criminal justice system. That is why the recruiting and the management of our volunteers' system was not as effective as we expected from the beginning. Let's look at the cost issue as well. As previously mentioned, the government set a policy that the volunteers can be paid for their services about \$5.00 per offender per month. The survey data, however, indicates that over 50 percent of the volunteers spend about \$80.00 per month on the offenders during their activities. This kind of practice should be readjusted. The government's reluctance on this issue is intolerable. Regarding the recruiting method, the current procedure is considered to be the major hindering element in terms of enhancing the volunteers' motive and maintaining the expected level of management. Appointing well spirited and dedicated citizens to the volunteer forces is vital in achieving goals designed by the government. As seen in the data, the majority of volunteers (50.7%) were in favour of self-screening processes to be appointed as volunteer. A careful examination of their motives prior to the nomination seems imperative if an accountable system operation is designed. The volunteers, in general, have also shown that they are more interested in the activities of juveniles. Especially, they were more interested in the Safe School Movement aimed at preventing school violence. This reflects the fact that school violence is one of the most serious social issues currently occurring in Korean society. Accordingly, many citizens showed their concern towards a solution to this problem.

### **K. Evaluation: Problems and Future Prospects**

In order to improve the current volunteer operation in our criminal justice system, a few areas are of concern: the recruiting procedure, training, a reorganisation of the committee, and collaborating agencies, and the various forms of volunteer involvement.

#### **1. Recruitment Procedure**

The recruitment procedure for the crime prevention volunteers as indicated earlier, the volunteers are appointed by the Minister of Justice. However, it is general practice that members of the Crime Prevention Committee are appointed by the recommendation of the public prosecutors office and the crime prevention committee. Thus, it is a reality that the principal body of the probation system operation has no place in submitting their opinions and suggestions in the process of recruiting volunteers. This resulted in volunteers' indifference or ignorance towards the probation system.

Therefore, we need a plan that reflects the probation office's opinions regarding the recruitment of volunteers. Within the current organisational structure of the Crime Prevention Volunteer Committee, it may not be practical to employ the above suggestions at this time because the united body of various volunteers group with the name the "Crime Prevention Volunteer Committee" is under the direct control of the Deputy Public Prosecutor General in the Supreme Public Prosecutor Office. Hence, it is desirable that the probation office should have authority in recommending volunteers at least to the probation division, which is one of the fields in the Crime Prevention Volunteer Committee.

#### **2. Educational Training**

A well planned educational programme is one way of revitalizing the volunteers involvement to the probation operation. Only 15.6 percent of the Crime Prevention Volunteers are classified as members of the probation committee. This tells us that the lack of interest and recognition of the importance of probation are apparent.

It is fortunate that recently education programmes were offered to volunteers in various probation districts throughout the nation as part of the professionalisation of volunteers. But, the numbers participating in the educational programmes are very limited and also the contents of the courses are still too general to deal with the specific situations from the professional standpoint. The organisation and contents of the curriculum in the educational programmes should be further developed toward the professional level. Since the probation system is under the operation of a legal department, it is understandable that most educational courses are designed on the basis of the legal aspect, however, the programme operation is largely an administrative function that requires a wide application of knowledge and skills from the social science field, especially from the social work perspective, which focuses on the transaction between the offender and his/her immediate surrounding environment. The traditional control model and the current service model that emphasizes the strength of the offenders has a large gap that inhibits the effective and efficient way of helping the offenders. Lecturers are

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mostly legal professionals and few are from the social work field. Training should be regularly administered to all members of the Crime Prevention Volunteer Committee at least once a year during their three years appointment.

3. Reorganisation

As currently exercised, the probation division utilises less than a quarter out of the entire volunteer pool; this is a problematic issue. Three quarters are in other divisions, whose functions are not directly related to probation. Many members still do not belong to any divisions. In other words, they are not assigned to any activities. They are simply paying their monthly dues (\$25.00). Those unassigned need to be reoriented for their positive involvement, or removed from the pool. It is believed that inherently the major spirit of volunteering might have been misinterpreted by many participants. Some of them are here mainly to seek a connection with the powerful body of government officials, such as prosecutors or some other reasons rather than the service oriented spirit. We are in great need of help from volunteers to reach our goals at least at the level we have designed initially. Therefore, we need a new structure that guarantees our own volunteers can be recruited at the discretion of the probation office. With the present organisational scheme, anticipating a greater contribution is a misnomer.

In some probation districts, the Crime Prevention Volunteer Committee does not function as it is supposed to. It is also a general practice that the committee assigns volunteers to the offenders not from the probation office. The levels of assisting offenders by these members are limited in its nature of service application that is, micro level of engagement by means of counselling and guidance. Since the offenders are subject to the execution of sentence or protection disposition, the levels of supervision require an application of both micro and macro intervention from the perspectives of education, counselling, and resource management. Therefore, volunteers from other than the probation division may not be able to provide the offenders with relevant services. Volunteers, who are engaging in the activities of the probation realm, should be assigned to offenders by the probation office.

4. Collaborating Agencies

It is an undeniable fact that the collaborative agencies play the major roles in the enforcement of the Community Service Order and the Attendance Center Order. However, two factors are in need of consideration. First, the most appropriate agencies must be selected. Second, it is necessary to supervise the collaborating agencies to ensure the assigned work is properly carried out. The emphasis should be placed on the quality of the agencies' supervision rather than on the increase in the number of agencies. Since the Community Service Order and the Attendance Center Order are in their nature a part of the legal sanctions of the suspended sentence or protection disposition, the selection of proper agencies is crucial. Selection criteria that are not related to the quality of service must be avoided. Budget saving criteria should be carefully assessed prior to the consideration of agencies being selected.

Supervision is necessary because the enforcement of these orders are in need of strict administrative control. In practice, the current exercise of supervision over the collaborative agencies is administered by the crime prevention volunteers. Thus, volunteers who supervise agencies need the professional education of the nature and contents of those orders. We are in need of professionalising volunteers through special educational programmes designed to strengthen their capacities.

5. Variant Forms of Volunteer Involvement

Volunteer involvement in the probation system can best be exercised through the Crime Prevention Volunteer Committee. But we are in need of professionalising their activities, promoting citizen's recognition of the probation operation, and designing variant forms of people's involvement both directly as well as indirectly. In order for us to bring these suggestions into our practice, we need to lead the citizen's recognition on the probation system in a positive direction so that a participatory atmosphere can be created.

The current management style of the Crime Prevention Committee is not accountable in terms of its efficiency, effectiveness, and relevancy. This committee as a system is considered to be a closed one, not an open one. As seen in the survey data, it is only open to people who happen to be associated with them. We need to design a mechanism that can draw people from a wide range of life fields: professionals, experts, and concerned groups so that their varied experiences can be shared with the

offender. More importantly, we need to recruit more professionals in the volunteer force, thus, agency self-enforcement of community orders and attendance center orders can be extended.

The Crime Prevention Volunteer Committee as a system should come up with a viable means to process input from outside the system. Without a change to the current organisational structure and functions the efficacy of the probation operation is not predictable. The feedback channels are not in operation. The interaction among members within its system are not reciprocal. Malfunctions of other divisions within the committee affect the balance of the operation negatively. The probation office as a system of interlocking forces should regulate the ways it and its members operate, not by another system or committee, if we are serious about our business.

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## **PARTICIPANTS' PAPERS**

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### **THE MALDIVES CRIMINAL JUSTICE SYSTEM – AN ALTERNATIVE METHOD FOR PUNISHMENT**

*Haleem Mohamed\**

#### **I. INTRODUCTION**

The Maldives legal system is based on the principles of shariah and other legislation, which is based mostly on common law. The criminal justice system has been evolving throughout the history of the country rising to the needs of this tiny island nation. Historically, the country had few cases of serious crimes, hence the method of punishment was simple and idle considering the challenges of the time. In the old days the most effective method of punishment was considered to be banishment, which was a preferred method of punishment to that of incarceration. Therefore, up until recent times, the prison population of the country was very small and insignificant and even today the prison population is comparatively smaller than that of other nations in the region or elsewhere.

#### **II. CRIMINAL JUSTICE POLICY**

In the past, it was seen that criminals can best be reformed when their freedom is taken away either by way of incarceration or banishment. Today, however, a new and fresh look has been given to the whole criminal justice system. Hence, recent legislation puts emphasis on not only the retributive aspect of punishment but also on the rehabilitative side of the criminal. Recently the government of the Maldives has been trying to assess the effectiveness of the criminal justice system and thus has established a committee whose mandate among other things was to gauge the effectiveness of the existing method of punishment and the condition of the prison population.

The committee, which has formulated its findings and policies, has held several consultation meetings so far with the relevant authorities on their findings and is expected to advise the government on several key aspects of the existing criminal justice system of the country. It was also part of the vision of his Excellency president Maumoon Abdul Qayoom, that the country must have a modern justice system by the year 2020. Therefore, the work of this temporary committee is immensely important as it includes reformative measures to the criminal justice system.

Beyond that, there is general wish and view of the legal community and the jurists, that certain changes to the criminal justice system are necessary. This is based on several factors:

1. The existing criminal justice system has not for a long time witnessed any legislative reforms so as to make it dynamic and practical to the changing culture and habits of the people.
2. While there is apparently a certain degree of sentencing options given to the judges, there is very little or nothing they can do towards rehabilitating the criminal in a practical manner.
3. The prison population of the country is increasing faster than ever imagined before and there is nothing one can do to decrease these numbers.
4. Most of the punishment given to a criminal is considered not appropriate by many considering either the nature of the offence or the person who has committed the offence or against whom the crime has been committed.

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Thus, for some obvious reasons it is perceived by many in the legal community that certain important changes to the system are highly desirable to make the criminal justice system more effective.

### **III. SENTENCING POLICIES AND OPTIONS**

There are varieties of sentencing options given to a judge when a person is found guilty before him however non-of these sentences are conditional. Nevertheless, from the penal law of the country it is very evident that there is considerable clout passed to a judge to rehabilitate an offender by giving him a sentence appropriate to the offence committed by him. The existing sentencing options include:

1. A judge may sentence a person to incarceration, considering, of course, the nature of the crime he has committed.
2. The judge may also sentence a person to more rehabilitative types of sentencing such as banishment to another inhabited island (this form of punishment is now under debate by the concerned authorities as having a negative effect on the small community of the island to which these criminals are banished). One of the reasons is that the law does not make any distinction between the seriousness of the crime under which a person can be considered for banishment. Thus, it may still be an effective method of punishment if it can be considered for particular types of offences, most probably a less serious type of offence.
3. One of the most effective and rehabilitative types of punishment is that of house arrest commonly used by judges in the country and is applied for almost all kinds of crime. This kind of punishment is deemed largely effective to a working population who do not wish to be deprived of their working places, and their lives limited to their home only.
4. One of the most effective methods of rehabilitation and a method of punishment is a fine. However, this form of punishment, to be made effective, needs certain reforms to the legislation to make the fine appropriate to the crime committed. The existing fines are insufficient as the amounts of the fines were set a long time ago when the living standard was not the same as it is today.

Imprisonment is the most common form of punishment found in all the justice systems around the world and the Maldives in no exception. However, the population of the prisons is not that high considering the number of crimes being committed.

### **IV. LEGISLATIVE POLICIES AND REFORMS**

Though not great in number, there are certain pieces of legislation which advocate and oblige the judges to give more reform based sentences.

1. Number 99/04 circular issued by the Ministry of Justice outlines the method of punishment for a juvenile offender. Under this regulation a juvenile may not in any circumstances be imprisoned or have a fine imposed on them. Under this regulation, a child offender should on the first account be punished with house arrest only and the punishment should be two thirds of the minimum punishment prescribed for that particular offence committed by a juvenile. The regulation also prescribes that a juvenile who repeats the offence shall be sent to a juvenile correctional institute run by the government. Under the Maldivian law, a juvenile is one who is below 16 years. The same regulation does not, however, give an exception to a juvenile who is between 14 to 16 years if the offence is one of murder or a crime liable for Hud punishment under Islamic shariah.
2. According to a circular issued by the Ministry Of Justice, if the sentence passed on an offender does not exceed three months the judge should suspend the sentence whether the sentence is imprisonment or house arrest or banishment. However, if the sentence is of between four to six months the judge still has the discretion to suspend the sentence of imprisonment, banishment or house arrest.

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3. Under the rules of Shariya issued by the Ministry of Justice, for certain kinds of sexual offences the judge may not sentence the offender to imprisonment or banishment if the offender is a female. The rationale behind this discrimination of punishment is deemed to give the offender appropriate punishment which could rehabilitate her. Nevertheless, the effectiveness of this discrimination of punishment is questionable.
4. Certain laws promulgated recently embody the rehabilitative aspect and an alternative to incarceration. Thus law number 17/77 (law on misuse of drugs) states that an offender who abuses drugs should be given the opportunity to get rehabilitated in the government run rehabilitation center.

#### **V. POSSIBLE ALTERNATIVES TO INCARCERATION IN THE MALDIVES**

The criminal justice system of the Maldives is still undergoing change and development and is very much in transition. Policy makers have made recent changes, while law makers are in the process of drafting new criminal laws. At this point in time we are in a very sensitive stage of our criminal justice system which is going through many changes in the treatment of offenders and in the sentencing policies for criminal offenders.

When it is seen that certain crimes are on the rise, the law makers favour harsher laws rather than leniency in sentencing offenders. In this aspect it is important to examine the present laws in sentencing policy in order to determine whether any alternatives to incarceration can be adopted in the criminal justice process. In respect to the above it is important to examine the recent changes that were made to Law No. 17/77, the law dealing with narcotic drugs.

Previously, the law which deals with narcotic drugs, allowed drug users and addicts to undergo rehabilitation, instead of sentencing them to jail where treatment for drugs is not available. (However the court only sentenced the drug offender to a rehabilitation center if they confessed to using drugs and if they agreed to undertake treatment). Currently, after the recent change in Law No. 17/77 the offender is sentenced to jail and the court will send the details to the Special Committee which decides whether an offender should be allowed to get treatment or not. Treatment presently depends on if the person is a first time drug offender and to receive treatment he must not have committed any other crimes. Therefore it is much tougher to be selected for a rehabilitation center now. This shows that if the policy makers have evidence that a certain crime is increasing in this small community they favour harsher sentences to protect the rest of society from an increasing crime rate. It will be interesting to explore the case of the glue sniffing offender in the Maldives with regards to Law No. 17/77. In the past glue sniffing carried a six month banishment and with the recent changes in the law (due to the increasing number of glue sniffing offenders in the country) the glue sniffing offender is sentenced to three years in jail. This three year sentence will be passed even on a first time offender.

As we are in a very experimental stage of social and legal understanding in the Maldives, we see new types of crimes which we have not seen in the past increasing every day, law makers and policy makers will be hesitant to allow leniency in the law. We have to remember that the Maldives is a very small state and the threat of losing more people to criminal behaviour has to be avoided at all costs even if this means that detention is practiced for more crimes. However, it is also an obligation on the state to ultimately find the safest options and avoid detention for minor and petty offences and to also allow non-custodial sentences for first time offenders for certain crimes.

In the Maldives, the law allows a wide discretion on the judge in sentencing under the Penal Code (Criminal law). Depending on the crime, the judge has discretion to sentence the criminal offender to jail, banishment to another island, to house arrest or a fine. At the moment the law does not allow warnings but this is something the police in their day to day duty can practice if the crime is a traffic violation or some other very minor offence. However, this will be a fact for the government and the policy makers to decide after extensive research. Although the judge has this wide discretion on the method of sentencing, they are bound by the rules of uniformity, to treat like cases alike therefore judges do not take the situation of the offender into consideration. This is in fact to maintain uniformity

and practice the principle of precedent in deciding cases so as to avoid unfairness or to create a distinction between offenders of similar crimes.

Currently, community service is not an option available under the penal code of the Maldives. However it is correct to say that banishment amounts to a type of community service where the offender is banished to an island to serve the full term of his sentence. While banished he or she would be allowed to work if they so wish, and live with the community without much restriction on his or her movements. The offender's movement is restricted to that island. Another alternative to incarceration practiced in the Maldives is the suspension of a sentence. This suspension will be afforded to an offender if he or she is sentenced to less than three months jail or banishment and the judge will use his discretion to evaluate the case and circumstances in which the crime has been committed but also depend on whether the offender has a past criminal record or not.

The question is whether the majority in a small state like the Maldives will favour community service as an alternative to incarceration? The need to re-integrate minor offenders and those who commit petty crimes into society is an important obligation on the law and policy makers. Evidence that the policy makers do not encourage incarceration of offenders can be seen in the establishment of a drug rehabilitation center, this shows that importance has been placed on re-integrating drug offenders back to society.

It is also important to highlight the nature in which juvenile offenders are dealt with in the Maldives. The law protects the juvenile offender of sixteen years and below because jail sentences are not allowed to be passed on them. Nor can they be fined by a court for a criminal offence. The juvenile offender will either be sentenced to house arrest, in which he will be allowed to attend school with a parent or guardian. If the juvenile offender continues committing criminal acts more than two times then they will be sentenced to the juvenile center, depending on the crime, for a certain term. It is very important to establish a system where young offenders are sentenced into community service rather than house arrest or the juvenile detention center as they will be separated from their parents, school and community. In the future it is possible that community service will be implemented for minor offences as an alternative to incarceration. Many juveniles in this country should be sent for community service as a punishment for their crimes, rather than given any other method of sentencing.

A further way of avoiding harsher sentences, which might mentally and emotionally damage the young offender, is to introduce a system of probation. Alternatively, suspended sentences could be more widely used, especially for minor and first time offenders.

A system of bail could also be introduced to this effect whereby all offenders can benefit. The state will also benefit if a system of bail is introduced, in that the state's expenditure on prison costs would be reduced. Unlike other countries, the Maldives does not issue warnings. It is known that a stern warning to a juvenile can be a sufficient deterrent for future crimes. To go through the legal process is an undesirable thing, especially for a young offender, and in a small country like the Maldives it is often the case that a person will carry a label for the rest of their life. If this can be avoided through a simple warning then it is worth considering this alternative too.

Professional counselling is given to convicted drug addicts when they undergo rehabilitation they are even allowed to work and earn while they are under community rehabilitation. It is therefore important to recommend extending the counselling services for other offences. Counselling services and other methods of learning work skills could also be established in jail to improve the quality of life in jail which will further amount to less stigmatization of offenders and also help them to re-integrate into society once they have completed the duration of their sentences.

Probation should be established so that offenders serving a long jail sentence with good behaviour have the possibility of being re-integrated into their family and society. Alternatives to incarceration that have been discussed above would without a doubt require further allocation of funds by the government to support such alternatives, but the long term benefits would make it worthwhile.

## VI. CONCLUSION

In conclusion it can be said that in a small country like the Maldives, alternatives to incarceration need to be more fully explored before they are established and implemented at every stage of the criminal justice process. Even if alternatives to incarceration are established, it will only be limited to certain offences, with a definite list of criteria. It is possible that the majority of the law-abiding citizens will look upon leniency and non custodial sentences as problematic. The question is when the time comes would parliament support such a system, and would the majority of the people accept such a system of community based non-custodial sentences? Would the alternatives to incarceration increase the rate of crime, or decrease it? Would leniency deter potential offenders? These are some issues that would have to be addressed if any new methods were to be implemented into the criminal justice process. With greater numbers incarcerated, a serious effort needs to be made to determine whether alternatives to imprisonment are desirable or not, and whether it could be an effective method of sanctioning criminal offenders.

# ENHANCEMENT OF COMMUNITY-BASED ALTERNATIVES TO INCARCERATION AT ALL STAGES OF THE CRIMINAL JUSTICE PROCESS IN SOUTH AFRICA

*Ronald Mpuru Ntuli and Sonwabo Victor Dlula\**

## I. INTRODUCTION

Prison overcrowding is one of the largest problems facing the South African criminal justice system today. Many people may think this issue does not affect them, but the problem becomes important when overcrowding forces prisoners to be granted early release. In cases of extreme brutality, the sentence served by criminals can be short.

Prison overcrowding causes a controversy of positive and negative views concerning the construction of more prisons. Supporters claim that building more prisons is the only solution, while opponents argue that community-based alternatives could be used to reduce the prison population, address the problems caused by overcrowding and to enhance effective rehabilitation and successful reintegration of offenders into the community. Treatment services and development programmes are always an important component to bring about more permanent changes in the conduct and behaviour of the offender.

In South Africa, as in the rest of the world, there is great concern regarding the continual escalation of the prison population. In the absence of community-based alternatives to incarceration, prison sentences alone have been relied upon to serve the penal function of deterrence, retribution, protection of the community and rehabilitation.

Regarding penal reform, most leading countries including South Africa have invested in alternative sentencing options which makes it possible to satisfy the community's requirements for retribution and protection whilst keeping offenders with less serious offences out of prison. Therefore, according to Section 2 of the Correctional Services Act 111 of 1998, the purpose of a correctional system is to contribute to maintaining and protecting a just, peaceful and safe society by:

1. Enforcing sentences of the courts in a manner prescribed by this act;
2. Detaining all prisoners in safe custody whilst ensuring their human dignity and;
3. Promoting social responsibility and human development of all prisoners and persons subjected to community corrections.

One of the important goals of the criminal justice system of any country is to help offenders to become law-abiding citizens. Incarceration in prison for long periods at a time does not, in itself, lead to long-term changes that many offenders require in order to return to the community.

Therefore this document aims to share information on the available community based alternatives to incarceration throughout the criminal justice process in South Africa.

## II. TRENDS IN THE PRISON POPULATION IN SOUTH AFRICA

### A. Prison Population

As of 31 March 2001 the Department of Correctional Services had cell accommodation for 102,048 prisoners against a total prison population of 170,959 prisoners. The situation constituted a national average level of 167.53%. The composition of the prison population is reflected below:

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**Table 1. The Composition of the Prison Population as at 31 March 2001**

Categories	Adult		Juvenile		Total
	Male	Female	Male	Female	
Sentenced	98,778	2,719	12,814	233	114,535
Unsentenced	41,714	1,067	13,390	251	56,424
Total	140,485	3,786	26,204	484	170,959
Percentage	82.17%	2.21%	15.33%	0.28%	100%

*Source: Department of Correctional Services*

**Table 2. The Cell Accommodation and Utilisation as at 31-01-2000/ 31-01-2001/ 31-01-2002**

Gender	1/31/2000			1/31/2001			1/31/2002		
	AC <sup>1</sup>	Prisoners	Occupation	AC	Prisoners	Occupation	AC	Prisoners	Occupation
Female	4,454	4,180	93.85%	4,37	4,157	95.17%	4,066	4,315	106.12%
Male	95,380	162,243	170.10%	97,646	163,612	167.56%	102,024	173,386	169.95%
Total	99,834	166,423	166.70%	102,013	167,769	164.46%	106,090	177,701	167.50%

*Source: Department of Correctional Services*

The level of the prison population compared to available accommodation clearly demonstrates that South African prisons are seriously overcrowded.

**Table 3. The Approved Accommodation Versus Prisoner Population as of 31 January 2002**

Provinces	Capacity	Unsentenced	Sentenced	Total	Occupation [%]
Free State	12,847	3,597	13,173	16,769	130.53%
Mpumalanga	7,550	2,086	7,745	9,831	130.21%
KwaZulu-Natal	17,111	11,671	17,646	29,317	171.33%
Eastern Cape	12,033	6,956	14,729	21,685	180.21%
Western Cape	19,383	8,095	20,521	28,616	141.63%
North West	6,599	2,826	8,901	11,727	177.71%
Northern Cape	3,055	1,734	5,056	6,790	222.26%
Northern Province	2,315	1,197	4,608	5,805	250.76
Gauteng Province	2,315	18,904	28,257	47,161	187.17%
RSA total	106,090	57,066	120,635	177,701	167.50%

*Source: Department Correctional Services*

The above figures suggest that there is serious overcrowding in prisons. The continuous increase in the prison population places an enormous strain on the Department's available resources and this

<sup>1</sup> AC: Accommodation Capacity

remains a real problem that handicaps the proper functioning of Correctional Services in many respects. It is generally accepted that overcrowding has a negative impact on the human detention and service delivery to prisoners.

Nonetheless and despite the building of new prisons and renovations of existing prisons, overcrowding continues to place a heavy burden on prison infrastructure and the capacity of prison managers.

**B. Number of Prisoners Awaiting Trial in South Africa**

The increase in the number awaiting trial was far greater than the increase in the number of those who have been sentenced. In December 2000 the detention cycle for prisoners awaiting trial was 136 days. By June this figure decreased slightly to 134 days. This meant that, on average, alleged offenders are held in prison for over four months awaiting trial. However, in some cases, they are held for years.

The high number of prisoners awaiting trial is an enormous cost to the South African Government. The cost of imprisonment was estimated at R88.00 per day per prisoner. Based on June 2001 figures of prisoners awaiting trial, this suggested the state was spending over 4.5 million a day to hold those awaiting trial.

These efforts yielded good results, but more is needed to maintain the number of prisoners awaiting trial at an acceptable level. In recent months this downward trend continued, although at a slower rate: between December 2000 and June 2001 the number of prisoners awaiting trial dropped by 7%.

**Table 4. Number of Prisoners Awaiting Trial: January–June 2001**

Months	January	February	March	April	May	June
Prisoners awaiting trial	57,695	57,676	56,422	56,151	53,476	51,559

Source: Department of Correctional Services

One of the main reasons for the large number of people held awaiting trial was their inability to pay bail. In June 2001 a total of 17,588 (34%) prisoners awaiting trial were being held because they could not afford to pay bail. Over 11,000 of them had bail set at less than R1,000.

**Table 5. Number of Prisoners Awaiting Trial Who Were Unable to Pay Bail: June 2001**

Amounts	Below R300	R600	R1000	Total below R1000	Total above R1000
Prisoners awaiting trial	2,342	4,208	4,709	11,259	6,329

Source: Department of Correctional Services

**C. Analysis of Trends in Prison Population in South Africa**

The abolition of the death penalty in South Africa in 1995 brought the advent of a new sentencing dimension in the criminal justice system. This resulted in magistrates opting for longer sentences especially for those offenders who committed atrocious crimes such as murder, rape, kidnapping, etc.

An increase in the number awaiting trials is another trend that has adverse implications for the already crowded prisons. This situation is also brought about by congestion and delays in bringing cases to trial.

It is very important to note that the continuous increase in prison population demanded new strategies of managing offenders. The realization of this need, saw the introduction of community corrections in South Africa as an alternative to ease overcrowding in prisons.

### III. COMMUNITY CORRECTIONS IN SOUTH AFRICA

There are two basic alternatives to incarceration, namely correctional supervision and parole supervision. These alternatives fall under the umbrella of community corrections.

#### A. Correctional Supervision

Correctional supervision is a community-based sentence, which is served in the community and not in prison subject to conditions as may be determined by a court of law such as house arrest, monitoring, community service, victim compensation, etc. A person who serves a sentence of correctional supervision is called a probationer.

**Table 6. Daily Average Community Corrections: Probationers as at May 2002**

	Average for periods						
	1995	1996	1997	1998	1999	2000	2001
PC EASTERN CAPE	698	1,014	1,175	1,485	2,077	2,876	2,939
PC FREE STATE	1,883	2,397	2,382	2,109	2,013	2,454	2,732
PC GAUTENG	1,987	2,608	2,931	2,970	2,546	2,604	2,752
PC KWAZULU-NATAL	1,114	1,478	1,923	1,913	2,255	2,826	3,465
PC MPUMALANGA	388	733	895	873	986	1,161	1,317
PC NORTH WEST	658	989	1,117	1,203	1,153	1,436	1,738
PC NORTHERN CAPE	487	581	603	747	717	781	855
PC NORTHERN PROVINCE	265	368	573	616	1,209	1,856	1,944
PC WESTERN CAPE	2,860	4,106	4,785	4,598	4,262	4,737	5,066

*Source: Department of Correctional Services*

The dramatic increase in the probationer population would contribute significantly towards reducing overcrowding in prisons and lessen costs for maintaining prisoners per day.

#### 1. Background of Correctional Supervision

A South African delegation attended the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders and also visited several countries to gather information on alternatives to incarceration. It became abundantly clear that the time was ripe for the introduction of a viable and meaningful community-based alternative in South Africa. While visiting several countries it was discovered that the system of supervision used in Georgia, in the United States of America could be adapted to meet local circumstances in South Africa.

Through the co-operation of the Department of Corrections in Georgia, an in-depth study of correctional supervision was undertaken. This culminated in the establishment of multi-disciplinary task team whose terms of reference was to formulate a South African model based on the Georgia model of supervision and to draft legislation that would meet South African needs and realities.

On the 6<sup>th</sup> May 1991, a white paper was tabled in Parliament, charging the Department of Correctional Services with the management of offenders to be placed under community corrections. Parliament approved the Correctional Services and Supervision Matters Act, 1991 on the 14<sup>th</sup> June 1991. The Criminal Procedure Act, 1977 as amended in 1991, included the following options:

- Section 276(1)(h) of the Criminal Procedure Act, 1977 empowers the magistrate to sentence an accused person to a maximum of three years and minimum of one year correctional supervision after receiving a report from a correctional official or probation officer.

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- Section 276(1)(i) of the Criminal Procedure Act, 1977 authorizes the court to impose a sentence of imprisonment not exceeding 5 years upon an accused person which sentence may be converted into correctional supervision by the Correctional Supervision and Parole Board, after serving at least 1/6 of the sentence.
- Section 287(4) of the Criminal Procedure Act, 1977 the court may sentence an accused person to imprisonment with the option of a fine. If an accused person cannot afford to pay a fine, he/she will automatically face imprisonment, which may be converted by the Correctional Supervision and Parole Board after serving at least 1/6 of the sentence.

On the 15<sup>th</sup> August 1991 correctional supervision was introduced in the magisterial districts of Pretoria and Wondedrboom in Gauteng Province. The courts were provided with a sentencing option to deal effectively with those offenders who posed no threat to the community. This community-based alternative to incarceration was rolled over to eight more provinces.

2. Requirements for Correctional Supervision

According to the Criminal Procedure Act, 1977, accused persons must comply with the following minimum requirements to be considered for a sentence of correctional supervision. They must:

- Not pose a threat to the community.
- Have a fixed, verifiable address, and
- Have a means of support or be financially independent.

**B. Parole Supervision**

Parole supervision refers to the supervision of offenders who have been released from prison upon the decision of the Correctional Supervision and Parole Board. Parolee means any person placed on parole.

**Table 7. Daily Average Community Corrections: Parolees as at May 2002**

	Average for periods						
	1995	1996	1997	1998	1999	2000	2001
PC EASTERN CAPE	2,451	3,576	4,163	4,235	4,111	4,953	5,470
PC FREE STATE	1,368	1,787	1,765	1,771	2,020	2,188	2,681
PC GAUTENG	5,851	8,565	9,334	9,929	10,468	10,599	10,773
PC KWAZULU-NATAL	3,670	6,127	7,391	7,187	7,008	7,578	9,688
PC MPUMALANGA	1,676	2,118	2,301	2,329	2,519	2,546	2,717
PC NORTH WEST	1,236	2,043	2,625	3,311	3,378	3,385	3,513
PC NORTHERN CAPE	1,064	1,335	1,391	1,356	1,392	1,497	1,484
PC NORTHERN PROVINCE	1,145	1,773	2,401	2,280	2,559	2,833	3,472
PC WESTERN CAPE	5,762	7,307	7,765	7,573	6,691	6,436	7,086
All RSA	24,222	34,629	39,135	39,970	40,145	42,015	46,885

Source: Department of Correctional Services

The sharp increase in the parolee population would reduce the prison population and alleviate the problems caused by overcrowding.

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1. Background of Parole Supervision

A South African delegation conducted an in-depth investigation into the systems of parole supervision in other countries. During the years 1992/1993 the Parole Supervision and Amendment Bill was approved by Parliament, charging the Department of Correctional Services with the supervision of parolees, to be placed under community corrections.

2. Parole Procedure

The Correctional Supervision and Parole Board (CSPB) is an autonomous body that is chaired by a member of the community. When the Correctional Supervision and Parole Board finds that a prisoner meets the requirement that parole will better serve the goal of correctional efforts, it determines a definite date of release, the place where he or she should return and the conditions that the parolee should abide by during the period of parole supervision. These requirements include, amongst other things, the following; a person who has been sentenced to:

- (i) Imprisonment for corrective training may be detained in prison for a period of two years and may not be placed on parole until he or she has served at least 12 months.
- (ii) Imprisonment for the prevention of crime may be detained in a prison for a period of five years and may not be placed on parole until he or she has served at least two years and six months.
- (iii) Life imprisonment may not be placed on parole until he or she has served at least 25 years of the sentence but a prisoner on reaching the age of 65 years may be placed on parole if he or she has served at least 15 years of such a sentence.

In South Africa, the decision to release on and revoke parole is the function of the Correctional Supervision and Parole Board.

**C. Placement of Prisoners Awaiting Trial**

The Criminal Procedure Act, 1977, as amended in 1991, makes provisions for the magistrates to place the following categories of offenders under the supervision of correctional officials or the supervision of Community Corrections.

- Section 62(f) of the Criminal Procedure Act, 1977 empowers the court to place an adult accused person who is awaiting trial, under the supervision of a probation officer or correctional official.
- Section 71 of the Criminal Procedure Act, 1977 makes provision for the placement of persons awaiting trial who are under the age of 18 years, in custody, may, instead of being released on bail, be placed under the supervision of a correctional official.

The effective utilization of community-based alternatives to incarceration and the placement option would contribute significantly towards increasing the number of probationers under the system of community corrections and reduce the number of accused being held in prison awaiting trial.

**D. Conditions to which Parolees and Probationers may be Subjected**

Parolees and Probationers may be subjected to the following conditions in terms of the Correctional Services Act, 1998:

1. General Conditions

Parolees and probationers are required to comply meticulously with the following conditions:

- Refraining from committing criminal offences.
- Complying with any reasonable instructions issued by the court.
- Refraining from making contact with a particular person or persons.
- Refraining from threatening a person or persons by word or action.

2. Monitoring

Both parolees and probationers will be monitored by correctional officials or appointed volunteers. They are subject to one of the following categories of supervision:

- Maximum supervision cases: visited four times per month.
- Medium supervision cases: visited twice per month.
- Minimum supervision cases: visited once per month.

3. House Arrest

Both Parolees and Probationers are expected to be at their homes at all times, except when they must report for work, go to school, attend religious services or participate in organised sports such as soccer, cricket etc. The monitoring officials also visit them physically at their homes to ensure compliance with house arrest conditions.

4. Victim Compensation

The court may order the probationer to pay victim compensation. In the event of such an order, the correctional supervision official must ensure that this becomes one of the probationer's conditions of correctional supervision. Parolees are not required to pay any victim compensation.

5. Community Service

The Court/Correctional Supervision and Parole Board must stipulate the number of hours which probationers are required to serve, which shall not be less than 16 hours per month. Parolees are not required to perform community service but this matter is still under discussion.

6. Correctional Programmes

Parolees and probationers are required to attend specialized programmes aimed at the prevention of further criminality, drug and alcohol abuse, promotion of family relationships and the acquisition of social skills.

7. Restriction to Magisterial District

Parolees and probationers are restricted to their magisterial districts for the duration of their term of community corrections. The supervision committee may grant them permission to leave their magisterial districts upon request.

8. Fixed Addresses

Parolees and probationers are not allowed to leave their fixed addresses for the duration of the community corrections term. Any change of address must be communicated to the Head of Community Corrections immediately.

9. Use or Abuse of Alcohol/Drugs

Parolees and probationers are restricted from using or abusing alcohol/drugs during their term of community corrections. A correctional official may require parolees and probationers to allow a designated medical officer to take blood or urine samples in order to establish the presence and concentration of drugs/alcohol in the blood.

10. Searching

Correctional officials are empowered to search parolees and probationers subjected to community corrections and may even confiscate any weapon in order to ensure the safety of the correctional officials or any other persons.

11. Seeking Employment

Both parolees and probationers are required to take up and remain in employment. They may not change their employment without notifying their correctional supervision official.

#### IV. NON-COMPLIANCE WITH CONDITIONS OF COMMUNITY CORRECTIONS

Section 70 of the Correctional Services Act, 1998 (Act 111 of 1998) makes provision for the handling of non-compliance with conditions of Community Corrections. The court and Correctional Supervision and Parole Board may apply the following measures, depending on the nature and seriousness of the non-compliance:

- The court may revoke the correctional supervision sentence imposed upon a probationer, if it is satisfied that the probationer has repeatedly violated his/her conditions, it may even impose an alternative sentence which may include imprisonment
- The Correctional Supervision and Parole Board may revoke parole granted to a parolee if it is satisfied that the parolee has repeatedly violated his/her conditions, it may even instruct the parolee to serve the remaining portion of his/her sentence in prison.

#### V. HIGH CASELOAD

Most countries experience a shortage of staff within community corrections services and South Africa is no exception in this regard. Community corrections personnel cannot cope with the amount of work available. High caseloads are brought about by the fact that there are few monitoring officials and the demand and volume of work is high. The ratio between personnel and probationer/parolee is reflected as follows:

**Table 8. Ratio Between Personnel and Probationer/Parolee**

	1999/2000	2000/2001
Ratio	1:33	1:34

#### VI. COST IMPLICATIONS

Community corrections as a community-based alternative is more cost-effective than incarceration in South Africa. During the 2000/2001 financial years, the budget per capita cost for offenders under the system of community corrections was R12.00 compared to today's cost of R97.75 per day to maintain a prisoner awaiting trial or a convicted prisoner.

#### VII. OTHER AVAILABLE COMMUNITY-BASED ALTERNATIVES IN SOUTH AFRICA

##### A. Pre-Trial Stage

##### 1. Pre-Trial Services

The aim of Pre-Trial Services is to enable courts to make more informed bail decisions. Pre-Trial Services (PTS) is a system whereby relevant information is collected and verified by probation officer prior to an accuser's first appearance in court.

PTS does not take away the discretion of the magistrate to make a bail decision, however, it provides the court with more information. Its most obvious impact has been on the profile of awaiting trial prisoners in that it has reduced the number of accused persons who cannot afford to pay bail. This programme has also helped to ensure that:

- Dangerous suspects are less likely to be released on bail;
- Petty offenders are released with a warning or on affordable bail;
- All accused persons are closely supervised, reducing the likelihood of witness intimidation and court delays due to failure to appear; and
- There is a decrease in the number of prisoners awaiting trial.

If no pre-trial services were considered in South Africa, the number of offenders in our system would have doubled.

## 2. Diversion Programmes

Diversion is a procedure by which people are referred away from the criminal justice system, in order to deal with him/her in a developmental and strength-based manner, which allows the person to take responsibility for his/her actions and make restitution to the victim and the community.

Diversion programmes essentially try to prevent people who have offended from being imprisoned by providing alternatives to prosecution and convictions. Diversion from the criminal justice system has a dual function:

- It prevents further exposure to negative influences of the criminal justice process and
- Attempts to prevent further offending by providing a variety of options

The existence of diversion programmes in South Africa dates as far back as 1990 when the main concern was about the number of children being convicted for petty offences. A prosecutor refers young people who commit petty offences to diversion programmes presented by NICRO. The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) a non-governmental, community-based organisation in partnership with the correctional services and the welfare department are spearheading the diversion programmes for offenders.

### (i) *Diversion Process*

Firstly, the Bill has certain rules about referral of children to diversion, to ensure that children's rights are protected, and that they are not coerced into opting for diversion. The draft Bill says the following in section 51:

1. A child suspected of having committed an offence may only be considered for diversion if:
  - a) Such child voluntarily acknowledges responsibility for the offence;
  - b) The child understands his or her right to remain silent and has not been unduly influenced in acknowledging responsibility;
  - c) There is sufficient evidence to prosecute; and
  - d) Such child and his or her parent or an appropriate adult, if such person is available, consent to diversion and the diversion option.

Secondly, the draft Bill sets out minimum standards applicable to diversion and diversion options in section 49:

1. No child may be excluded from a diversion programme owing to an inability to pay any fee required for such programme;
2. A child of ten years or over may be required to perform community service as an element of diversion, with due consideration for the child's age and development;
3. Diversion options must:
  - a) Promote the dignity and well-being of the child, and the development of his or her sense of self-worth and ability to contribute to society;
  - b) Not be exploitative, harmful or hazardous to a child's physical or mental health;
  - c) Be appropriate to the age and maturity of the child; and
  - d) Not interfere with the child's schooling.
4. Diversion options must, where reasonably possible:
  - a) Impart useful skills;
  - b) Include a restorative justice element which aims to heal relationships, including the relationship with the victim;
  - c) Include an element which seeks to ensure that the child understands the impact of his or her behaviour on others, including victims of the offence, and may include compensation or restitution; and

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- d) Be presented in a location reasonably accessible to children. Children who cannot afford transport in order to attend a selected diversion programme should, as far as is reasonably possible, be provided with the means to do so.

Today, diversion programmes are primarily used for juvenile offenders although adults occasionally benefit from this service. Most participants are between 14 and 18, although some are older or younger. Upon the completion of a number of hours, this organisation must submit a report to the court regarding the number of hours performed, which would imply that the order would have been executed. Amongst others NICRO has developed the following five-structured diversion programme.

- (i) Youth Empowerment Scheme (YES): a six-part life skills programme that runs over a period of six weeks. It involves 15 to 25 participants and parents/guardians participate in the first and last sessions.
- (ii) Pre-Trial Community Service: In lieu of prosecution, the offender has to perform a number of hours agreed to by all the parties and are monitored by NICRO who has to give reports to the public prosecutor. As of May 2001 to May 2002-4,273 offenders were ordered under this option.
- (iii) Victim Offender Mediation (VOM): Victims and offenders are brought together in an attempt to address the needs of both parties.
- (iv) Family group conferencing: These conferences are similar to mediation in certain instances except that they involve the families of both the victim and the offender in the mediation process. The aim is to come to an agreement with the assistance of a mediator/facilitator. Preventing recidivism and stigmatization is the ultimate goal of this programme.
- (v) The Journey: An intensive and long-term programme that involves an outdoor experience for young people.

Upon completion of the diversion programme, the case is withdrawn. If the offender fails to complete the diversion programme, the case will be referred to the court for prosecution.

As of May 2001 to May 2002, 16,377 cases involving children and young people were diverted out of the criminal justice system by way of a range of diversion programmes, offered by non-governmental organisations which operate in the nine provinces and in partnership with government departments at a Provincial and National level.

(ii) *One Stop Youth Justice Centre: Stepping-Stones*

Stepping Stones is a one stop youth justice centre, consisting of a police charge officer; youth court and welfare component staffed by a probation officer and children and youth care workers. This pilot project is mainly located in the local community. The aims of the centre are:

- To divert young people in trouble with the law away from the criminal justice system or to prevent them from going deeper into the system;
- To provide a holistic and comprehensive service to young people in trouble with the law and their families, from the point of their arrest. Services are based on a developmental, strength-based approach and is rendered by multidisciplinary teams. This programme embodies the philosophy of restorative justice with an emphasis on:
- Re-uniting the young people with their families and preventing them from being separated from their families
- Focusing on the least restrictive and most empowering sentence option
- Giving the young people the opportunity to correct the wrongs done through their actions

Amongst other services provided in this centre are pre-trial assessments and supportive services to the families, pre-sentence investigations with regard to sentence options, diversion programmes, probation supervision and preventive counselling services. During the period of January 1999 to December 1999 about 3,395 young people attended the centre.

## **B. Sentencing Stage**

### **1. Fines**

The Criminal Procedure Act, 1977 stipulates that the court may order the payment of a particular sum in lieu of a sentence of imprisonment. The court will stipulate the amount of the fine, and the date by when the fine should be paid. The court may also suspend the payment of a fine for a stipulated period on the condition that the accused is not convicted of the same offence during the same period.

The court should inform the offender that the payment of the fine could be postponed, or could be paid in installments on request from the offender. Usually, the court insists that the fine be paid immediately to release the person from custody.

The court may also instruct the sheriff of the court to issue a warrant to attach certain of the offender's property in the event that the person is unable to pay the fine, or the court may order that the money be deducted from the offender's salary.

When sentencing the offender to pay a fine, the court must investigate the ability of the person to pay the fine. The courts have held that the amount of the fine should be proportionate to the income of the offender, so that the offender should be able to pay the fine.

There is usually no fixed amount to be paid in respect of an offence, although some Acts may determine a minimum or a maximum amount, which the court can impose.

In addition, the Criminal Procedure Act allows the court, in cases of imprisonment for a period of three months or less, to impose a fine to reduce the term of imprisonment. This option has been widely used in South Africa. However, in reality those who are not able to pay the fines are sent to prison, which has an adverse effect on prison overcrowding.

### **2. Community Service Order**

Overcrowding and detention costs led to the introduction of community service orders in South Africa. The court may make a community service order against an offender convicted of an offence punishable with imprisonment. Before making the order, the court has to obtain the consent of the offender and has to be satisfied with the probation officer's report on the suitability of making such an order. Under this order, the offender has to perform unpaid work of benefit to the community for a number of hours, not exceeding 240, within the period of twelve months. The order can be made to or in lieu of any other sentence.

In South Africa, the National Institute of Crime Prevention and Reintegration of Offenders (NICRO), which is a community-based organisation and other relevant organisations, administers community service orders. These organisations are also responsible for monitoring the execution of the order. Upon the completion of a number of hours, organisations must submit a report to the court regarding the number of hours performed, which would imply that the order would have been executed.

The rationale underlying the community service order is to punish the offender in the community where the offence was committed, away from the prison. This gives offenders the opportunity to make some general reparation to the community and furthers the notion of community responsibility to offenders by involving it with correctional programmes.

The target groups for this sentencing option are first time offenders and/or those who commit minor offences. In the case of employed offenders, this order may be performed on weekends, and for those unemployed, during the week.

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When the offender fails to comply with the requirements of the community service order, the court may issue a summons requiring the offender to be brought before the court. The court may impose a fine upon the offender or sentence him or her to imprisonment. As of May 2001 to May 2002, 51 cases involving juveniles and adult offenders were ordered to serve community service as a form of punishment.

Since the direct supervision of offenders on community service orders is carried out under the control of a non-governmental organisation such as NICRO, and not by the Department of Correctional Services, this arrangement has reportedly proven to be ineffective to ensure that the set conditions are met.

(i) *Selection Criteria*

The Criminal Procedure Act specifies that Community Service Orders can only be imposed on persons of 15 years of age or older who are first time offenders. The minimum period of service must not be less than 50 hours. Community service may be imposed for any offence other than those for which a maximum sentence is prescribed by law. In order to be considered for such a sentence, the offender must be willing and must have time to render unpaid service.

(ii) *Assessment and Referral Procedures*

Usually their attorneys, advocates and the courts refer offenders. The assessment of offenders is done by a group of professional people who come from different disciplines, e.g. social workers, probation officers and others. The decision of the panel is based only on the individual offender. After the assessment, a report is prepared for presentation to the court.

People serving community service may be referred to places such as, hospitals, homes for the aged, police stations, schools or health clinics. The referral of offenders to such places is still a problem because not all of them are prepared or are able to accept and supervise such offenders.

(iii) *Caution and a Discharge*

This is the lightest possible sentence, which a court can impose on someone. It is usually imposed where the offence is so trivial that it does not warrant even a suspended sentence being imposed. The effect of this sentence is the same as if the court acquitted the person, except that the conviction will be recorded as a previous conviction.

(iv) *Compensation Order*

A sentence of imprisonment or the payment of a fine may be suspended subject to the condition that the offender pays compensation to the victim of the crime. The criminal court can order the offender to pay money to the victim of the crime.

The difficulty with this sentence is that a criminal court can make a monetary award, which is usually made only by a civil court. A civil court in an action for damages can make an order that a person pays another person "damages" in a certain amount. This the court does only after evidence has been put before it as to how the damages are calculated. The Criminal Procedure Act allows the criminal courts to do the same thing.

This sentence is imposed on relatively few occasions, mainly because it is difficult for the criminal courts to determine the amount of the award.

3. Suspended Sentence

The Criminal Procedure Act, 1977 provides that:

*A magistrate may impose an imprisonment sentence upon an accused found guilty of a crime and may also suspend the execution of the sentence. The court may, when taking into consideration the age, the past record, behaviour, intelligence, education and training, health, condition of the mind, habit, occupation and the environment of the offender or the nature of the offence or other extenuating circumstances, pass judgment, if it thinks fit, that the accused is guilty, but the determination of the punishment is to be suspended and then release him / her.*

The suspension ranges from one year to a five-year maximum period. This alternative is widely used in South Africa.

The court can suspend a sentence of imprisonment or a fine on condition that the offender:

- Pays compensation;
- Renders a specific service to the victim;
- Does community service;
- Be under correctional supervision; or
- Attends a specific treatment programme.

If the offender does not commit any crime during the suspension period then the sentence is automatically dismissed. There is no supervision during the period of suspension.

If the offender commits a crime during the period of suspension, then the suspended sentence would be put into operation. If the offender is found guilty of an offence, the court may impose a new sentence in addition to the suspended sentence. The suspended sentence reduces prison overcrowding and lessens detention costs.

### **C. Post-Sentencing Stage**

In terms of the Correctional Services Act, 111 of 1998, Section 81 (1) if the Minister is satisfied that the prison population is reaching such proportions that the safety, human dignity and physical care of the prisoners are being affected materially, the matter must be referred to the National Council. Section 81 (2) further stipulates that the National Council may recommend the advancement of approved dates for placement of any prisoner or group of prisoners under Community Correction and the Minister may act accordingly

## **VIII. RESTORATIVE JUSTICE APPROACH**

### **A. Background**

Within the criminal justice system, criminal activities are mainly dealt with by means of a system of retributive justice. Once convicted by a court of law, offenders are punished either by means of imposing a period of correctional supervision, a term of imprisonment, the payment of a fine or a combination of these punishment options.

The Department of Correctional Services has, however, decided to introduce the concept of Restorative Justice as a key priority. This approach is based on the understanding of crime as an act against the victim and the community. It encourages participation of the prisoner, the victim, families and the community in addressing the concerns of the victim in an attempt to allay the need for revenge and to combat re-offending whilst facilitating the healing process of all concerned. Restorative justice seeks to address and balance the rights and responsibilities of victims, prisoners and communities and it advocates reparation and forgiveness.

This can be achieved through the mediation and healing process. It also aims to remedy the fundamental shortcomings in the criminal justice process. It is not aimed at replacing retributive justice in the short term but rather at enriching the justice process.

### **B. Definition of Restorative Justice**

There is no single definition that can embrace all of the available perspectives on the concept of *Restorative Justice*, but the following definition on the subject can be very enlightening:

Within the context of Correctional Services, *Restorative Justice* could be described as a restorative response to crime. It emphasizes the importance of the role of the victims, families and community members by more actively involving them in the justice process. It is also aims at holding offenders directly accountable to the people they have violated and at restoring the losses and harm suffered by the victims. It provides an opportunity for mediation, dialogue, negotiation and problem solving which could lead to healing, a greater sense of safety and enhanced offender reintegration into the community.

### **C. Practising Restorative Justice**

Restorative Justice can be practiced at all stages of the criminal Justice process, including the:

- Pre-Trial Stage
- Sentencing Stage and
- Post-Sentencing Stage

### **D. Processes of Restorative Justice**

Restorative Justice processes can be practiced at places where it is conducive for both the victim, the offender and the community to freely and voluntarily meet and talk about the impact and effects of the crime. These processes can be done at:

- Police stations/probation offices/welfare offices
- Places of detention/prisons etc.
- Community safety centres/rehabilitation agencies

## **IX. ADVANTAGES OF COMMUNITY-BASED ALTERNATIVES**

The advantages of community-based alternatives are many and varied. These advantages include:

- To achieve the reformatory, retributive, deterrent, and preventive aim of sentencing as a form of punishment;
- To avoid offender stigmatization;
- To reduce prison overcrowding and prevent escalation of detention costs;
- To allow the offender to continue contributing towards his or her family in particular and society instead of being confined in prison;
- To avoid the risk of the break-up of the family institution as a result of a member of the family being incarcerated;
- To retain their employment and contribute to the economic mainstream of the country;
- To avoid an escalation in deviant behaviour when new offenders are mixed with hardened criminals; and
- To enhance rehabilitation and reintegration of offenders into the community

Community-based alternatives offer a viable solution to both overcrowding and financial constraints, as they are cheaper sentencing options and result in more space being made available in prison for hardened criminals who pose a real threat to the community.

## **X. CONCLUSION**

In conclusion it can be stated that imprisonment remains the most appropriate option for offenders who pose a real threat to the community. It can also be concluded that community-based alternatives to imprisonment should be enhanced to reduce the prison population, address problems caused by overcrowding, and promote effective rehabilitation and successful reintegration of offenders into the community. The Inspecting Judge of South African Prisons, Mr. Justice JJ Fagan, in the South African Press, 21 May, 2002 said, "It is totally unacceptable that prisons are so overcrowded. There are far too many prisoners. Building new prisons is not the answer, Community Corrections is the way to go." It should always be remembered that the community is the point of entry and the point of exit for the offender.

Furthermore, Judge Fagan said at the Launch of the Restorative Justice Approach in November 2001, "We all know that effective rehabilitation of offenders can best be done outside prison and within the community." This statement clearly shows the vital role that the community can play in the rehabilitation of offenders, which cannot be overlooked if the criminal justice system wants to achieve its objective of developing community-based alternatives to incarceration.

The scenario sketched above, asserts that a need exists for criminal justice practitioners to search for a new or a better way of addressing the problems of crime, overcrowding in prisons, and the high

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rate of recidivism, etc. A more reintegrative approach as opposed to the current retributive nature of our criminal justice systems needs to be explored. It can also be said that adoption of a holistic and an integrated approach in the search for community-based options towards the rehabilitation of the offender should be considered. Since successful community-based alternatives demand a consultative and a genuine partnership with the community.

# THE CRIMINAL JUSTICE SYSTEM AND COMMUNITY-BASED TREATMENT OF OFFENDERS IN THAILAND

*Kanokpun Kalyanasuta\**  
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## I. THE CRIMINAL JUSTICE SYSTEM IN THAILAND

### A. Criminal Proceedings

Responsibility for the administration of criminal law in Thailand is shared by several organisations: the Royal Thai Police, Office of the Attorney General, the Courts of Justice, the Ministry of Justice (Department of Probation and the Central observation and Protection) and the Ministry of Interior (Department of Corrections).

After an arrest, law enforcement agencies present information about the case and about the accused to the prosecutor. According to the Criminal Procedure Code, investigation is conducted by the inquiry officials who are mainly the police. Thai prosecutors are not granted the power to initiate investigation nor institute the case themselves. Prosecutors begin their function after receiving investigation files from the inquiry officials. The only channel to involve with the investigation is to instruct the inquiry officials to conduct an additional investigation if the prosecutors deem that the facts or evidence as they appear in the file are not clear enough.

When the investigation is completed, a report is filed with the public prosecutor, who then prepares an indictment and gives a copy to the accused or his counsel, who enter a plea of guilty or not guilty. Based on the plea and evidence that had been gathered, the judge either accepts a case for trial or dismisses all charges.

Trials are normally held in open court, and the accused is presumed to be innocent until proven guilty. During trials, accused persons or their counsels can cross-examine prosecution witnesses and re-examine defence witnesses. After that, the judge decides the sentence. A sentencing hearing may be held at which evidence of aggravating or mitigating circumstances from an offender's background and the offender's criminal behaviour can be taken into account. Courts often rely on pre-sentence investigations by probation officers.

The sentencing choices that may be available to judges include one or more punishments of the following (the Penal Code Section 18):

1. Death Sentence: this type of punishment is carried out by means of shooting. However, there are guidelines in both the Thai laws and the United Nations code where safeguard measures for implementing the death sentence are provided. Despite its existence in the laws, the death sentence is infrequently carried out in Thailand. Most of the prisoners who receive the death sentence have their sentences commuted to life imprisonment. Throughout the history of modern corrections in Thailand, there have been 300 prisoners executed.

2. Sentence to Imprisonment: this is the major type of punishment to deal with criminal offenders in Thailand. The imprisonment terms range from one day to life imprisonment. Under the Thai laws, a term of imprisonment is a determinate sentence and must be carried out till its termination. The prison authority has no right to commute the sentence or to offer sentence reduction. Under this existing sentencing system, a large prison population is created which must rely, on the Royal King's Pardon as a means to control the number of inmates in the system.

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3. Sentence to Confinement: the punishment of confinement is less than imprisonment. If the court imposes a punishment of imprisonment not exceeding three months, and if it does not appear that such a person has received the punishment of imprisonment previously, the court may impose the punishment of confinement not exceeding three months in lieu of the punishment of imprisonment. Any person receiving the punishment of confinement shall be held in a place of confinement which is not a prison.

4. Fine: this type of sentence is applied to petty crime. Offenders are ordered to pay a certain amount of money to the authorities as punishment. Failure to pay the fine results in an order of confinement.

*In reducing the punishment, if the punishment of imprisonment to be imposed upon the offender is only for a period of three months or less, the Court may determine a lesser punishment of imprisonment, or if the punishment of imprisonment to be imposed upon the offender is only for a period of three months or less, with a fine, the Court may determine a lesser period of imprisonment, or a fine only. (the Penal Code section 55)*

5. Forfeiture of Property: this type of punishment is applied to items, weapons, and assets which offenders used or acquired to commit an offence.

#### 1. The Legal Basis of Probation

If the court passes judgment that the offender is guilty, he/she may be put on probation. There are two types of court decision for probation, but the contents of probationary supervision are the same. The basic requirements of probation provided in the Thai Penal Code are as the follows:

*Whenever any person commits an offence punishable with imprisonment and in such case the Court shall punish with imprisonment not exceeding two years, if it does not appear that such person has received the punishment of imprisonment previously, or it is the punishment for an offence committed by negligence or a petty offence, the Court may, when taking into consideration the age, past criminal record, behaviour, intelligence, education and training, health, condition of the mind, habit, occupation and environment of such person or the nature of the offence, or other extenuating circumstances and, pass judgment, if it thinks fit, that such person is guilty, but the determination of the punishment is to be suspended, or the punishment is determined, but the punishment is to be suspended, and then release such person with or without conditions for controlling his behaviour, so as to give such person an opportunity to reform himself within a period of time to be determined by the Court, but it shall not exceed five years as from the day on which the Court passes judgment. (the Penal Code section 56)*

#### 2. Conditions of Probation

Regarding the conditions for controlling the behaviour of the offender (probation conditions), the court may determine one or more conditions as follows to:

1. Report himself to the probation officer from time to time so that the official may make inquires, give advice, assistance or admonition on the behaviour and carrying on of an occupation, or arrange an activity to be done for community service or the public benefit, as the official and offender think fit;
2. Be trained or to carry on an occupation;
3. Refrain from keeping company with certain people or from any behaviour which may lead to the commission of a similar offence again;
4. Take the offender to have treatment for drug addiction, physical and mental illness, and other illness as determined by the court;
5. Have other conditions determined by the court in order to rehabilitate or prevent him from recommitting an offence.

## **B. Criminal Justice Organisations**

### **1. Royal Thai Police**

The Royal Thai Police are the National Law Enforcement Agency and one of the largest government ministerial offices of Thailand, responsible for crime prevention and suppression for the whole kingdom. The first step in a criminal case is a preliminary investigation carried out by a police officer; the investigation might include searches of suspects, their homes and others thought to be implicated. Arrested suspects are required to be taken promptly to a police station, where the arrest warrant is read and explained to them. They are then held or released on bail. The provisions for bail and security are defined by law.

The Royal Thai police emphasize protection more than suppression through including the participation of the community in support of police work, to have the greatest possible effect. They will increase activities in the areas of crimes and in the surveillance of places where criminals tend to associate.

Police Stations are the main organ of the Royal Thai Police. These offices need to develop personnel, systems of work, including efficient use of all administrative resources in order to carry out their functions of serving the people in justice, crime prevention and suppression.

### **2. Office of the Attorney General**

A public prosecutor is an official under the office of the Attorney General and is governed by the Regulation of Public Prosecutor Officers Act 1978 (B.E. 2521). The Office of the Attorney-General, formerly called the Public Prosecution Department, was separated from the Ministry of Interior and became a state agency under the direct supervision of the Prime Minister in 1991 to make the Office free from outside influence and interference.

The public prosecutor is responsible for bringing a criminal prosecution on behalf of the government and represents the government in civil cases where the government is a party to the proceedings.

When the investigation is completed, a report is filed with the public prosecutor, who then prepares an indictment and gives a copy to the accused or his counsel, who enter a plea of guilty or not guilty. Based on the plea and the evidence that has been gathered, the judge either accepts a case for trial or dismisses all charges. Trials are normally held in open court, and the accused is presumed to be innocent until proven guilty. If the defendant has no counsel and wishes to be represented the court appoints a defence attorney. During trials, accused persons or their counsels can cross-examine prosecution witnesses and re-examine defence witnesses.

#### *Authority and Functions*

The authority and functions of the Office of the Attorney General can be classified into three main categories:

#### *(i) Criminal Justice Administration*

This is to conduct a criminal prosecution to protect the state and public as well as to defend innocent government officials who have been charged with criminal cases relating to the lawful performance of their duties. The Office also takes on an active role in international co-operation to suppress crime and for international mutual assistance in criminal matters because the Attorney General is the "Central Authority" under the "International Co-operation in Criminal Matters Acts of 1992 (B.E.2535)".

#### *(ii) Government Interests Protection*

This is to render legal opinions to government agencies and state enterprises as well as to review draft contracts both domestic and international, between private entities and government agencies of state enterprises. Furthermore, the Office is charged with the power to handle civil cases where the government agencies or state enterprises are parties.

(iii) *Public Interests Representation*

This is to disseminate legal knowledge to the public in the fields of democracy, human rights, environment and other laws. These functions have been carried out both by personal instruction method and through mass media such as television, radio and newspapers. In addition, the Office also renders legal aid to the poor and needy people, i.e. assisting them in lawsuits and the conciliation process.

The authority and functions of the Office of the Attorney General will be continuously developed in order to effectively fulfill the role of the guardian of the law and the protector of public interests, especially with a view to coping with this new era of globalisation and technological advance.

3. The Courts of Justice

The Constitution of the Kingdom of Thailand, 1997 (B.E.2540) has a substantial impact on the reorganisation of the judicial system in Thailand. The types of court recognized under the 1997 Constitution are: the Constitution Court, the Court of Justice, the Administrative Court and the Military Court. The Constitution Court and Administrative Court were recently established as a result of the provisions of such constitution. Although this change decreased the scope of the jurisdiction of the Courts of Justice, most cases fall under the jurisdiction of the Courts of Justice.

The structure of the Courts of Justice is divided into two parts: administration and adjudication. After August 20, 2000, the Courts were separated from the Ministry of Justice. The office of the Judiciary is the organisation responsible for the administration of the Courts of Justice.

The Courts of Justice are classified into three levels consisting of the Courts of First Instance, the Courts of Appeal and the Supreme Courts. The Courts of First Instance are categorized as general courts, juvenile and family courts and specialized courts. The general courts are ordinary courts which have authority to try and adjudicate criminal and civil cases. The Courts of Appeal handle an appeal against the judgment or order of the civil courts and the criminal courts. The Supreme Court is the final court of appeal in all civil and criminal cases in the whole kingdom.

Each court of appeal and the Supreme Court has a research division consisting of research judges. The primary function of the division is to assist justices by examining all relevant factual and legal issues of cases to ensure uniformity and fair results.

4. Department of Corrections

The Department of Corrections is the final agency of the criminal justice system. The responsibility of the Department of Corrections concerns the taking into custody of offenders being sentenced by the court and the rehabilitation of offenders; so that they will be able to reintegrate themselves into society as good citizens after release. The Department of Corrections is a preventive agency in terms of crime suppression and, at the same time, it plays an important role in the development of human resources of the country.

Presently, the correctional system in Thailand comes under the administration of the Department of Corrections, Ministry of Interior. The Department's main responsibilities are to execute penal sentences imposed by the Courts and any lawful orders. The implementation of these responsibilities is carried out by means consistent with procedures, and measures stipulated in law. The Criminal Procedure Code B.E. 2477 (1934), the Penal Code B.E. 2499 (1956), the Penitentiary Act B.E. 2479 (1936) are a few of the laws which govern the Department. The Department has committed itself to fulfill the following functions:

- (i) To keep prisoners whose age ranges from 18 and above in custody and ensure their appearance in Court.
- (ii) To ensure that all the procedures for detaining prisoners in custody are consistent with laws, regulations, government policy, and the principle of criminology and penology, as well as the United Nations Standard Minimum Rules for the Treatment of Offenders and other recommendations.
- (iii) To manage prisoners according to individual background, risk factors, and individual needs.

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- (iv) To equip prisoners with lawful earning skills through various vocational training programmes.
- (v) To provide a safe, secure and humane environment whereby prisoners are able to have access to social services, recreation facilities, education, vocational training, religious, health care, and other forms of welfare.
- (vi) To coordinate and cooperate with other criminal justice agencies in order to achieve maximum protection of society.

*Vision*

1. Prisoners become good citizens and shall not recommit crime
2. Prisoners become skillful and are able to find good work after release
3. Prisoners have good physical and mental health
4. Society and community accept and support the rehabilitation of prisoners.

*Mission*

1. The efficiency of custodial and security systems
2. The rehabilitation of offenders.

The Thai Department of Corrections regulates remand detention, confinement, imprisonment, the execution of capital punishment, and several non-institutional treatments. At present there are 185 correctional facilities located throughout Thailand. The average daily population in 2002 is some 250,000 which is a substantial increase over the previous 10 years.

**Table 1. Prisoners by Status, (February 2002)**

Status	Number	Percentage
Convicted	154,018	62.05
Awaiting investigation	29,919	12.05
Awaiting trial	59,187	23.85
Others (juvenile delinquent, confined persons)	5,099	2.05
<b>Total</b>	<b>248,223</b>	<b>100</b>

**Table 2. Convicted Prisoners by Types of Offences (February 2002)**

Offences	Males	Females	Total	Percentage
Against Property	27,266	2,669	29,935	19.44
Against Narcotic Laws	74,847	26,504	101,351	65.80
Against Life	7,042	336	7,378	4.79
Against Person	3,670	142	3,812	2.47
Sex Offences	4,665	74	4,739	3.08
Against Public Safety	369	27	396	0.26
Others	5,642	765	6,407	4.16
<b>Total</b>	<b>123,501</b>	<b>30,517</b>	<b>154,018</b>	<b>100</b>

5. Department of Probation

The Thai Government agreed to provide probation services for adult offenders and gave the Ministry of Justice the authority to organise such services. The Central Probation Office began its operation on August 7, 1979 in Bangkok. Then the Central Probation Office was upgraded to be the Department of Probation, Ministry of Justice, on March 15, 1992.

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### (i) *Duties and Responsibilities of the Department of Probation*

According to Royal Decree of the Division of the Department of Probation, Ministry of Justice 1992 (B.E.2535), the Department of Probation has the following duties and responsibilities under the Probation Procedure Act in accordance with the Penal Code 1979 (B.E.2522).

- a) To promote and encourage the process of the offender's corrections and rehabilitation under the Probation Procedure Act in accordance with the Penal Code 1979 (B.E.2522).
- b) To plan and develop the system of probation, the offender's treatment measures and to cooperate with the Ministerial Operation Plan, in setting up policies as well as to follow up and evaluate the administration and efficiency of the agencies under the department.
- c) To conduct the pre-sentence investigation, supervision, corrections and rehabilitation of the offenders who have been subjected to the Probation Procedure Act in accordance with the Penal Code 1979 (B.E. 2522).
- d) To operate other duties besides the above principal duties and responsibilities required by law or the cabinet.

### (ii) *Vision*

By the year 2012, the Department of Probation will be the principal organisation in community corrections and drug addicts rehabilitation by means of a compulsory system. We will promote crime control and prevention through community networks; will demonstrate the leadership role of innovation and engage the community to get involved in participatory administration of justice and offender's treatment; in respect of staff; will assume the professional and service-minded roles through competence and capability; in respect of the Department, will assume the distinct cultures of learning organisation, appearance, work, ethics and honesty, transparency and accountability, and high standards recognized internationally.

### (iii) *Mission (Strategic Plan and Operational Plan 2002 - 2006)*

- a) To provide offender services of preparing investigation reports, enforcing conditions of supervision, and supportive services conferred by virtue of the enactment concerning deferred prosecution of pre-trial release, parole, and probation both adult and juvenile.
- b) To provide drug treatment and rehabilitation of offenders by means of a compulsory system.
- c) To provide offenders with social welfare services after termination of probation and release on conditions.
- d) To advocate and mobilize community resources to provide better services for offenders and to enhance and develop community networks.
- e) To study and research, to develop the rehabilitation system, information technology, and legal rules as well as other related regulations.
- f) To develop the organisational structure, administration, and staff for providing better services through professionalism with competence and capability.
- g) To promote crime prevention and diversion services in the criminal justice process.

### (iv) *Policies and Operational Directions for the Fiscal Year 2002 (especially concerning community-based corrections)*

- a) To prepare for the establishment of the drug addicts rehabilitation centre in accordance with the Drug Addicts Rehabilitation Act. B.E., which has been read by parliament, by working harmoniously with other related organisation, public and private, through fostering national cooperative efforts, however, it depends on the supportive resources from the government.

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- b) To put emphasis on studying, and research for the appropriate approaches for working to implement the July 10, 2001 resolutions of the council ministers. The Department of Probation will be the principal organisation in the probation service at the suspension of prosecution stage, trial and after the trial stage.
- c) To put emphasis on having offender classification used by all offices, including to create and develop programmes to support classification.
- d) To promote study and research in order to bring about innovation as well as alternatives on probation to probation services aimed at reducing the workload and increasing the effectiveness based on the resources in the community and social conditions.

At present there are 14 divisions and 88 probation offices throughout the country. Additionally, there are two new divisions namely the Drug Addicts Rehabilitation Center and the Office of the Secretary of the Drug Addicts Rehabilitation Center.

After the public administration reform and restructuring the Ministry of Justice (October, 2002), the organisational structure may change into 5 groups to conform with the mission as follows.

1. Probation and Treatment Development Group
2. Rehabilitation of Drug Addicts Group
3. Community Affairs and Community Service Group
4. Bangkok Probation Office Group
5. Probation Office Region 1-9 Group

**Table 3. Manpower of Officials, Regular Employees and Temporary Employees from 1997-2001**

Fiscal Year	Manpower		
	Officials (Probation officers)	Regular Employees	Temporary Employees (Probation officers)
1997	823 (528)	304	850 (490)
1998	961 (624)	333	914 (490)
1999	961 (624)	333	1,642* (493)
2000	961 (624)	333	1,642* (493)
2001	985** (625)	333***	992* (493)

Remarks: \*includes temporary employees of the projects under the supplemental expense measures released by the government for encouraging the economic crisis. In the fiscal year 1999-2000 a total of 1,029 positions

\*\* manpower's framework of government services were cancelled because of the early retirement of 2 positions and 1 shortage

\*\*\* permanent employees active placement and vacant positions.

**Table 4. Budget  
Granted Budgets From 1997-2001**

Fiscal year	Budget (Baht) (April 26, 2002 100 yen = 33.69 baht)
1997	279,180,300
1998	251,126,800
1999	237,888,800
2000	385,154,700
2001	487,422,500*

\* includes an amount for disseminating knowledge regarding mediation and the preliminary justice system to the general public 108,594,600 baht.

*Requirements for Becoming a Thai Probation Officer*

- Education: B.A. in Law, Criminology, Political Science (in Government or in Public Administration) Social Science, Psychology, Sociology, Social Work  
M.A. in Criminology, Social Administration (in Criminal Justice), Sociology, Psychology
- Criminal record: Must not have served a sentence of imprisonment for committing a crime, unless it is for an offence committed by negligence or a petty offence

6. Juvenile Justice System

Thai law limits children's criminal responsibility by their age. Children under 7 years old are not liable to criminal punishment. Those between 7 and 14 are not liable to any punishment either, but the law gives the court the option to use juvenile procedures, depending on the children's behaviour and environment and other mitigating circumstances, thereby giving the children an opportunity to turn over a new leaf rather than punishing them severely as a deterrent. Above that age (15 years and older), youths may have to face criminal punishment, but the court may use its discretion to reduce the sentence.

In provinces where there are Juvenile and Family Courts or Juvenile and Family Sections, the juvenile justice system is applied including: rehabilitation, vocational training and family reunion. However, in provinces with no such structure, adult procedures will be applied according to the nature and the extent of the offences, with the exception of the sentencing stage when the juvenile justice standard is allowed by the law.

The death penalty and life imprisonment cannot be applied to children and youth and the punishment cannot be increased due to repeated offences.

The law gives the investigating officer the right to detain the child for not more than 24 hours and will then have to speedily send the child to an Observation and Protection Centre where the child will be provided with appropriate accommodation. Child offenders have a right to bail during the investigation or during the trial. The bail procedures or criteria for bail application are not as complicated as the ones applied to adult offenders.

Sentencing of a child offender. The Juvenile and Family Court or the regular court may exercise the following discretion in its decision:

- (i) If the child commits a minor offence and his or her conduct is not damaging, the court may admonish and then release the child unconditionally;
- (ii) If there are mitigating circumstances and the child's conduct is not too damaging, the court may consign the child to the care of his or her parents or legal guardian or the person with whom the child has been living on condition that they pledge a bond with security;
- (iii) If the circumstances of the offence are violent and the child's conduct is damaging, but the child does not deserve a sentence of criminal punishment, the court may consign the child to the care of parents, legal guardian or the person with whom the child has been living, subject to a bond with security and probation;
- (iv) If the circumstances of the offence are violent and the child's conduct requires correction, the court may order the child to be detained in an Observation and Protection Center for a certain period of time which must not last longer than the offender's twenty-fourth birthday. Alternatively, the court may order a maximum or minimum period of training at the Center;

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- (v) If the circumstances of the offence are as serious as an adult's and the child's conduct is very damaging and not conducive to the application of juvenile procedures, the court may sentence the child to prison but the sentence must be reduced proportionally.

Treatment of juvenile offenders after the sentence. When the Juvenile and Family Court or regular court has passed a judgment on the child, if the child's behaviour later improves, the court may reconsider the case and order a better treatment for the child or youth offender. On the contrary, if the child's behaviour deteriorates, the court may instigate new controls on the child.

In a case where the court hands over the child to his parents, guardian or to the person with whom the child resides, the court may determine the conditions for controlling behaviour of the child in the same manner as provided in the Penal Code section 56. In such case the court shall appoint a probation officer or any other official to control the behaviour of the child.

**C. Situation, Problems and Solutions in the Criminal Justice Process**

The crime rate in Thailand appears to have risen throughout the 1990s. The crime rate of the early 2000s is also predicted to increase. The cause of this is the influence of the impact of globalisation, technological development and economic and social modernization.

**Table 5. Number of Reported Crimes in Thailand 1996-2000**

Major Types of Crime	Arrested				
	1996	1997	1998	1999	2000
Crimes against the Person	18,711	19,109	20,717	21,481	22,099
Property Crimes	28,581	29,763	37,726	34,779	35,377
Narcotics	178,994	18,866	243,661	253,461	275,551
Prostitution	6,085	4,961	6,853	10,272	11,591
Cheating and Fraud	2,335	2,233	2,825	2,777	3,099

(Excerpt from <http://www.Police.go.th/stat43.htm>)

**Table 6. Number of Criminal Cases Prosecuted During 2000-2001  
(The Courts of First Instance)**

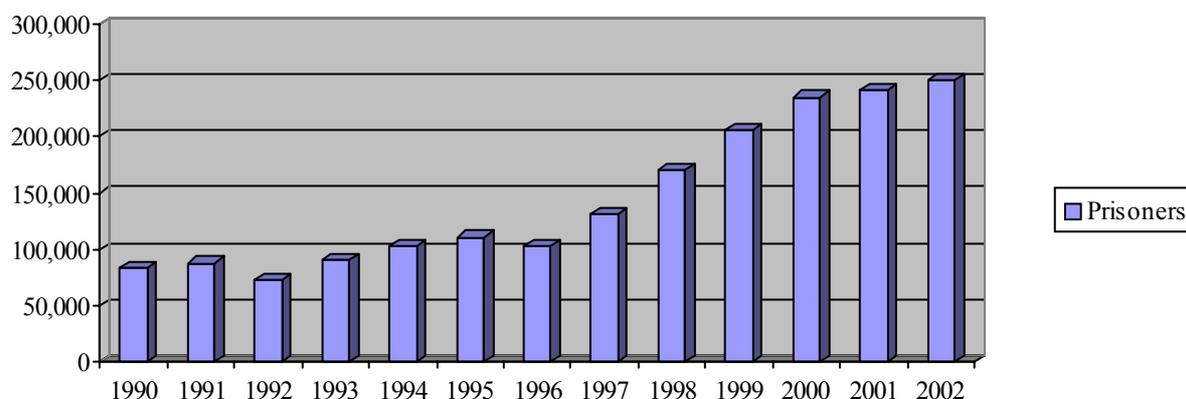
Major Types of Cases	2000	2001
Offences of Bodily Harm	16,828	17,737
Offences of Theft	36,172	35,686
Offences of Cheating and Fraud	2,765	2,894
Narcotics	238,907	256,032
Controlling Firearms Act	17,451	18,519

Source: Annual Statistic Report 2000-2001 the Court of Justice.

1. Prison Overcrowding

The Thai correctional system, as elsewhere, is faced with a prison overcrowding problem, which is grave and most urgent. The prison authority in their report to the higher authority do not seem to have any immediate plan to cope with this problem. In 2002 there were 250,000 inmates being detained in correctional facilities throughout Thailand. Of these, 62.05 per cent were convicted prisoners, and 38 per cent were on remand. Prisoners convicted of offences against narcotic laws form the largest group in the prison population. Ninety-two per cent of prisoners had completed primary education while a small number had completed higher education. There were only 0.5 per cent of prisoners who had completed

university education. The prison population in Thailand has increased dramatically during the past ten years, creating problems for the Department in carrying out its tasks effectively.



**Figure 1. Prison Population 1990 - 2002**

Overcrowding became a serious problem for correctional administrators in the 1990s. The increase in the prison population in Thailand during the last decade has created a crisis in the country's correctional system. With a maximum official capacity of 90,000, there are currently nearly 250,000 prisoners of all types incarcerated in prisons throughout Thailand. Although the Department was allocated more new prisons, these new spaces were filled up in a very short time. Despite having a Royal Decree of Pardon to relieve this overcrowding crisis from time to time, this is not a permanent solution to the problem. After a few years, the prison population starts to climb back to the same level, and continues to grow far beyond the overall capacity again. At present there are two measures that the Department has used to relieve overcrowding: Good Time Allowances and Parole. Although a certain number of prisoners are released on condition each year, that amount has generally remained the same even though there has been a large increase in the prison population, thereby doing little to help solve the overcrowded conditions within the Thai correctional system.

(i) *The Impact of Overcrowding*

The impacts of overcrowding are numerous. The first and most important is the improper implementation of the United Nations Standard Minimum Rules (UNSMR) for the Treatment of Prisoners. These rules require separation of prisoners taking into account factors such as sex, age, criminal record and that accommodation has to meet all health requirements, climatic conditions, cubic content of air, minimum floor space, lighting and ventilation.

Secondly, the uneven distribution of prison officers to prisoners make the task of a prison officer very difficult. These factors contribute to the maintenance of discipline, which eventually has the effect of deteriorating the relationship between correction officers and inmates hence, destroying the notion of 'corrections'.

Thirdly, overcrowding has hampered the rehabilitation programmes, due to limited resources, space, and materials, as well as being one of the causes of an increase in corruption within prisons.

(ii) *Causes of Overcrowding*

The causes of overcrowding in the prisons can be identified by examining the processes of the criminal justice agencies in the country with specific references to the criminal policy, police, public prosecutors, courts, and corrections. Each of these agencies has its own measures to divert incarceration, ranging from the pre-sentencing stage to the post-sentencing stage. However, the existing measures have never been used widely due to limitation of each particular agency. For example: the limitation in the laws; the amount of bail surety and restrictions; the lengthy trial; the lack of cooperation, the lack of ultimate goals, with a concentration on individual agency's goals only, and so on. These factors need a comprehensive plan at the national level, and such a plan must

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acknowledge the merit of diversion, and encourage all agencies concerned to be aware of the overcrowding and pain of imprisonment.

The major causes of overcrowding in Thailand can be summarized into a few reasons, which are: the harsh policy on drug use, long sentences, little use of non institutional treatment, greater reliance on imprisonment as a sentencing option, and a low rate of bail granted to accused persons. In coping with overcrowding, the prison authority may not be able to contain this problem by itself, but the entire criminal justice system must come to share this problem and endorse solutions, which every agency must carry out accordingly with the objective to minimize the use of incarceration.

The Limitation of Non-Institutional Treatment

Although non-institutional measures have existed within the Thai correctional system for a long time, the measures are yet to be implemented widely. There are reasons that contribute to this limitation as follows:

(iii) *Conflicting Policy*

The Thai criminal justice system values the use of non-institutional treatment, and efforts have been made to expand these measures as recommended by the United Nations. However, there is another policy that the Thai criminal justice system has to adhere to, which is the policy on narcotics. This policy stipulates guidelines for criminal justice agencies to implement in order to cope with the spread of narcotics in society. With regards to the correctional system, drug related inmates shall receive neither privileges nor early release in order to deter them from committing offences. As indicated previously, the majority of inmates (62 per cent) in the Thai correctional system are for drug-related offences, and thus they must be barred from receiving privileges such as parole and pardons. These conflicting policies have resulted in a lower number of inmates being released on conditions.

(iv) *Lack of New Initiatives*

Over the past 66 years, only three modifications have been made to the Prison Act B.E. 2479 (1936). The first was in 1977 whereby a Good Time Allowance System or remission was introduced in order to relieve overcrowding. The second modification, in 1979, enabled those who were being detained under lawful orders to earn the status of convicted prisoners under this Act. After that, there were changes in 1980 whereby the Public Works Allowance system was introduced so as to allow the Thai Department of Corrections to send selected convicts to engage in public work activities and earn sentence remissions. However, there has been no internal or independent external commission or committee appointed to look into the problems of prison conditions or prisoner's rights in Thailand. These few modifications, and the lack of government attention, indicate that ideas relating to prison law reform which directly address the issue of prison conditions as well as the non-institutional measures in Thailand have yet to be developed.

(v) *Shortage of Staff*

In the fiscal year 2002, the Department employed 11,295 correctional staff of all ranks and types. During the previous 10 years, the number of correctional officers has slightly increased when compared to the growth of the prison population. From 1986 to 1995 there was only a 1 per cent increase in staff numbers. The Department is short of specialist staff to carry out its rehabilitation function. Most of the staff were custodial officers whose duty was to carry out daily routine prison operations.

(vi) *Restrictions on Rules and Regulations*

The other reasons that hamper the expansion of non-institutional treatment in the Thai correctional system is the restriction on rules and regulations. As mentioned earlier, during the past 66 years of the Thai Prison Act BE 2479 (1936), there were only a few modifications in the laws. Thus, most of the rules and regulations have been in practice for more than 60 years. These obsolete rules and regulations are one of the main reasons that there are only 2 per cent of convicted inmates being treated in the community.

(vii) *Solutions*

There are several ways and means to contain prison overcrowding. There is for example the enhancement of understanding and co-operation between all agencies involved in the criminal justice system. The expansion of non-institutional measures to be implemented at all stages of the criminal justice system, by acknowledging that *“Imprisonment should only be considered as a last resort, taking into account the nature and gravity of the offence, victim's rights, personal circumstances of the offender and the impact on the community.”* (UNSMR, article 2, 3)

The solutions above are just some of the measures that can be considered and implemented to reduce the problem of overcrowding in prisons. However, the authorities must ensure that these measures cannot be achieved without full understanding and co-operation of all the agencies concerned. Moreover, prison authorities should invite other agencies to visit prisons in order to obtain first hand information such as statistics, existing prisoners and problems encountered.

2. The Policies of the Thai Government to Solve the Criminal Problem

Because of the increasing crime rate, the fact that incarceration has not succeeded in reducing the crime rate, the prison population increases every year and the badly organised agencies in the Thai criminal justice system, we have the problem of a huge caseload. Another grave concern is the shortage of staff and the lack of effective process. So the policy of the Thai Government (February 26, 2001) contained in the development of the Legal Process and Legal Reform, is a commitment to improving efficiency in the criminal justice system.

The Government will undertake the following:

- (i) Accelerate the process of restructuring the Ministry of Justice to provide it with a role and responsibility covering the legal process in a thorough and efficient manner.
- (ii) Encourage and support the use of settlement measures other than through court settlements in order that such measures can serve as a tool for consumers, the public, the under privileged and the disadvantaged to ensure that their rights are protected and safeguarded.
- (iii) Revise the system and procedures in which offenders are treated, making them more diverse and capable of providing for the rehabilitation of such offenders in an efficient manner.
- (iv) Encourage communities, members of the public, and people's organisations to be more involved in the legal process as well as in setting policy for the administration of justice.
- (v) Accelerate the reform of any outdated laws, rules and regulations in line with the country's present economic and social conditions, while making them flexible enough to cope with future variations.
- (vi) Promote more research and studies in law and other fields related to both public and private sectors. This will, in turn, lead to the amendment and revision of existing laws or the proposal of draft legislation that is significant to and necessary for the country's development.

In order to deal with the drug problem more efficiently, the Royal Thai Government issued the Prime Minister's Order No. 119/2001 (B.E. 2544) on 31st May 2001. This Order is a major plan by the Government to eliminate drugs from Thai society under the strategy on *“Concerted Efforts of the Nation to Overcome Drugs.”* Three solutions were offered: 1) control illicit drugs, 2) treat drug addicts, and 3) prevent drug abuse.

To control illicit drugs, chemicals and precursors used for producing drugs will be strictly controlled while suppression and interception of the drugs coming from outside the country will be systematically carried out. Suppression of drug trafficking will be focused mainly on major traffickers. The prosecution and punishment process will be improved to accelerate drug cases for punishing the drug offenders as quickly as possible.

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To treat drug addicts, treatment and rehabilitation programmes will be improved to serve all kinds of addicts sufficiently. This involves using military camps and governmental agencies that are well-equipped to be additional treatment centres.

To prevent drug abuse, the government will encourage public awareness on the dangers of narcotic drugs, which has threatened Thai people and the country as a whole for years. Local communities will be targeted in the implementation of the drug prevention measures which will make them strong enough to fight against drugs.

Besides, public administration reform and development which has been an important policy of the Thai Government and the Constitution of the Kingdom of Thailand, 1997 (B.E.2540) aims to guarantee greater rights and freedoms to the people. It would also set up new bodies to protect the public from abuses of power by the state and would ensure that the criminal justice system is more open and gives greater transparency and accountability.

## II. COMMUNITY-BASED TREATMENT OF OFFENDERS

In Thailand, informal justice alternatives have been widely used for a long time. Personal relations and close-knitted social solidarity play a significant role in crime prevention. But formal criminal justice community solutions have only appeared recently in the legal system.

According to Penal Code 1956 (B.E.2499) there are 5 types of punishment that offenders may receive: capital punishment; imprisonment; confinement; fine and forfeiture of property. Of these punishments, imprisonment is preferable because of the penal concept of integrating retribution, deterrence and rehabilitation. So the prison population in Thailand has increased every year and the prison system is overcrowded and so the concepts of using non-custodial measures were developed.

### A. Non-Institutional Treatment Except for Probation

The Thai correctional system recognizes the importance of non-institutional treatment, under which a few measures are available to convicted inmates as an incentive to motivate their good behaviour. The aims of non-institutional measures are to mobilize community resources to rehabilitate offenders, instead of relying solely on the authorities. The principle behind these aims is that offenders are members of society who will eventually return to society. Thus, community treatment should be available to some categories of offenders to suit their needs. Inmates serving their sentence in the community may have more time to readjust themselves towards the family and community. Non-institutional measures may also help to alleviate prison overcrowding to a certain extent.

Accordingly, the Thai Prisons Act BE 2479 (1936) Article 32 stipulates that "*Convicted inmates who demonstrate good conduct, diligence, progress in education or work, or support prison activities, may receive one or more privileges such as Parole, Good Time Allowance (ordinary) and Good Time Allowance accumulated by means of public works, etc.*" Convicted inmates who earn Parole or Good time Allowances may be released from prisons prior to the end of their sentences to serve the remainder of the sentence in the community, provided that they comply with regulations laid down by the prison authority. Breaching of such regulations may result in the termination of privileges resulting in the inmate being brought back to prison to serve the remainder of their sentence.

The Thai Department of Corrections is fully aware of the impact of the overcrowding situation, therefore non-institutional measures have been encouraged to alleviate the problems. In the year 1977, Volunteer Parole Officers were recruited to assist full time Parole Officers in supervising the inmates. Since then, there are nearly 12,000 Volunteer Parole Officers deployed in every Sub-district throughout Thailand. Moreover, these non-institutional treatment measures were endorsed by the National Economics and Social Development Board as a solution to the overcrowded prison problem, and as a part of the National Human Resource Development Plan.

#### 1. Parole

Parole is a measure that encourages inmates to behave while incarcerated. Inmates in the Good class<sup>1</sup> and above who demonstrate their: good conduct; progress in education; diligence; and support

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prison activities, may be granted parole. Parole enables inmates to be on conditional release from prison, and undergo a supervision period till the end of their sentence. This measure does not affect judicial authority as the sentence is not shortened. It is considered an alternative treatment under which inmates are not necessarily detained in prisons to serve the sentence. Inmates who are on parole still retain prisoner status until the end of the supervision period. Parole is also a mechanism that foster inmates' s readjustment toward society, because there are conditions set out for them to comply to. Those who fail to comply with their conditions will be returned to prison to serve the remainder of their sentence.

Inmates will be eligible for parole when two thirds of their sentence has been served, provided that they are in the Good Class and above. The minimum time served shall be changed to 10 years if prisoners receive a life sentence. Accordingly, the maximum parole period that may be granted to eligible inmates is set out in accordance with prisoner class, and is as follows:

1. Excellent Class inmates may receive a parole period up to one-third of the sentence.
2. Very Good Class inmates may receive a parole period up to one-fourth of the sentence
3. Good Class inmates may receive a parole period up to one-fifth of the sentence

*Parole Procedures*

Parole is not a right of every inmate, but it is a privilege for well behaved ones. The Director General of Corrections has the authority to grant parole. However, since there are over 150,000 convicted inmates in the Thai correctional system, parole committees have been set up at each prison. These committees are responsible for considering and recommending any inmates to be paroled. The procedures state that every 6 months, duty officers shall carefully select inmates under their control who both meet the requirements, show their good conduct and progress in rehabilitation. They will then submit a recommendation to the parole committee of the prison. The committee shall investigate, as well as gather all information necessary to submit recommendations to the Director-General. The Director-General may grant parole to any prisoners recommended.

At the departmental level, there is also a committee appointed by the Director-General to double check all recommendations before passing them on to the Director-General. Examples of conditions for parolees to comply to are as follows:

- Report monthly to the prison authority or local police station or district office;
- Dwell at the approved address;
- Perform lawful occupations;
- Cooperate with volunteer parole officers who will regularly visit them;
- Remain within a designated area or province;
- Refrain from consuming drugs and alcohol, and so on.

Failure to comply with such regulations may result in their return to prison to serve the remainder of their sentence.

**Table 7. Prisoners Released on Parole (1987-2002)**

<b>Year</b>	<b>No. of Convicted Prisoners</b>	<b>Parole Recommended</b>	<b>Parole Granted</b>	<b>Percentage of Convicts on Parole</b>	<b>Failure Cases</b>
1987	37,729	2,981	2,778	7.36	46
1988	41,276	1,226	787	1.91	6
1989	23,899	1,644	1,220	5.10	8
1990	27,794	1,830	1,768	6.36	7

<sup>1</sup> Convicted inmates are classified into 6 classes, which are Excellent, Very Good, Good, Fair, Bad and Very Bad. Each class is entitled to different privileges.

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Year	No. of Convicted Prisoners	Parole Recommended	Parole Granted	Percentage of Convicts on Parole	Failure Cases
1991	31,754	1,251	956	3.01	1
1992	33,454	950	945	2.82	12
1993	36,944	1,720	1,282	3.47	4
1994	30,892	2,367	2,088	6.76	40
1995	64,746	2,572	2,114	3.27	52
1996	65,366	1,325	805	1.23	36
1997	75,320	1,731	1,114	1.48	7
1998	97,027	1,607	1,016	1.05	24
1999	125,258	1,440	1,071	0.86	29
2000	219,716	655	504	0.23	8
2001	247,865	2,447	1,832	0.74	9
2002	248,223	1,606	1,369	0.53	10

The reason why the number of parolees in Thailand is considerably low is because:

1. The Ministry of Interior Regulations concerning this issue contradicts the Prison Act. According to the Prison Act, convicted inmates may be eligible for parole after one-third of the sentence has been served. However, the Ministry Regulations narrow this down by stating that excellent class inmates may receive parole for a period of not more than one-third of the sentence.
2. The inmates configuration in Thailand consist of 38% of remands and they are therefore unable to receive parole.
3. Among convicted inmates in Thailand more than 65% are imprisoned on narcotics charges for which they are not eligible for parole.
4. Parole is not a right of every inmate, but it is a privilege for the well behaved ones.
5. Certain types of offences by convicted inmates may not receive parole even though they meet the requirements. These offences include, for example, gunmen or professional killers.

2. Good Time Allowances

Good Time Allowances are another measure that enable inmates to be released prior to the termination of their sentence. It was introduced to the Thai correctional system in 1978 as a result of overcrowding. Inmates in the Good class and above who demonstrate their: good conduct; progress in education; diligence; and support prison activities, may receive Good Time Allowances. This means, inmates are to be on conditional release from prisons, and undergo a supervision period until the end of their sentence. This measure does not affect judicial authority and the sentence is not shortened. Inmates released by this measure still retain prisoner status until the end of the supervision period. This measure is considered as an alternative treatment under which inmates are not necessarily detained in prisons to serve their sentence. Inmates who fail to comply with supervision conditions will be returned to prison to serve the remaining sentence.

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Inmates in the Good Class and above may receive Good Conduct Allowances of no more than 5 days a month, that accumulate until the amount of days they received is equivalent to the remaining sentence. Then, they will be released under conditions for supervision till the termination of their sentences. The Ministerial Regulations state the number of days that prisoners may earn in accordance with their class as follows:

1. Inmates in Excellent Class may earn 5 days a month
2. Inmates in Very Good Class may earn 4 days a month
3. Inmates in Good Class may earn 3 days a month

### *Procedures*

Good Time Allowances are not a right granted to every inmate, but only to those who are well behaved. Despite having accumulated as much as a few years, inmates may not be released on this measure if they are not well behaved or breach rules and regulations. Deprivation of Good Time Allowances may be imposed on inmates as a punishment.

The procedure begins when prison officials submit the report of each inmate whose earning of good conduct allowance is equivalent to the remaining sentence. The report is submitted to the Committee for Considering Granting Good Time Allowances to Inmates. The committee is comprised of representatives from the Department of Social Welfare, Police Department, Psychiatry Department; and the Director General of the Corrections Department as the chairperson, and has the authority to grant or withhold the allowances that inmates have earned. Generally speaking, most of the cases brought to the committee are likely to be granted, except under unusual circumstances.

Conditions for inmates released on Good Time Allowances are set the same as those on parole. For example: report monthly to prison authority or local police station or district office; dwell at the approved address; perform a lawful occupation; cooperate with volunteer parole officers who will regularly visit them; restricted to a designated areas or province; shall not consume drug and alcohol, and so on. Failure to comply with such regulations may result in their return to prison to serve the remainder of their sentence.

**Table 8. Convicted Inmates Released on Good Time Allowance (1996-2001)**

Years	Earned GTA	Number of Convicted Inmates	Rule Violations
1996	17,543	70,857	10
1997	18,670	74,974	11
1998	17,671	88,476	9
1999	23,056	113,258	8
2000	18,618	143,329	16
2001	25,981	147,049	13

### 3. Public Work Allowances

This measure was subsequently introduced to the Thai correctional system in 1980 to provide an employment opportunity for inmates, and utilise prison labour for community interests. This measure enables prison officials to send convicted inmates whose remaining sentence is less than 2 years to engage in public works outside the prisons. The numbers of days they work are recorded as remission days. The work is for example: construction, cleaning public areas, sewerage cleaning and so on. Once the number of accumulated remission days is equivalent to the remaining sentence, such inmates will be released on supervision. Moreover, inmates who engage in these public work projects are entitled to 80 per cent of the net profits earned from their work.

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There are conditions set out for considering sending any inmates to work outside prisons on public work projects. For example, inmates under narcotic charges; internal and external security charges; and charges against the monarch, are not allowed to partake. The work shall be limited to government, local authority, or state enterprises only. Inmates to be sent out must be fit both mentally and physically, and have a remaining sentence of no more than 2 years, as well as have the minimum time served according to their classes as follows:

1. One-fifth for Excellent class prisoners
2. One-fourth for Very Good class prisoners
3. One-third for Good class prisoners
4. Half for Fair class prisoners

*Procedure*

The procedure begins when prison officials submit a proposal to send inmates to work on public projects to the Department of Corrections. The proposal must provide details, like: the number of days to work, source of funds, project owner and so on. Once the proposal is approved as a public work project, inmates who engage in this project are entitled to earn a sentence remission, and share 80 per cent of the net profit gained from the projects. A sentence remission earned from the public work can be combined on top of the remission days earned from good conduct allowances.

Inmates will be qualified for release under this measure when their accumulated remission days are equivalent to the remaining sentence. Prison officials shall submit a report of each inmate to the same committee for considering granting good time allowances. The numbers of remission days may be revoked as a punishment if they are not well behaved or breach rules and regulations.

Conditions for supervision are set the same as those on good time allowance. Failure to comply with such conditions may result in the prisoner being returned to serve the remainder of their sentence.

In 2001, there were 5,520 prisoners engaged in 301 projects throughout Thailand. The total budget involved in these projects was 300,000,000 baht.

4. The Royal King's Pardons

The Royal King's Pardon is part of the sovereignty that the King as the head of state may grant to anyone. With a long history of an absolute monarchy, the King of Thailand retains the right to pardon. Under the Constitution, The King has power to grant pardon to commute, reduce or terminate sentences with or without conditions. Such pardons would overrule all previous convictions.

The Royal King's pardon serves several purposes such as: to solve a miscarriage of justice; to restore equal justice to offenders; to restore the country's unity; to provide opportunity for offenders; to mark important national occasions; to foster international relations and so on. There are two types of the Royal King's Pardon, which are: collective pardon and individual pardon.

*The Collective Pardon*

Whenever there is an important event in the country, such as: to mark their Majesties 60th Anniversary, the Golden Jubilee and so on, the Cabinet may submit a recommendation to His Majesty the King to consider granting the Royal King's pardon to commemorate these important events.

Conditions to which inmates can benefit under the Royal Decree of Pardon are laid down by an ad hoc drafting committee. Such a committee is comprised of representatives from various government departments such as: Ministry of Interior, Police Department, Office of the Attorney General, Ministry of Justice, Office of His Majesty's Principle Private Secretary, Department of Corrections, and so on. Conditions written in each Decree vary from one to another depending upon: situations, crime trends, government penal policy, etc. Generally, each of the Decrees stipulates three main conditions as follows:

1. Conditions for those who are eligible for release. This may include: those who have less than 6 months to be served; disabled persons with total blindness, loss of both hands or feet; those who are suffering with a serious illness; pregnant inmates who have less than 1 year to be served; those who

are over 60 years old and have served more than 5 years; those who are under 20 years old and have served more than half of their sentence, and those who are on conditional release, and so on.

The Royal Decree of Pardon may also stipulate conditions for those to be released to adhere to for a certain period after release. These conditions are for example: refrain from using drugs, report regularly to a designated authority, etc.

2. Conditions for those who are eligible for sentence commutations. Those who are not qualified under the above said conditions may have their sentence commuted according to their class. The reduction of each Decree varies from one to another.

The following is an example of how the Decree commutes prisoner sentences:

- (i) Death Sentence inmates shall have their sentence commuted to life imprisonment.
- (ii) Life sentence inmates shall have their sentence commuted to 40 year imprisonment.
- (iii) Those who are on definite imprisonment terms shall have their sentence reduced according to their classes. The reduction terms range from half for inmates in Excellent class to one-seventh for those who are in Very Bad class.

3. Conditions for those who do not benefit under the Decree. Prisoners who receive neither release nor sentence reduction are for example, those who committed: serious drug offences, serious crimes or any other crimes stipulated in the Decree.

Throughout the history of the Thai correctional system, there have been a number of Royal King's Pardons granted to inmates to commemorate important national events. Each of the pardons enables thousands of inmates to be released from prisons. This in turn helps to temporarily solve prison overcrowding.

**Table 9. Royal King's Pardons Granted Between 1977-1999**

Occasions	Year	Unconditional Release	Sentence Remission
Royal Marriage of HRH Crown Prince	1977	13,359	22,319
His Majesty the King's 50 <sup>th</sup> Anniversary Birthday	1977	17,539	23,010
Royal Ordination of HRH Crown Prince	1979	12,033	32,158
Her Majesty the Queen's Birthday	1980	16,164	29,661
Bangkok Bicentennial	1982	18,438	36,188
His Majesty the King's 60 <sup>th</sup> Anniversary Birthday	1987	37,400	46,603
His Majesty Longest Accession to the Throne	1988	22,922	34,215
90 <sup>th</sup> Anniversary of the Princess Mother	1990	20,133	32,697
Her Majesty the Queen's 60 <sup>th</sup> Anniversary	1992	30,620	35,861
His Majesty the King's 50 Year Accession to the Throne	1996	24,751	57,815
His Majesty the King's 6 <sup>th</sup> Cycle Birthday	1999	23,940	30,681

*Individual King's Pardon*

Any convicted inmate or their relatives has the right to submit a petition to His Majesty the King for royal clemency. This is stipulated in the Penal Code and the Penitentiary Act. Prison officials, upon receiving such a petition, shall forward it to His Majesty the King through a designated channel. The channel begins at prison where all the information on prisoners is filed. It is then forwarded to the Department Headquarters, to the Minister of Interior, to the Prime Minister, to the Office of His Majesty Principle Privy Secretary, to the Privy Council and to His Majesty the King. However, once the petition is denied, a prisoner has to wait for two years to re-submit his/her petition.

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Death sentence inmates shall not be executed once they have submitted a petition to His Majesty the King for royal pardon. As long as there is no further notice whether or not the Royal King's pardon is granted or denied, such prisoners remain on death row.

5. Boot Camp

Boot camp is a military regime for drug offenders. Under this regime offenders are treated in military style whereby conditions and the daily routine are strict just like in a military camp. Boot camp was introduced into the prison system after several modes of treatment regime had been tried, such as punitive, rehabilitative, medical and the desert model. In Thailand, the boot camp was introduced into the Thai justice system in 2001 because the Department of Corrections is suffering from a severe overcrowding crisis, under which drug-related inmates are the majority. The Thai authorities believe that the military should participate in helping in such a crisis. Accordingly, military barracks were transformed into treatment centres for drug addicted inmates.

Drug-addicted inmates whose sentence is less than 1 year may be sent to these camps for rehabilitation under a strict military regime for a period of 3 months. Apart from the training, they will be educated on the harm of drugs as well as counselling. Once they complete the training at the boot camp they will be released on condition and be supervised until the end of their original sentence. Since 2001, 5,000 inmates have participated in the boot camp programme.

**B. Probation in Thailand**

Probation as an alternative to imprisonment has been accepted as a possible solution to prison overcrowding. These measures are considered to be more useful to society rather than a traditional term of imprisonment. There are two agencies responsible for offenders to be placed on probation. The Observation and Protection Center is responsible for juvenile offenders and the Department of Probation is responsible for adult offenders.

1. The Observation and Protection Center

The juvenile system in Thailand aims at rehabilitation and has special judicial proceeding for children and youth as is evident from the adoption of the Act Instituting the Juvenile and Family Courts and the Juvenile and Family Procedures of 1991. This Act covers children and youths charged with criminal offences. They must not be confined with adults nor in cells as part of the child rights protection measures.

At the juvenile and family Court, where the child is formally charged, the court will not strictly follow regular criminal court proceedings and cannot condemn a child to imprisonment. But the system of Juvenile and Family Courts is limited and does not yet cover all parts of the country. The number of children in the Observation and Protection Centers is on the rise.

*Reasons for the Overcrowding of Juvenile Institutions*

(i) *Juveniles awaiting trial*

The rapid increase in the juvenile crime rate especially the increase of juvenile drug abusers since 1996. In general, a case will take 90 days before it is tried, excessive requirements for bail or inadequate use of bail provisions, these have also increased the untried juveniles population.

(ii) *Trainees after adjudication*

A training institution which is a minimum security detention facility is a preferable or an alternative place. Diversion from juvenile justice to non-institutional treatment is not preferable. Other reasons are long treatment sentence and the large numbers admitted to juvenile training school for juvenile drug offences also the increase of juvenile populations.

*Measures to Reduce Overcrowding of Juvenile Institutions*

In order to reduce the number of untried juveniles in remand homes, the following measures would be effective at the pre-trial stage such as warning, summons, application of voluntary investigation, suspended prosecution and bail.

Institution treatment should not be a routine recommendation or adjudication process but should be a measure imposed as a last resort and for the minimum necessary period. Moreover, implementation for non-institutional treatment (such as diversion, probation, restitution, community service, temporary release, pre-release) and semi-institutional arrangements (such as half-way houses, educational homes, day-time training centers) should be taken to reduce the judiciary's heavy caseload, juvenile institutional overcrowding and the high financial cost of maintaining the institutional system.

#### *Participation of Citizens in Rehabilitation of Juvenile Offenders*

For the successful treatment and rehabilitation of juvenile offenders in the community, the citizens' positive attitude to and involvement in programmes are indispensable factors. In Thailand, it is officially organised and mobilized by Volunteer Probation Officers and Para-Probation Officers (*the temporary employees probation officer of the Observation and Protection Center*) who assist probation officers in helping rehabilitation of probationers. Furthermore, voluntary organisations, local institutions and other community resources shall be called upon on to contribute effectively to the rehabilitation of juveniles in a community setting and as far as possible, within the family unit. There can also be found a variety of activities for citizens, voluntary organisation, local institutions and other community resources to be involved in the prevention of juvenile crime and the rehabilitation of juvenile offenders.

## 2. The Procedure for Adult Probation

### *Pre-Sentence Investigation*

It begins when the criminal court orders probation officers to investigate the offenders (who have been found guilty of the criminal acts) and to submit pre-sentence reports to the courts within 15 days. The matter of age, previous records, behaviour, intellect, education, physical and mental health, habit, occupation and environment of the offenders together with the nature of their offences and other extenuating circumstances are investigated and scrutinized. In the pre-sentence reports, probation officers give their opinions concerning the offenders under investigation, for instance,

- (i) What kind of people they really are;
- (ii) Whether or not they want probation;
- (iii) Whether or not they will be dangerous to society if they are placed under probation; and
- (iv) What type of treatment will be suitable for them, considering the safety of society and the benefit to the offender.

The probation officers also give their suggestions concerning appropriate treatment measures to the courts in their recommendations. However, the courts need not follow their recommendations.

### *Supervision*

It begins after the offenders have been placed under probation. In this case some probation conditions are provided by the courts and the probation officers are authorized to supervise the offenders in accordance with the conditions laid down by the courts.

Supervision consists of three important elements, namely,

#### (i) Surveillance

The probationers must report periodically to the probation officers and the probation officers must also visit their homes or their places of work at least once a month to see whether they behave themselves and whether they have any problems adjusting themselves at home or at work.

#### (ii) Service

Probation officers check to see whether the probationers need any help in terms of needs, i.e. food, shelter, academic, vocational skills, employment or medicine, and whether they can be provided or referred to any community organisations for help.

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(iii) Counselling

The probation officers should help the probationers and their family members to understand the problems they are facing, and how they can help in solving the problems.

Operating Results of Pre-Sentence Investigation and Supervision

In 2001, all probation offices under the Department of Probation were authorized by the courts to conduct pre-sentence investigation and supervision of offenders under the Probation Procedure Act in accordance with the Penal Code 1979 (B.E. 2522), 42,898 cases and 94,962 cases, respectively. In addition, there were 128,928 cases that have been supervised continuously from 2000. The total amount of supervision cases in 2001 was 223,890, including new cases, while in the past one year terminations accounted for 100,101 cases from which 69,417 (69.35%) completed the probation terms well and 30,684 (30.65%) cases violated the conditions of probation. Presently, there are 123,789 probationers.

*Community Affairs*

Probation services involving community based corrections have been widely recognized as an alternative treatment to terms of imprisonment. The alternatives have proved themselves to be an effective means of reducing crime rates. Realizing the value of the community based corrections' approach, the Department of Probation has aimed to encourage and to promote the general public's awareness of communities participation in the processes of the probationers' rehabilitation by creating project work plans and activities that could be useful for the probationer's rehabilitation. Furthermore, the Department has also developed volunteer probation projects in order to gather, recruit and select suitable persons to be volunteer probation officers and to deal with probationers (currently there are 6,691 VPOs).

The project work plans and activities to be given to the probationers in order to modify their behaviour as mentioned before are, for example:

- Religious group study and group therapy;
- Counselling programme;
- Ordination programme;
- Basic educational programme;
- Job placement programme;
- Bail project for the accused;
- Community service programme;
- Other suitable training courses.

Progression of Community Affairs of All Probation Offices in 2001

**Table 10. Treatment Tasks**

Activities	No. of probationers
Orientation	19,801
Religious group therapy	22,738
• Morality group study	2,447
• Ordination programme	8
Psychological counselling program	318
<b>Total</b>	<b>45,312</b>

**Table 11. Community Service**

<b>Activities</b>	<b>No. of Probationers</b>
<ul style="list-style-type: none"> <li>• Probationers ordered by courts</li> <li>• Probationers who completed the community service's condition in accordance with court's orders</li> <li>• Probationers who voluntarily participated in community service's activities</li> </ul>	<p>68,814</p> <p>47,105</p> <p>66,778</p>

**Table 12. Social Welfare Tasks**

<b>Activities</b>	<b>No. of Probationers</b>
<ul style="list-style-type: none"> <li>• Basic education programme</li> <li>• Job placement programme</li> <li>• Vocational training</li> <li>• To lend money for making a living</li> <li>• Food welfare</li> <li>• Vehicle Welfare</li> <li>• Hospital's fees</li> <li>• Bail project for defendants</li> <li>• Others</li> </ul>	<p>22</p> <p>400</p> <p>1,426</p> <p>69</p> <p>34,211</p> <p>4,893</p> <p>481</p> <p>81</p> <p>14</p>
<b>Total</b>	<b>14,597</b>

*Volunteer Probation Officer*

The role of the citizen in crime prevention and the criminal justice system is due to the growing belief among criminal justice officials that they cannot or should not carry the full burden of crime control without public participation. In addition, there has been a tremendous increase in the caseload of probation services, and the probation officer has been unable to devote enough time to rehabilitate and assist probationers effectively. The main point of Volunteer Probation Officers is to convince the public to participate in probation services and to ease the heavy caseload caused by the lack of probation officers.

According to the Regulations of the Ministry of Justice 1985 (B.E.2528), volunteers are to pursue the tasks of supervising and assisting both juvenile and adults probationer. Upon receiving the cases, assigned on the basis of job placement, volunteer probation officer are expected to do as follows to:

- (i) Examine the probationer's background, habits, social interactions, probation conditions, etc. in order to understand his or her basic problems and needs which will be useful in planning suitable approaches in dealing with him or her;
- (ii) Make a home or working place visit on a regular basis at least once a month;
- (iii) Provide the client counselling and assistance in order to help him or her to be able to maintain probation conditions, handle and manage daily problems and crises, and lead a normal life as a law-abiding citizen;
- (iv) Report the performance to the supervising probation officer on a regular basis, as evaluations and suggestions are considered to be a real benefit to the rehabilitation of probationers;
- (v) Support the probationers by: finding jobs, providing education funds to the probationer, donating money to the Foundation for the Rehabilitation of and After Care Services for Offenders, etc.

Qualifications to be a volunteer include:

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1. Must be at least 20 years of age
2. Live in a permanent residence
3. Must be literate
4. Honest and moral
5. Have suitable income
6. Maintain law-abiding behaviour
7. Complete required training course, provided by the Ministry of Justice
8. Have no criminal record except for petty offences or negligence.

Progression of the volunteer probation officer project in the fiscal year 2001, volunteer probation officers were responsible for 16,661 cases and finished 5,127 cases.

*Other Significant Projects*

(i) *The Narcotics Camp for Probationers and Family Project (A New Step Camp)*

The Department of Probation has set up the Narcotics Camp for Probationers and the Family Project (A New Step Camp). Its purpose is to promote the understanding of narcotics and the way to treat drug addicts correctly, including making probationers respect themselves and other people, and live their lives peacefully and develop their potential. And promote cooperation amongst the related agencies in the field of the prevention of narcotics and to create a network to deal with narcotics problems effectively. The Project also required the cooperation of many agencies such as the Ministry of Defence the Ministry of Public Health, and the Royal Thai Police. Fiscal year 2001 is the first year for running this project, and according to the plan, the probation offices under the Department have to set up the narcotics camp and carry out 57 camps for 1,857 probationers and 1,523 persons from their families participating in the family project.

(ii) *Project on Disseminating Knowledge Regarding Mediation and the Preliminary Justice System to the General Public*

The objectives are:

1. Promote and disseminate the mediation system and arbitration to the general public
2. Disseminate the knowledge of mediation and the preliminary justice system to the general public such as sub-districts, administration's member and community leaders
3. Reinforce understanding and a good relationship among civilians, the bureaucracy and government agencies.

This project is a one-day training course conducted by the probation offices throughout the country, this training is held twice a month. In the fiscal year 2001, there were 292,617 people who completed the training.

(iii) *The Adjustment of the Department of Probation's Framework*

The Department of Probation is currently in the process of adjusting its framework in accordance with the government's policy. After the Court of Justice separated from the Ministry of Justice, the Resolution of the Council of Ministers dated July 10, 2001 authorized the Department of Probation to be the principal organisation of probation at all stages of the criminal justice process, and of social work of offenders who are released from probation and aftercare process from the Department of Corrections. They are also responsible for the Drug Addicts Rehabilitation Center in accordance with the Drug Addicts Rehabilitation Act 2002 (B.E. 2545).

It had the effect of increasing the responsibilities of the Department of Probation while there is a manpower shortage, and probation officers have to work overloads more than the standard required by the Office of the Civil Service Commission. The Committee of Adjustment of the Department of Probations was set up to adjust the framework in order to comply with the new responsibilities.

The Committee is now drafting the Department's framework, shown by the organisation chart attached, and the draft has already been submitted to the Ministry of Justice and the Office of the Civil Service Commission. The details of the adjusted framework show that the practitioners or lines functions could work as a one-stop service and could respond to the general public's demands

immediately and effectively, including the evaluation of on-the-job performance focusing on the profession of practitioners and their career progression.

*Problems of Probation Administration and Practice*

(i) *Shortage of Professional Probation Officers*

While the Department of Probation conducts the Probation Offices Opening Project to promote the implementation of the probation service toward the general public, emphasising justice and other advantages equally, the Civil Servant Commission has limited the increase in government officials.

Employing temporary probation officers and volunteer probation officers to assist professional probation officers has been the solution, however, there are limits to the amount they can do and their capability.

(ii) *Lack of Training*

There are a few training courses and outdated training programmes. Employee probation officers do not get enough training.

(iii) *Moderate Salaries and Low Morale*

Probation officers receive moderate salaries compared to other officers (judges and prosecutors) while they have a high caseload. Many probation officers have low morale and leave the service for better paid jobs or easier jobs.

(iv) *High Caseload*

The high caseload is brought about by a shortage of probation officers and probation officers have many roles (pre-sentence investigation, supervision, community affairs project and policy projects, etc.). This problem makes probation officers do routine and documentary work more than active work, playing the role of law enforcement workers instead of that of social workers or counsellors.

*Solutions*

In fact, all the problems above are chronic problems in the Thai Probation System and this situation is common in other countries. The attempt to solve these problems in the past was not serious because some executives thought that these were anomalous and instead they paid more attention to operational duties required by the Ministry of Justice or the cabinet.

However, at the present the policies of the government to restructure the Ministry of Justice impact on the reorganisation of the Department of Probation. The Administration must improve and the Strategic Plan and Operational Plan 2002-2006 should be carried out seriously. Research and Evaluation should be the important instruments for policy makers and executives for using information in decision and planning. The policy should apply to real implementation and must improve the staffing situation in order to provide efficient services for probationers and other community-based alternative measures to incarceration.

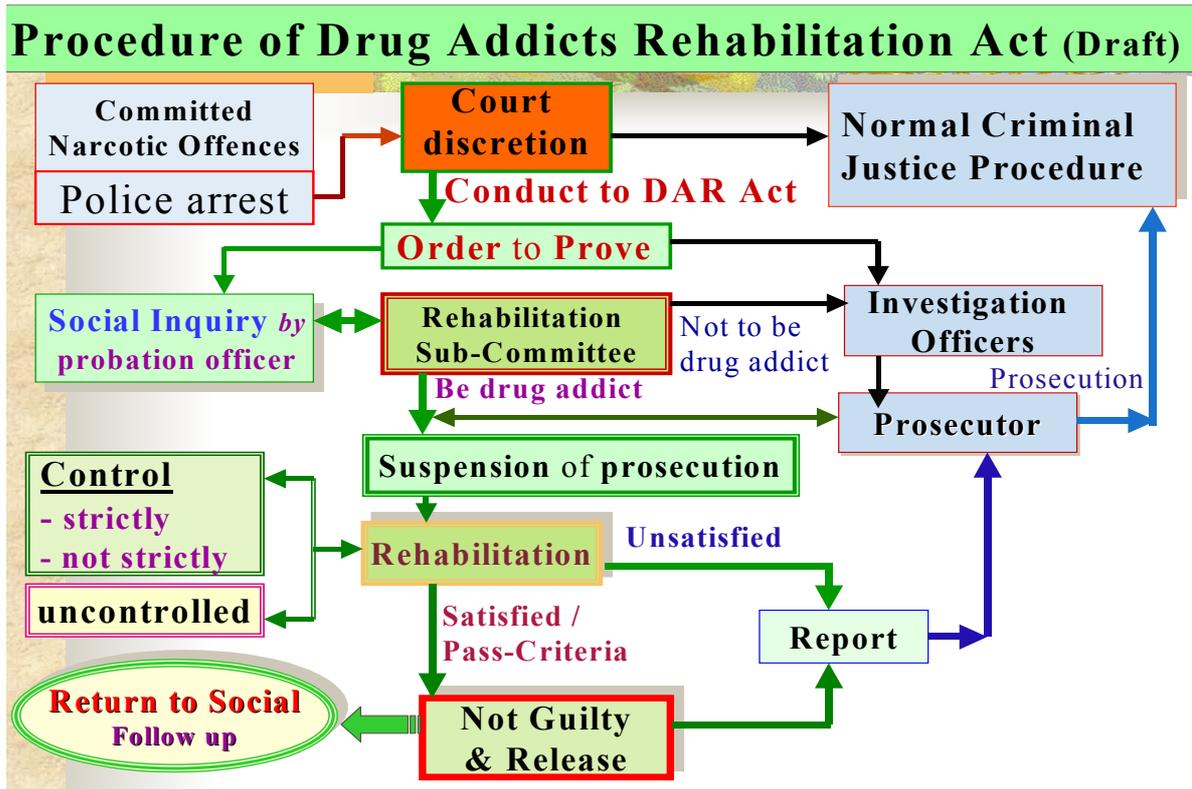
*Future Plans and Innovation of the Probation System in Thailand*

(i) *New missions resulting from the Cabinet Resolution on July 10, 2001*

The cabinet resolution concerning probation, agreed that the Department of Probation will be the principal probation organisation in regard to suspension of prosecution at the pre-trial stage, in juvenile probation at the court trial stage and in the supervision of prisoners who are released on conditions at the corrections stage. New missions will run after the results of a public hearing to approve the use of suspension of prosecution and the completeness of the new structure of the Ministry of Justice on October 2002. Furthermore, according to the draft of the Drug Addicts Rehabilitation Act, the Department of Probation will provide drug treatment and rehabilitation of offenders by means of a compulsory system after this Act is promulgated.

The main idea of this act is to introduce a compulsory drug treatment system for drug addicts so they won't commit further offences and should be considered as "a patient" not as "a criminal," and this act aims to divert the caseload in the criminal justice process, especially to reduce the number of prisoners and to provide for assessment and treatment of the illicit drug user. Therefore, if the results

of treatment are satisfied they will not have criminal records. The target is the person who is apprehended for use or possession of small quantities of illicit drugs. The benefit of the compulsory drug treatment system is to provide an opportunity to divert offenders out of the criminal justice system into treatment, reducing the population of prisoners and decreasing social problems.



(ii) *Introducing Restorative Justice in the Probation Services*

Some countries, including Thailand, are seeking a coherent conceptual basis for developing a probation system. Restorative justice is the approach that is clearly identified. It also seeks to balance the concerns of the victim and the community with the need to reintegrate the offender into society. It seeks to assist the recovery of the victim and enable all parties with a stake in the criminal process to participate fruitfully in it. The examples of restorative justice include mediation, conferencing and sentencing circles.

Restorative justice has been drawn from ancient concepts and practices in western and Thai societies. In the old days the victim had to lodge his complaint to the ruler and may institute his own criminal prosecution. Under the principals, restorative justice should be encouraged at all stages of the criminal justice process. In the Thai probation system, the Department of Probation has a policy to enhance the role of the probation officer as a mediator by holding moderated meeting with offenders, crime victims and others affected by crime. The probation officer tells the victim and the offender that they have the chance to settle their conflict in a different way. The mediator arranges for them to meet with the aim of settling the dispute which has arisen between them.

This meeting helps to harmonize relations between the parties and alleviate the consequences of the crime. It helps to settle the dispute and reach an agreement or compensation for damages which is also acceptable from society's point of view. The facts of the case meeting will be passed to the prosecutor or the court. On the basis of these facts the prosecutor or the court may decide to suspend prosecution or to pass a suspended sentence. However it will take time to try the pilot project, the operation of restorative justice programmes should be established by legislation with standards and guidelines. There are referral, handling and qualification of personnel, administration and ethical rules governing the operation of restorative justice.

(iii) *Preparing for the Suspension of Prosecution*

Suspension of prosecution will be implemented as an alternative to a criminal trial in order to reduce the caseload of the court, if the results of a public hearing by the office of the Attorney General are approved. Probation will be used as a measure at this stage to investigate and supervise the offenders whom the prosecutor has discretion to suspend prosecution.

The prosecutor should be informed of information about alternative treatment facilities and programmes in the community to be able to make a rational determination. The Department of Probation can provide social inquiry reports and supervision work for the suspension of prosecution carried out at the public prosecution stage.

(iv) *Using the Community Service Order as an Alternative to Imprisonment, Confinement and Fine*

At present the court of justice has offered to reform the law in regard to confinement to community service in cases where the offender was ordered to pay a fine but does not have enough money to pay. The court may order such a person to be confined in lieu of a fine and, in the future, such confinement shall not exceed two years.

The idea of the community service order is based on one of the conditions of probation that the probation officer may arrange an activity for the offender that is for the public benefit. In order to reform the probationer's behaviour and to meet acceptance. Since community service has achieved its goal, it is accepted to be one of the alternatives to imprisonment, confinement and fine that can solve the overcrowding situation in prisons.

### III. CONCLUSION

Criminal Justice in Thailand including the Probation System is at this time restructuring and reforming. During the past decade Thailand, like other countries throughout the world, has been influenced by the impact of globalisation and technological development. Social and economic considerations are becoming even more complex. Crime and drug problems are critical and related to the overcrowding situation in prisons and juvenile institutions. The correctional facilities are overcrowded, the living conditions are poor, occupational vocational and educational opportunities are insufficient. Consequently, the country's correctional problems and policies, in all their dimensions, should be re-examined. Therefore alternatives to imprisonment have been accepted as a possible solution to prison overcrowding. An effective alternative that is widely used is suspension of imprisonment with probation. In the correctional system, they have sentence remission and parole but they have rigid criteria, and the number of inmates released on parole has been few. In addition, at other stages of the criminal justice process there is less use of community-based alternatives to incarceration.

However the Thai Government realizes the problem and has policies to reform the legal and criminal justice system to guarantee greater rights and freedom for the people. Furthermore, to reduce the crime rate and the number of inmates in prison, finding new measures of non-custodial treatment and the development of the present measures is very important.

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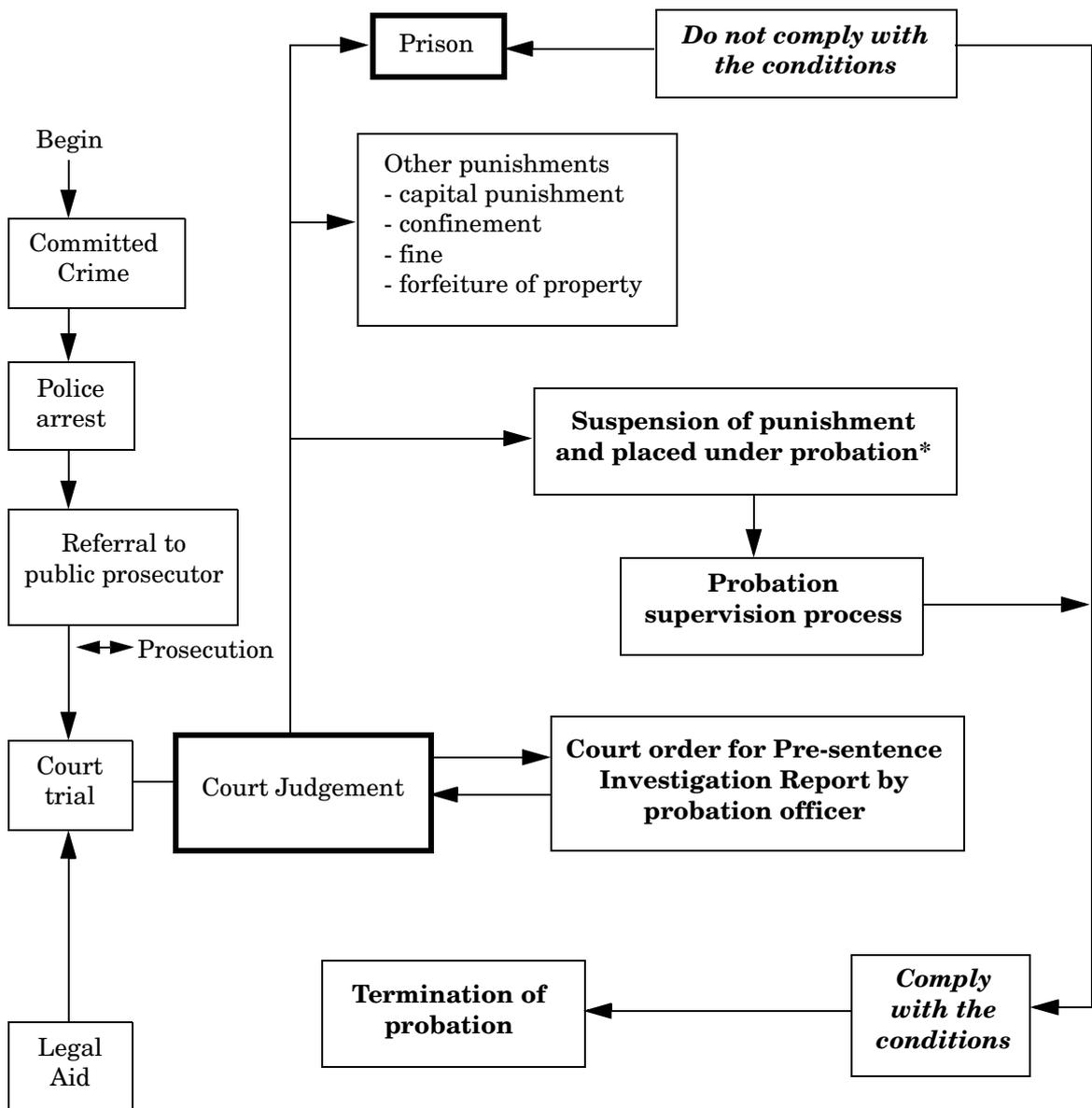
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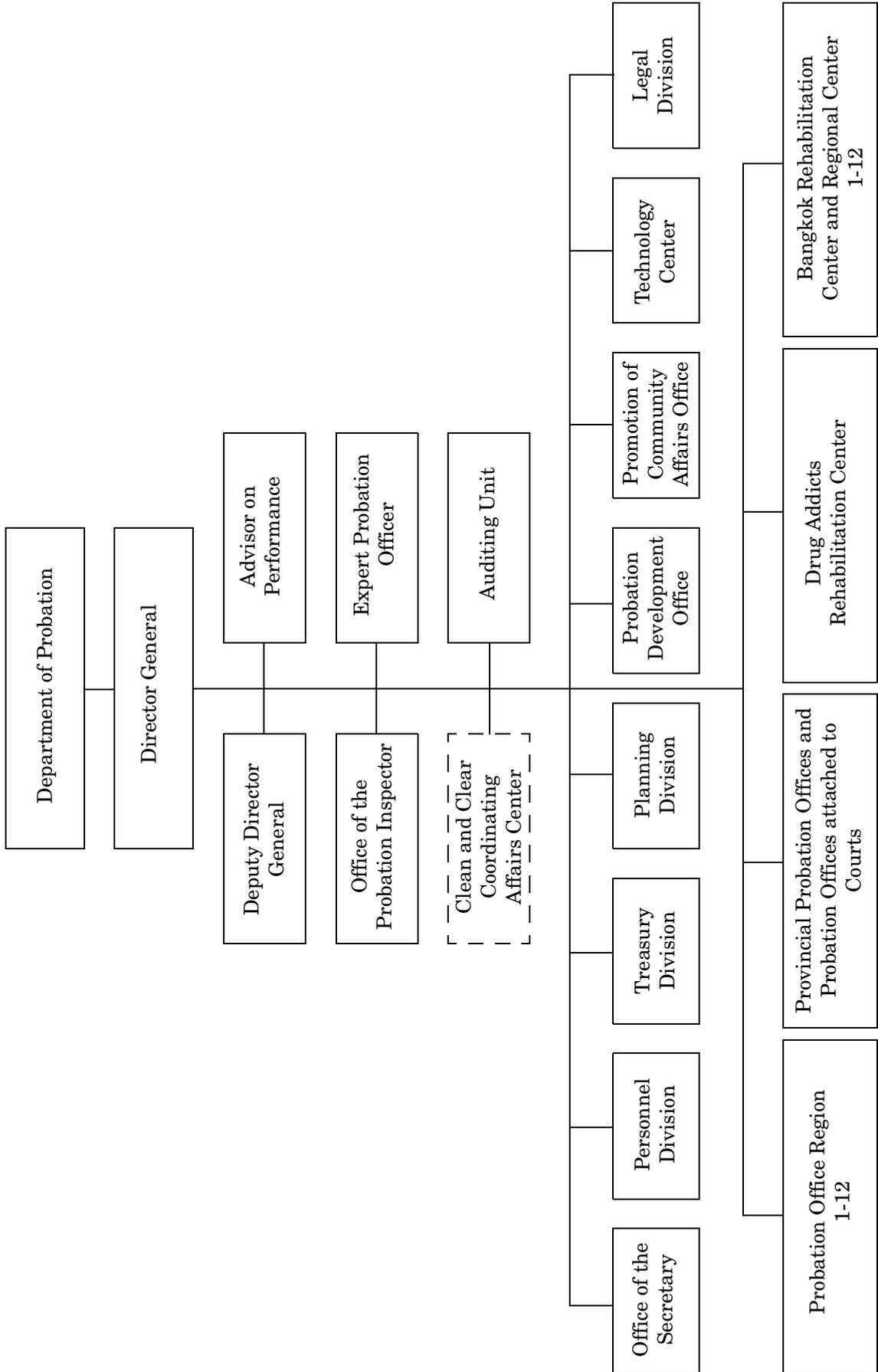
**APPENDIX A**

**Flow Chart of Criminal Proceedings for Adults Showing the Position of Probation Services within the Criminal Justice System.**



- Police → The Royal Thai Police (Independent Public Agency)
- Public-Prosecutor → Office of the Attorney-General (Independent Public Agency)
- Court → The Criminal Court → The Court of Justice (Independent Public Agency)
- Prison → Department of Corrections → Ministry of Interior (Ministry of Justice on October, 2002)
- \*Probation → Department of Probation → Ministry of Justice

**APPENDIX B**  
**The Future Framework of the Department of Probation**



*(This chart is not final, the structures of the Department of Probation and other departments are still being considered by the Ministry of Justice Committee)*

# RESOLVING PRISON OVERCROWDING: THE ENLARGEMENT OF COMMUNITY-BASED TREATMENT IN KOREA

*Joung Jun Lee\**

## I. INTRODUCTION

### A. Increase in Prison Population

Prison overcrowding is no longer a new issue in Korea. Since the economic crisis in 1997, overcrowding has been substantially aggravated and today most correctional institutions are accommodating a lot more offenders than their optimal capacity. This overcrowding has continued up until now even though there may have been a little change in some correctional institutions.

Correctional facilities that house offenders in confinement are various. They include: correctional institutions, juvenile correctional institutions, detention centers, branch of detention centers and social protection centers. Correctional institutions, juvenile correctional institutions, detention centers and branch of detention centers are designed to accommodate the convicted inmates who are sentenced to serve time in prisons or workhouses, and un-convicted inmates who are waiting trial. Social Protection Centers house offenders prescribed by the “protection & supervision” order under the Social Protection Act.

As of May 2002, there are 44 correctional facilities across the nation. This includes: 28 correctional institutions (including 1 open correctional institution, 1 female correctional institution), 2 juvenile correctional institutions, 8 detention centers and 4 branches of detention centers and 2 social protection centers. As for the details of the prison population, table 1 shows the daily average number of inmates in correctional facilities between 1991 and 2000.

**Table 1. Daily Average Number of Inmates (between 1991 and 2000)**

Year	Legal limit of maximum number	Daily average number of inmates	Inmate categories				
			Convicted	Un-convicted			Sentenced to work-house
				Total	Offenders	Accused	
1991	54,300	55,123	30,176	24,947	3,053	21,894	127
1992	55,300	55,159	31,388	23,771	3,023	20,746	219
1993	55,300	59,145	32,452	26,693	3,167	23,526	398
1994	55,800	58,188	33,752	24,436	2,892	21,544	545
1995	55,800	60,166	32,895	26,785	3,158	23,627	486
1996	57,360	59,762	32,848	26,519	3,272	23,247	395
1997	57,660	59,327	33,123	25,825	2,253	23,572	379
1998	56,500	67,883	35,125	31,238	2,930	28,308	1,520
1999	58,000	68,087	38,364	28,609	2,547	26,062	1,114
2000	58,000	62,959	37,040	24,312	2,441	22,304	1,607

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As shown in the table 1, the average number of inmates in each facility outnumbered the legal maximum number of inmates. Particularly, in the midst of the economic crisis of December 1998, the average number of inmates reached a record-breaking 74,400.

**B. Reasons for Overcrowding in Correctional Facilities**

1. The Practice of Incarceration before Conviction

The rate of imprisonment prior to conviction is much higher in Korea than that of other countries. In the United States and Japan, incarcerating suspects is principally limited to those who are very likely to conceal or remove evidence or are likely to flee from investigation. The number of un-convicted inmates account for 10 to 20% among the total prison population in these countries. In Korea, the rate of incarcerated suspects accounted for 38.9% among the daily average number of inmates in 2000.

When the economic crisis struck the nation in 1998, the figure went up to 46%, that is 4 times greater than that of other economically advanced countries. This practice resulted in overpopulation, which had already been aggravated by increasing recidivism. The practice of imprisonment before conviction along with the rising rate of repeat offenders contributes to the increasing workload of the judiciary and police investigations, thereby resulting in deteriorating justice and correctional services.

2. All Offenders should be Incarcerated: the Public's General Concept on Offenders

Prosecutorial and judicial policy cannot be separated from the citizens' notion of justice. Western countries provide offenders with extensive opportunities for their defence in the process of trial, such as bail except in serious cases. However, most Koreans agree that offenders should be incarcerated in a custodial facility. This concept hampers the formation of a policy which ensures offenders have an effective means of defence. Considering the fact that less than 30% of the incarcerated offenders are actually convicted in the first trial in Korea, it is necessary to change the general notion that offenders should serve time in a custodial facility.

3. Increase of Offences Stemming from the Economic Crisis

Since the economic crisis in 1998, the rate of robbery, fraud, theft and violence has risen sharply, amid prevailing anxiety over economic uncertainty. The number of imprisoned offenders went up from 62,594 in December 1997, in the wake of the economic crisis, to 73,659 in November 1998, an increase of 10,000 in less than a year (see table 2). During this period, all types of offences had increased. In particular, the number of property crimes such as theft, embezzlement and fraud had increased more than any other crimes. Consequently, incarcerating most of these money-related offenders caused prison overcrowding.

**C. Problems of Overcrowded Prisons**

Article 1 (objective) of the Penal Administration Act in Korea specifies that the Penal Administration Act is to separate offenders from society and to correct criminal attitudes and behaviours. The correctional service promotes sound ethics and provides inmates with the skills necessary to return to the community. The law also makes it clear that the objective of the custodial services is to prepare them to return to society as law-abiding citizens and to help them break the mold of criminal behaviour.

**Table 2. Monthly Average Number of Inmates during the Economic Crisis in 1997 and 1998**

Month	Average number of inmates		
	Total	Convicted	Un-convicted
End of Nov. 1997	64,813	34,225	30,588
End of Dec. 1997	62,954	34,380	28,574
End of Jan. 1998	62,011	34,404	27,607
End of Feb. 1998	62,084	35,736	26,348
End of Mar. 1998	63,390	34,907	28,483
End of Apr. 1998	65,367	35,847	29,520
End of May 1998	70,787	36,878	33,909
End of Jun. 1998	70,487	37,429	33,058
End of Jul. 1998	69,748	38,115	31,633
End of Aug. 1998	68,246	36,393	31,853
End of Sept. 1998	70,160	37,374	32,786
End of Oct. 1998	70,542	37,912	32,630
End of Nov. 1998	73,659	39,788	33,871

However, in the present circumstances of overcrowding, an effective correctional service cannot be expected. This overcrowding deteriorates the prison environment and consequently has brought more stress to inmates and prompted them to commit violence and suicide in custody. The shortage of correctional facilities and officers, and the heavy workload have dampened the morale of officers who are in the frontline of duty. The ratio of inmates per officer is over 5:1, whereas the ratio stands at 2:1 or 3:1 in North American and European countries. These statistics show that the workload of correctional officers in Korea is overwhelming.

Conclusively, it is a great risk to take inmates out of the correctional services and leave them to finish their sentences without giving them a chance to alter their criminal behaviour, because inmates will return to our community in the end.

## **II. COMMUNITY-BASED TREATMENT AS NON-CUSTODIAL MEASURES IN THE CRIMINAL JUSTICE PROCESS**

### **A. Diversion in Policing and Prosecution**

Contrary to traditional criminology, the labeling theory focuses on the social control structure with emphasis on the formation and progression of labeling and its negative results. The labeling theory supports the principle of non-engagement in criminal policies that can be summed up by correctional (social learning) programmes within the community, humanization of social control through diversion as well as a breakaway from pro-criminal attitudes. With the labeling theory, police can release offenders through admonition or reprimand in case of slight offences. Juvenile offenders can be released on suspension of indictment with the condition of putting them on correctional plans. Adults can be put into correctional planning, while they are still in society on the suspension of indictment. As a result, this will reduce the number of offenders admitted to correctional facilities, and contribute to easing up the problems with overpopulation in the correctional facilities.

In general, the diversion theory has the following concrete objectives: firstly, it recognizes the flexibility in police investigation and the prosecution system to allow them to address the concerns of

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offenders and society and to deal with crimes more effectively; secondly, it ensures offenders avoid the prosecution process and conviction; thirdly, it gives offenders the right motivation necessary to prevent further criminal behaviour; fourthly, it redistributes resources in a way that the justice system can operate at the optimal level; fifthly, it allows offenders to take responsibility for their behaviour and move on with their lives; sixthly, it encourages offenders to have a job and support themselves and their families; lastly, offenders will be given an opportunity to compensate victims for the damage they have caused.

The advantages of diversion are: firstly, it is a cost-effective way of dealing with offenders; secondly, it reduces the possibility that offenders repeat their criminal behaviour, out of despair from being nailed down with criminal records; thirdly, it lessens the workload of police and the justice system; fourthly, it is more humane, as it provides both the offenders and victims with necessary and adequate treatment; fifthly, it differentiates between less serious offenders and repeat offenders or felons who need to be incarcerated.

Various programmes based on the diversion theory have been developed and implemented to prevent offenders from being isolated from the community and to offer an alternative to the official prosecution process. Despite all the benefits of the diversion theory, many programmes have produced results that contravene the objectives of the theory.

The biggest problems of diversion-based programmes are: they have expanded the social control network contrary to the initial goal of reducing it; the lack of punishment undermines the effectiveness of correctional services in terms of stopping crimes; some programmes have deprived offenders of the right to follow the legal procedures, especially receiving assistance from lawyers. The diversion programmes have not been proven in terms of preventing repeated offences. The flaws of the current diversion programmes can be mended, when offenders acknowledge their wrongdoing and pledge to follow the diversion programmes laid out by the police and prosecution. The police, judges, prosecution and the officials responsible for diversion programmes should stipulate the qualifications necessary for offenders to be eligible for diversion programmes.

1. Diversion Programme Example: the Suspension of Indictment with the Condition of Correctional Service

As society realizes that correctional programmes in correctional facilities do not prevent repeat crimes nor help inmates adapt to the community, the justice system for juveniles introduced the suspension of indictment with the condition of correctional service as an alternative to imprisonment. The suspension of indictment with the condition of correctional service puts juvenile offenders under the protection and control of designated supervisors as opposed to convicting them or admitting them to juvenile institutions. Unlike the regular conditional suspension of indictment, this juvenile suspension of indictment programme includes proactive counselling and support to prevent repeat offending and to help juveniles develop self-regulation and self-management skills. It is mainly for their attitudinal and behavioural change. This system is designed to address the concerns that official prosecution of juveniles may exclude them from the community, cause lower self-esteem and hamper their efforts to return to society, which in effect, prompts juveniles to fall into the vicious circle of repeat offending.

As a core programme of the juvenile protection system led by the prosecution, the suspension of indictment with a condition of correctional service takes the juveniles out of criminal behaviour at an early stage and designates supervisors to provide juveniles with protection and guidance. It is for facilitating juveniles' return to the community and achieving the ultimate goal of keeping juveniles from further criminal behaviour. In other words, the prosecutor releases juveniles on suspension of indictment with a condition that they should abide by the regulations during the release period and be under the guidance of a designated supervisor. When a juvenile fulfills the requirements without breaching the conditions of their suspension of indictment during the period, the prosecution drops the charges.

The conditional suspension of indictment for juvenile offenders started in Gwangju in 1978 and by 1981 it expanded to the rest of the nation. Table 3 shows the annual number of juvenile offenders who are under conditional suspension of indictment programmes.

**Table 3. Annual Number of Juvenile Offenders Under Conditional Suspension of Indictment (1991 - 2000)**

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Number	7,797	7,737	8,065	9,917	11,551	11,062	8,653	9,182	7,076	7,045

## B. Avoiding Imposing Imprisonment

### 1. Fine

A fine is one of the ways to avoid imprisonment and help offenders stay in society. The Laws pertaining to fines under Article 69 (2001) of the Criminal Act states:

- (i) The fine must be paid within 30 days of ruling,
- (ii) Offenders who don't pay the fine will be sent to a workhouse where they must work from one day up to 3 years. However, fines as an alternative to incarceration defeats its purposes when numbers of people are sent to the workhouse because they can't pay the fines. This number actually skyrocketed after the economic crisis in 1998. This also increased the population of incarcerated offenders.

In January 1997, correctional institutions had an average of 400 people at a workhouse, then this number exponentially reached 3,083. The Ministry of Justice released 2,903 people from workhouses with the fines suspended in December 1998 to relieve problems such as infringement upon human rights, budget shortfalls and poor inmates' treatment, which are caused by overpopulation in correctional institutions. Then, the Ministry pardoned them in February 1999.

Some people criticized the pardon as unfair to the people who already paid the fines, while others raised the question whether a one-time release can be a fundamental solution to prison overcrowding. Table 4 indicates the daily average number of inmates in workhouses in each year compared to the average number of inmates in total. This table suggests that the number of inmates in the workhouses went sharply up after the economic crisis. There have been some efforts to improve the system of fining by introducing a deferred payment and a suspended sentence to the fining system. It is mainly to reduce the number of offenders ending up in workhouses. It will also be desirable to put offenders into social work programmes instead of fining them.

**Table 4. Daily Average Number of Inmates in Workhouses each Year Compared to the Average Number of Inmates in Total (1991-2000)**

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>Total inmate number</b>	55,123	55,159	59,145	58,188	60,166	59,762	59,327	67,883	68,087	63,472
<b>The number of inmates at work in correctional institutions</b>	127	219	398	545	486	395	379	1,520	1,114	1,607

### 2. The Suspended Sentence

The most common rulings as an alternative to incarceration by the court are the suspended sentence without verdict and the suspended sentence with verdict. However, these options have a limited role in reducing the number of incarcerated inmates and keeping offenders in the community because of the stringent requirements for these suspended sentences. The suspended sentence without

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verdict puts minor offenders on suspended sentences for 2 years, preempting verdict. If the offenders on suspended sentence without verdict spend 2 years without committing further offences, their offence will be written off the police records, without sentencing.

By leaving offences out of the police records, the suspended sentence without verdict makes it easier for the offenders to return to their communities and encourages them to not commit further crimes. The suspended sentence without verdict is different from the suspended sentence with verdict in the way that one puts sentencing on hold and the other delays implementing the sentences that have been given.

The suspended sentence with verdict holds off the implementation of sentencing for a certain period of time for offenders who commit very minor offences and do not need confinement in correctional institutions. Once offenders serve the predefined time period, the verdict will be cancelled out, as if the verdict had never been made. The suspended sentence programmes resolve the problems of short-term imprisonment without correctional plans, by fostering voluntary and proactive efforts of the offenders to return to society.

The suspended sentence without verdict may be accompanied by 1 year of probation. It is granted when offenders are in need of supervision to prevent further criminal behaviour. The suspended sentence without verdict cannot be coupled with community service or community lesson order, while the suspended sentence with verdict can be made in conjunction with probation, community service and community lesson order. In the case of the suspended sentence with verdict, probation lasts as long as the suspended sentence period lasts. The ruling court, however, may decide the probation period within the suspended sentence period. The community service is for a period up to 500 hours and the community lesson can be up to 200 hours.

### **C. Most Common Community-Based Treatment in Korea: Probation**

#### **1. History**

Community correction has the same principles as treatment in society. Probation is a part of treatment in society and also opposite to confinement in correctional facilities. It was first introduced in Korea in 1963 when the Juvenile Act was amended. As the probation Act was enacted and the Juvenile Act was completely amended in 1988, community service orders and attendance center orders commenced as a supplement to the Probation Act. In 1995, the Probation Act was merged with the Rehabilitation and Protection Law and this bore the "Act on Probation". During the same year, the amendment on the Criminal Act paved a way for expanding the probation, community service orders and attendance center orders to adult offenders.

The amended Criminal Act allowed probation to be granted to offenders who are under suspended sentences without verdict, suspended sentences with verdict, and parole. In 1995, the "Act on Probation" went through a phase of amendment to make probation, community service orders and attendance center orders available to adult offenders.

#### **2. Probation in each Act**

##### **(i) *Probation in the Criminal Act (2001)***

##### **Firstly, probation for the suspended sentence without verdict**

Article 59-2 (2001) of the Criminal Act stipulates that probation may accompany the suspended sentence without verdict, when deemed necessary to prevent further criminal behaviour. The probation may last as long as 1 year.

##### **Secondly, the probation programme for the suspended sentence with verdict**

Article 62-2 (2001) of the Criminal Act states that probation, community service orders and attendance center orders may be coupled with the suspended sentence with verdict (Clause 1). Probation may be equal to or shorter than the suspended sentence with verdict in the period (Clause 2), while community service orders and attendance center orders shall be completed within the suspended sentence period, just as in the probation system in the United States.

Thirdly, parole with probation

Clause 2 of Article 73-2 (2001) in the Criminal Act mandates that offenders who are conditionally paroled should be put under probation during the release period. However, probation can be excluded when the authority in charge agree that probation is not necessary. This parole is very similar to that of the United States in the way that it releases inmates before they finish their prison sentence.

(ii) *Probation under the Sex Offender's Punishment and Victim Protection Act (2001)*

Article 16 (2001) in this Act makes it optional to put sex offenders on probation, when they receive suspended sentences without verdict. Sex offenders on suspended sentences with verdict will be given probation for a certain time within their suspended sentence period. Sex offenders who are paroled will be placed under the probation programme until the parole period is over.

(iii) *Probation in the Probation Act (1995)*

Article 59 (1995) of the Probation Act specifies that community service orders should be given up to 500 hours and attendance center orders up to 200 hours for offenders on suspended sentences with verdict. The ruling court determines where the community service order should take place and what are the subjects of the attendance center order. In other words, the Criminal Act introduced the probation programme, and the Probation Act illustrates programme details in terms of content and extent. Therefore, these two laws constitute the backbone of probation.

(iv) *Characteristics of the Probation Programme in Korea*

Probation programmes in Korea are different from those of western countries. Firstly, in western countries, community service orders and attendance center orders are considered as an integral part of the probation programme, while in Korea, the community service order and attendance center order are independent segments of the treatment in society aside from the probation programme. Secondly, western countries practice community service orders and attendance center orders with both probation and suspended sentences regardless of their legal implication when deemed necessary. However, in Korea, the probation, community service order and attendance center order are given to offenders who are under suspended sentences with verdict. In cases of suspended sentences without verdict and parole only probation is granted.

3. The Relationship between Probation, Community Service Orders and Attendance Center Orders

The probation programme is divided into probation and parole. Parole and probation have different origins and history, but they share the core concept of treating offenders in society. Because of this commonality, probation and parole are grouped into the probation programme. Instead of incarcerating convicted offenders in correctional institutions or juvenile institutions, probation allows offenders to carry on their lives in society for a certain period of time under the control, supervision and protection of professionally trained officers. These probation officers help offenders to change their criminal behaviour and consequently prevent further crimes. This is a way to ultimately protect society from crime.

The court may order community service for convicted offenders. This order requires the offenders to work in the community without any payment for a certain period of time instead of being incarcerated. The attendance center order is designed to provide courses or educational programmes for convicted adults or juvenile offenders to assist them to change their criminal behaviour. Probation refers to all treatment in society for offenders; community service orders and attendance center orders are components of probation.

4. Probation, Community Service Orders and Attendance Center Orders

After the introduction of the probation programme, probation, community service orders and attendance center orders were expanded from juvenile to adult offenders in 1997. The number of offenders on probation reached as many as 140,000, calling for communities to assist the government in offender management. The demand for community involvement has enhanced the role and responsibility of the Crime Prevention Board as shown in Table 5.

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**Table 5. Offenders under Probation**

Year Number	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
The number of offenders starting the programme	20,104	21,916	26,480	29,053	33,591	38,292	70,082	88,947	80,064	90,431
The number of offenders completing the programme	17,001	19,430	21,704	27,758	31,385	37,924	54,546	80,224	80,378	90,826
Offenders on the programme	17,025	19,511	24,287	25,582	27,788	28,156	43,692	52,415	52,101	51,706

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Total	3,800	4,789	4,549	6,441	7,128	9,173	23,694	40,501	37,194	40,082
Community Service Orders	2,460	3,355	3,278	4,671	5,284	7,418	22,030	37,506	33,391	33,580
Attendance Center Orders	1,340	1,434	1,217	1,770	1,880	1,755	1,664	2,995	3,803	6,502

#### D. Parole

If incarcerated inmates demonstrate good behaviour during their time, they can be released before their statutory release date. Also, inmates are regarded as having completed their sentence unless the release is cancelled or nullified. Parole is practiced as a response to the call to avoid unnecessary incarceration, to help inmates find hope and to ensure inmates make a smooth transition back into society. The objective of parole is to encourage offenders to take a hold of their lives in society, to reward the offenders for their efforts to change their behaviour and attitude, to maintain order in the correctional institutions, to increase the effectiveness of overall correctional services and to save the cost needed for incarcerating inmates.

Parole in Korea has been used as a way of controlling the inmate population. Table 6 shows the comparison between the number of parolees and the total inmate population from 1991 and 2000. In 1991 and 1993, the rate of parole ranged from 27% to 29%. Since 1994, it had stayed below 20%. In 1999, conditional releases surged to 35.3% and then in 2000, it edged up to 40.6%. The reason behind the upsurge in parole was the sudden economic downturn resulting from the foreign currency crisis that caused many to commit offences.

As a result, the whole criminal justice system including prosecutor's offices, courts and the correction bureau have been trying to solve the problem of overcrowding. The correction bureau tried to construct several detention centers and repaired old facilities to enlarge the capacity. The prosecutors' office reduced the number of inmates on remand by controlling indictment rates. The Ministry of Justice broadened parole for many prisoners who showed good behaviour.

Despite the rising offender population, the Korean prosecution service has held on to the tradition of incarcerating offenders in the limited number of correctional institutions until the overpopulation in the correctional institutions became a social issue. Without any serious consideration about the overpopulation in the correctional institutions, the prosecution service may have made concessions and

sought a stopgap measure by paroling inmates. In this case, parole cannot be a fundamental solution. The justice system may be putting risks back into society by releasing inmates who have not been sufficiently rehabilitated.

Sometimes, the justice system faces the situation where they have to re-incarcerate those on parole because of re-offending. Some offenders will end up getting stuck in the cycle of recidivism. With the amendment of the Criminal Act in 1997, the probation service (parole supervision) began to cover adult offenders and those on parole had to stay in programmes during their parole period. However, parole may proceed without probation (parole supervision) if the parole committee decides that it is unnecessary.

**Table 6. The Number of Parolees vs. Total Number Released (1991-2000)**

Year	Number of parolees	Total number released	Percentage of parolees (%)
1991	6,479	22,734	28.5
1992	7,481	26,832	27.9
1993	6,151	22,749	27.0
1994	4,129	21,438	19.3
1995	2,516	22,614	11.1
1996	2,876	23,797	12.1
1997	2,614	20,014	13.1
1998	4,790	22,731	21.1
1999	8,559	24,242	35.8
2000	8,035	19,774	40.6

### III. CONCLUSION

Overpopulation in correctional facilities has long been an issue in Korea. However, it was not until late 1997 that this issue caught the public's eye. At that time, the foreign currency crisis hit the nation and many people committed offences as a result of economic instability.

Correctional services have always been on the back burner of public policy as the central government and the public have had no interest in it. As overpopulation has worsened by the foreign currency crisis and it caught the attention of the public, the government legislated and enacted the National Human Rights Board Act in May 2001. As more people are showing their interest in the human rights of incarcerated inmates, various efforts have been to resolve overpopulation in correctional facilities.

The traditional method of expanding or building correctional facilities is not cost-effective. In addition, correctional services isolated from society do not fulfill the policy objectives, that is, the successful return of offenders to society as sound citizens. Keeping up with the trends of society, Korea legislated with the Private Prison Act in 2001 to address the issues of high costs and low effectiveness. As of now, the Korean Correction Bureau is going to contract out one prison to a private entity. This private prison will be constructed and operated by the private contractor and the operating fees will be paid by the government according to the relevant laws and the contract.

It is one of the major concerns of the public to change the criminal behaviour of offenders and remove the risks they pose to society, and to transform them into socially compatible individuals. Because inmates are returned to the community and become our neighbours, it is the responsibility of society to help them adjust back to life in the community, to provide training and to make them stand on their own feet. In correctional facilities which are isolated from society, education, no matter how

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good it is, will not be enough to prepare the inmates to settle back into society; because human beings are products of their environment.

As correctional institutions have limits in terms of inmates' housing and education, we should look out for new options to more effectively administer correctional services with lower costs. There has been discussion in Korea on electronic monitoring including those on the probation programme. Some people who are in the field of justice are opposed to an electronic monitoring system, they believe that electronic shackles will turn society into a virtual prison by expanding the social control network.

They are concerned that the monitoring system will make human beings "guinea pigs." However, electronic monitoring for thieves or chronic drunk drivers or other offenders, as opposed to conditional release or parole for medical treatment, will have an actual impact of cutting down the incarceration rate. There is some criticism that the electronic monitoring system ends up increasing the population in the correctional services. However, this criticism decreases when tangible results are offered for people along with other efforts to ease incarceration. Now, is the time to discuss the overcrowding issue, its solutions and alternative methods to incarceration.

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# REPORTS OF THE COURSE

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## GROUP 1

### ENHANCEMENT OF COMMUNITY-BASED ALTERNATIVES TO INCARCERATION AT THE PRE-SENTENCING STAGE

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#### I. INTRODUCTION

Following the general discussion, our group's responsibility was to ascertain the types of community-based alternatives to incarceration which can be undertaken at the pre-sentencing stage of the criminal process and analyse their features. The discussion group composed of seven participants representing the following countries, (Haiti, Japan, Palestine, South Africa and Saint Vincent). The group would like to express its sincere gratitude to visiting experts, Mr. Stephan Vaughan from Australia and Professor Tony Peters from Belgium for their contribution that guided us during the group work. Their input, which led us with a clear point of view, to reach our goal in the group discussions, is appreciated.

The group held considerable discussions in relation to all aspects of alternatives to incarceration available at the pre-sentencing stage in the participating countries.

Following further consultation it was concluded that some measures used by the police and prosecutors in the participating countries to divert people from the traditional criminal justice system process, cannot be considered as community-based alternatives to incarceration.<sup>1</sup> However for certain participating countries such as Haiti and St Vincent those current measures can be considered as a bridge towards the future implementation and use of community-based alternatives to incarceration at the pre-sentencing stage as there are no exclusive community-based alternative approaches in plan at this stage. Based upon these issues a decision was taken to only examine penal mediation and diversion programmes, which often involves a community-based intervention as community-based alternatives to incarceration for the purpose of this paper. Full details of the available non-custodial measures in each group member's country are set out in chapter II.

To further clarify the purpose and direction of this paper, we offer the following definitions that are applicable to our discussions and recommendations.

#### A. Penal Mediation

Any process whereby the victim and the offender are able, if they freely consent, to participate actively in the resolution of matters by providing agreed upon compensation for damages and suffering arising from the crime through the assistance of an impartial third party (mediator). The process is designed to take the interest of the victim, offender and the community into consideration. It provides a

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<sup>1</sup> See Table 1, chapter II.

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timely reminder to an offender that he/she has to respect the law, thereby enhancing the procedure and the outcomes of the criminal justice system.

Detailed discussion took place in an attempt to adequately define Diversion. Three definitions were considered as follows

**B. Diversion**

Definition 1: *(Used by Australia in its National Illicit Drug Diversion Programme)*

Diversion is a process that provides an alternative to criminal justice sanctions to modify individual behaviour. It involves a graduated series of interventions appropriate and proportionate to the seriousness and circumstances of the offence and the personal circumstances of the offender.

Definition 2: *(USA Federal Judicial Center 1994)*

Diversion is the official halting or suspension of legal proceeding against a criminal defendant or juvenile after a recorded justice system entry, and possible referral of that person to a treatment or care programme administered by a non-justice agency or private agency.

Definition 3: *(Detailed in the South African Criminal Justice System)*

Diversion is a procedure by which people are referred away from the criminal justice system, in order to deal with him/her in a developmental and strength-based manner, which allows the person to take responsibility for his/her actions and make restitution to the victim and the community.

Following further discussions, for the purpose of this paper the following definition has been developed to describe the use of community-based alternatives to incarceration at the pre-sentencing stage:

Diversion is a process, which provides an alternative to criminal justice sanctions to facilitate rehabilitation of an individual through various dispositions and may include assessment, education, treatment, developmental programmes and restitution. It involves a graduated series of interventions appropriate and proportionate to the seriousness and circumstances of the offence, and the personal circumstances of the offender.

**II. AVAILABLE NON-CUSTODIAL MEASURES – INCLUDING COMMUNITY-BASED  
ALTERNATIVES TO INCARCERATION**

The group discussed at length the non-custodial measures presently practiced in each member's countries, to enable a comparative study of the various judicial systems and to pinpoint the similarities and differences in those systems.

**Table 1. Available Non-custodial Measures Including Community-Based Alternatives**

No.	Pre-sentencing stage	Haiti	Japan	Palestine	South Africa	St. Vincent	Australia	Belgium
1.	Admonition/warnings	⊙	⊙	⊙	⊙	○	⊙	⊙
2.	Suspension of prosecution with referral to programmes*	×	×	○	⊙	×	○	○
3.	Suspension of prosecution without referral to programmes	×	⊙	▲	×	○	×	⊙
4.	Disposal of petty offence	⊙	⊙	×	×	△	⊙	⊙
5.	Fine (or other economic sanctions & monetary penalties)	⊙	⊙	⊙	×	×	⊙	○
6.	Treatment order*	×	×	○	×	▲	⊙	○
7.	Other type of diversion program*	×	×	⊙	×	×	⊙	○
8.	Bail <sup>2</sup>	▲	⊙	⊙	⊙	⊙	⊙	▲

\* Community-based alternatives    ⊙ Widely used    ▲ Rarely used    △ Occasionally used  
 ○ Sometimes used    × Not available

**A. Haiti**

In Haiti whilst there are four types of non-custodial measures, at the current time there are no community-based alternatives to incarceration available at the pre-sentencing stage of the criminal justice system.

1. Admonitions/Warnings

Admonitions/warnings are mostly used for traffic violations, for instance if an individual commits a minor traffic violation it will be at the discretion of the police officer to warn or reprimand that person.

2. Fines

Fines are usually used also for major traffic violations. Fines are paid at the tax department, and a driver must take his/her receipt to the motor vehicles' headquarters and retrieve their driver's license, which is normally seized at the time of the alleged violation. A problem with this system is that once you've been issued a ticket there are no avenues to protest against it, you just have to pay. Fines are also used for illegal use of government seals or stationery. The police will fine you as prescribed by the law.

3. Disposal of Petty Offences

Disposal of petty offences is strictly at the discretion of the police commissioner. If an arrest was made and it involves petty offences such as: stalking, threats or slapping someone, the commissioner, after a brief investigation, decides that the case was not serious enough for judicial proceedings then he has the power to dismiss the case, but if the victim is dissatisfied with the outcome he/she can always take it to court.

<sup>2</sup> Bail is a disposition available to both the police and/or the judiciary to ensure the appearance of an alleged offender in court at a future time by the imposition of various conditions as the presiding authority sees fit.

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4. Bail

Bail is a proceeding that is not widely used in Haiti. The participant from Haiti is only aware of two cases where bail has been granted to the defendant. The system is different from other countries. If you are well known and you own a house, have a business or are working in a reputable place and surrender your passport, bail will be granted to you without paying any money, unlike regular procedures.

**B. Japan**

In Japan, most offenders can utilize non-custodial measures at the pre-sentencing stage. However, there is no community-based alternative to incarceration.

1. Admonition/Warnings

Police officers often warn the offender and finish the case. Theft cases where the value of the stolen property is quite low are the typical cases where admonition/warnings can be applied.

2. Administrative Fine for Traffic Infraction

Offenders who commit a minor traffic violation and pay the administrative fine issued can escape further criminal procedures.

3. Disposal of Petty Offences

The following case types, designated by each district public prosecutor, are reported to a public prosecutor on a monthly basis without formal referral. This referral system is based on article 246 provision of the Code of Criminal Procedure.

- (i) An adult who has no criminal record for the same kind of crime, an adult who is not a habitual offender
- (ii) An offence designated by a public prosecutor (larceny, an offence related to stolen property, fraud, embezzlement, gambling, assault), in cases, where the offence is found to be minor, where it is obvious that a suspect needs no punishment.

4. Suspension of Prosecution

In Japan, a public prosecutor has wide discretion to drop cases even when there is enough evidence to prosecute (CCP248). In 2001, 842,106 persons (38.6% of the total number charged) received a suspension of prosecution.

5. Summary Proceedings

The prosecutor can utilize the summary procedure only when the offender deserves a fine not exceeding 500,000 yen, admits guilt and has no objection to that procedure. In this procedure, the offender can be released without trial. In 2001, 41.8% of the total cases referred to public prosecutors were prosecuted in a summary manner.

6. Bail

Bail is a system, which attempts to prevent the defendant absconding through the threat of the confiscation of bail money.

**C. Palestine**

In Palestine, some community-based alternatives are available, however these are limited.

1. Admonition/Warnings

These are widely used by the police and the law enforcement agencies in Palestine in cases concerning traffic violations, neighbourhood outrages<sup>3</sup> and Juvenile offences.

2. Suspension of Prosecution With Referrals to Programmes

These are used only in cases of drug abuse and juvenile offences. Drug users go to specially designed programmes whilst juveniles take courses in Juvenile training institutes.

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<sup>3</sup> Families get involved in neighbourhood outrage that can include hundreds of people and mostly there is no use of arms or weapons.

3. Suspension of Prosecution Without Referral to Programmes

This process is used for neighbourhood outrages with a reconciliation agreement between the parties being facilitated.

4. Fine

Police widely use fines in traffic offences. Fines are also widely used by Municipal Inspectors dealing with municipal law violations. With most of these fines, the offender can decide not to pay the fine and defend the matter in court if they wish.

5. Treatment Order

Police and the prosecution sometimes use this alternative to send mentally ill offenders to health treatment. In some cases of traffic accidents, police transfer offenders to treatment programmes where they may receive psychological treatment or attend a government run-driving course.

6. Bail

Bail is widely used by the law enforcement authorities dealing with neighbourhood outrages, juvenile offenders, and female offenders. Bail is also an alternative used in the case of fatal road traffic accidents.

7. Other Types of Diversion Programme

Over the past 30 years, Palestine has lived under occupation and the Palestinian restorative justice system has partly replaced the law enforcement authorities and the court system as the judiciary has been unable to function effectively. In many cases, especially neighbourhood outrages, the law enforcement authorities have to use the assistance of the restorative justice system to deal with these outrages.

**D. South Africa**

There are a number of community-based alternatives to incarceration available at the pre-sentencing stage in South Africa.

1. Admonition/Warnings

These options are widely used by the police for minor traffic violations and offences involving minor threats to a person.

2. Pre-Trial Services

The aim of the Pre-Trial Services is to enable courts to make more informed bail decisions. Pre-Trial Services (PTS) is a system whereby relevant information is collected and verified by a probation officer prior to an accused first appearance in court.

PTS do not take away the discretion of the magistrate to make a bail decision however it provides the court with more information. Its most obvious impact has been on the profile of prisoners awaiting trial in that it reduces the number of accused persons who remain in prison, as they cannot afford to pay bail. This programme has also helped to ensure that:

- Dangerous accused are less likely to be released on bail;
- Petty offenders are released on warning or on affordable bail;
- All accused persons are closely supervised, reducing the likelihood of witness intimidation and court delays due to failure to appear; and
- Decrease the number of prisoners held in prisons awaiting trial

If no pre-trial services were available in South Africa, this would lead to a doubling of the offenders held in prison awaiting trial.

3. Bail

This option is widely used by police for summary offences and also by the judiciary pending the commencement of proceedings.

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**E. St. Vincent**

In St. Vincent, there are some non-custodial measures and no community-based alternatives to incarceration in use at the pre-sentencing stage.

1. Admonition/Warning

Due to the number of offences and the limited resources available to a very small police force, a policy was implemented by the police not to prosecute offenders for less serious offences such as threats, insulting language and common assault. The complainants in these matters are usually advised by the police to seek their remedies in the civil courts. In the mean time the offenders are located and warned by the police to desist from such unlawful behaviour.

The Director of Public Prosecutions (DPP) has statutory powers to *nolle prosequi* or to discontinue a criminal matter (indictable or non-indictable) at any stage before and during the trial, even if there appears to be sufficient evidence for a conviction. In practice, however, this power is usually exercised when the converse is true.

2. Suspension of Prosecution without Referral Programme

Ninety Nine percent of all summary matters are laid before the Magistrate's Court in the name of the Commissioner of Police. He/she therefore has an inherent discretionary power to prosecute or not to prosecute a particular offender.

3. Fines

A ticketing system for certain types of traffic violations existed in St. Vincent and the Grenadines about twenty years ago, but this proved to be administratively unworkable, hence it was discontinued and is no longer available.

4. Treatment

Treatment without prosecution is given to a very limited class of offenders. These are persons with previous mental health history whom the police suspected of not being in control of their mental faculty during the commission of a minor offence or offences. The police take them to the Mental Health Center for treatment.

5. Bail

Police have a statutory discretionary power to grant station-bail to an accused person charged for any summary offence, and this power is usually exercised.

Section 43 of the Criminal Procedure Code of St. Vincent and the Grenadines gives the Court discretionary power to grant bail to an accused person for any type of offence, except murder and treason. This may be exercised with or without certain specified conditions attached.

**F. Conclusion**

A study of non-custodial measures being practiced by these five countries reveals that in each country some non-custodial measures are available except the degree of availability varies.

The most common measures are admonition/warnings, which makes it possible to release the petty offender from the criminal procedure at the earliest stage. Fines are also widely used measures particularly for traffic offenders. In each country, there are prosecutors or police executives who are authorized to decide to prosecute or drop some cases, though there are differences as to which point in the process this power is exercised.

The practice of bail varies considerably between each country. However, the idea that offenders who are considered a low risk of absconding should be released is accepted in almost every country.

In this way, existing non-custodial measures are utilized in each country. However, in many countries, these measures are simply a release from criminal procedure without an offender being involved in a programme of care and/or rehabilitation. These traditional non-custodial measures have both advantages and disadvantages, some of which are impossible to ignore. It is clear that

consideration needs to be given to ways of introducing or enhancing other alternative means of community based sanctions that do not involve incarceration

Before discussing the community-based alternatives, it is necessary to elaborate on the advantages and disadvantages of the traditional non-custodial measures.

### **III. ADVANTAGES AND DISADVANTAGES OF USING NON-CUSTODIAL MEASURES AT THE PRE-SENTENCING STAGE:**

We believe that some of the advantages and disadvantages of using non-custodial measures at the pre-sentencing stage will affect all stages of the criminal justice system. A number of perceived advantages and disadvantages of non-custodial measures among the participating countries were identified.

#### **A. Advantages**

##### **1. Reducing Prison Populations and the Proper Care of Remaining Offenders**

Currently, most participating countries face the problem of overcrowding in prisons. The term “prison” can be defined as: “all publicly financed institutions where persons are deprived of their liberty. These institutions could include but are not limited to penal, correctional, or psychiatric facilities.”<sup>4</sup>

An over-crowded prison can adversely affect the mental well being of its inmates, which can ultimately lead to violent unrest and even death. Over-crowding causes problems not only for the inmates but for the prison staff as well, problems such as managing and supervising the daily activities of each inmate, potential health risks and preventing the spread of contagious diseases. It is therefore no coincidence that the spread of HIV/AIDS through homosexual activity is so prevalent in some of the institutions of participating countries.

Non-custodial measures at the pre-sentencing stage could be a means of reducing prison population and assist in solving many problems caused by over crowding in prisons.

##### **2. Lower Cost as Compared to Incarceration**

Evidence demonstrates that adopting non-custodial measures at an early stage of the criminal justice system are far more cost effective than incarceration, particularly in developing countries. Whilst acknowledging the necessity for prison facilities, it is also argued that funding allocated to the maintenance of prisons would be better used if diverted to much more important areas such as health or education thus creating more benefit for the general public.

##### **3. Avoiding Stigma Versus the Stigma of a Criminal Conviction**

Custodial sentences often lead to the stigmatization of offenders and indeed their families. Whilst it is acknowledged that arrest also stigmatizes a person, research evidence demonstrates that non-custodial interventions, particularly at the pre-sentencing stage, lessen the stigma attached to offenders through the traditional criminal justice processes.

##### **4. Avoidance of Escalation in Deviant Behaviour**

The evidence is clear that the introduction of offenders to penal institutions increases their knowledge of avoiding detection for crimes committed and also of procedures used by police to combat crime. The use of non-custodial measures at an early stage of the criminal justice system is relevant to assist in the prevention of escalation in deviant behaviour of offenders.

##### **5. Timely Bail and Diversion will Assist to Maintain Family Linkage, Employment and Social Status**

Long periods of incarceration may lead to job loses and weaken family ties. One may argue that losing his/her job or weakening the family ties is the offender’s own fault. However, all of us deny the idea that depriving the offender of jobs or family ties can be justified as a discipline, because such conduct may only negatively affect his/her rehabilitation and reintegration into society.

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<sup>4</sup> Palestinian Prison-Police rules and regulations. 1993

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The imposition of non-custodial measures offers an offender the opportunity to maintain family links and continue with gainful employment. These measures also maintain a person's social status.

6. Some Measures take the Victims Interests into Consideration

Most victims of minor offences such as theft are not interested in severe punishments for offenders if they can recover the damages caused. Non-custodial measures provide offenders with the opportunity to compensate and reconcile with victims. This opportunity is particularly important when considering restorative justice initiatives.

7. Possible Contribution by the Offender to the Community

If an offender is incarcerated, he/she will normally be dismissed from his/her job, which results in a loss of contribution to society provided by the offender's labour. This can also impose a further burden on the social welfare system if an offender has a family that requires support. Non-custodial measures are attractive purely from an economic and social point of view.

A different argument however is often put forward from some people who believe that many offenders are jobless at the time of their arrest and are not making a financial contribution to society anyway, so it does not make any difference whether he/she is incarcerated or not.

**B. Disadvantages**

1. Risk of Recidivism

It can be argued that non-custodial interventions provide offenders with more opportunities for recidivism. It is acknowledged that whilst incarcerated an offender has less chance to commit crime, however if the offender is released without any rehabilitation or education programmes being provided, the chance of that offender's recidivism is likely to be high.

2. Fear in the Society

Non-custodial interventions may create a sense of insecurity among a community where crimes are prevalent due to commonly held perceptions that all offenders are dangerous and to allow them to mix in society is a risk. This is not supported by the available data and what people forget is that offenders who are imprisoned eventually return to the community at some time anyway, often having learnt more criminal skills whilst they are in prison.

3. Diversion is Often Perceived as a Soft Option

Diversion is often perceived as a soft option and it can lead to a decreasing trust of the criminal justice system. The criminal justice system is based on national trust and legal professionals have an obligation to prove that they and the system are worthy of nationwide trust. Many people believe that early release of offenders is contrary to the best interests of justice and they support tougher penalties even though evidence shows that this does not impact on offending or recidivism rates.

4. Decreasing both the General and Individual Deterrent Effect of Punishment

Many people believe that long periods of incarceration are necessary to make an offender realize the seriousness of the offence and to release the offender at an early stage without a trial may decrease the effect of the deterrent. It is also a public perception that non-custodial sentences lead offenders to hold the judicial system in contempt and to commit more crime.

5. Risk of Revenge by the Family Members of Victims

Some members of the public, particularly victims and their family members may see community-based alternatives to incarceration as a soft option. This may lead to a risk of retribution or revenge from a family when faced with the results of a serious crime.

**IV. PENAL MEDIATION IN THE PRE-SENTENCING STAGE**

In the last decades the lack of attention given to victims of crime has entered the debate on punishment. This interest in victimology has affected the public and judicial reaction to crime. In western European countries recent legislative changes to penal mediation reflects this new approach.<sup>5</sup>

Similarly, the interest of the victim as well as the importance of community involvement is stressed by the United Nations Standard Minimum Rules.<sup>6</sup>

### **A. Using Mediation in Different Fields**

For many observers, mediation is seen as a viable alternative to the traditional formal justice system as it involves real communication between people affected by a crime rather than sterile conversation between lawyers in a courtroom environment. Mediation involves the use of independent persons to assist an aggrieved party to find a compromise in a civilized manner. Some examples of the use of mediation over the last decades involve diplomats negotiating their country's position through a third party such as a United Nations' envoy rather than resorting to warfare.

Mediation is now commonly used in family disputes involving family break up and divorce. It is used to counsel people to prepare them for changes in their roles, duties and opportunities resulting from family disruption. Intervention specialists, family counsellors and therapists are used as mediators in this role.

The act of mediation involves community action and conflict resolution and is a method of ensuring that communication is ongoing and the problems in question are resolved. A further example is its common usage to deal with labour conflicts and improvements to working conditions.

In relation to the criminal justice system, mediation is already an integral part of the juvenile justice system in many countries. Mediation in adult matters is gaining popularity; victim-offender mediation involves community volunteers and criminal justice caseworkers interacting with both offenders and victims to reach a mutual resolution.

Institutional mediation is another example of conflict avoidance and resolution involving students and staff of an institution such as a school or university.

### **B. Penal Mediation in Belgium**

This paper provides an opportunity for a brief examination of penal mediation as used in Belgium. A two-year trial of penal mediation, which involves an informal arrangement, negotiated between the police and the offender, in one region in Belgium. Following the success of this trial, legislation was introduced to formalize this practice. To ensure the success of this initiative, the capacity of the judicial system required reinforcement and this was supported by the allocation of new resources to provide new positions and functions. This programme-support resulted in acceptance of the initiative by prosecutors, and resulted in training, treatment, community service and mediation at the level of the prosecutorial service becoming available options.

In the pre-sentencing stage, penal mediation is seen as a way of diversion. Penal mediation is an effective diversionary tool which aims to restore peace to the affected parties and provide agreed compensation for damage and suffering caused to the victim. It involves compromise and requires all parties to engage in finding solutions to the problem at hand. Penal mediation in the pre-sentencing stage represents a model where victim-offender mediation becomes a legitimate part of the criminal justice procedure. The ability to reach an agreement between victim and offender impacts on the outcome of criminal proceedings as proceedings are permanently stayed resulting in cost savings for the community and the restoration of the community peace.

### **C. Aims of the Law on Penal Mediation**

Penal mediation is designed to take the interest of the victim, offender and the community into consideration. It provides a timely reminder to an offender that he/she has to respect the law, thereby enhancing the procedure and the outcomes of the criminal justice system.

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<sup>5</sup> The victim is also represented in the European Rules on community sanctions and measures (1992) in the preamble. (Reparation for the harm) (Safeguarding the interest of victims) (Rule 30 – responsibility to the community in general and the victims in particular).

<sup>6</sup> UN standard minimum rules for non-custodial measures (1990) e. g. Rule 1.2 and Rule 8.1.

#### **D. Characteristics of Penal Mediation in Belgium**

The decision to mediate a case in Belgium was previously only available to a judge, however with the introduction of penal mediation this authority was extended to include prosecutors. Penal mediation was further refined when prosecutors transferred this authority to the police for specific cases that fit within clearly defined guidelines. These guidelines were defined by a steering committee, which meets every month and issues a public report annually. The committee comprises of prosecutors, police, representatives of the bar association, victims of crimes, and offenders representatives.

Penal mediation is used for serious crimes that required a high degree of community involvement and interaction and using this intervention police have an opportunity to intercede in the criminal justice system by means of an informal arrangement with the offender. If the offender agrees to this arrangement, victims are then invited to participate. Any agreement reached is the equivalent of a civil settlement and no further proceedings can be taken. If a successful outcome is reached, police inform the prosecutorial service of the result, however if penal mediation is not successful the prosecutor can make further attempts to mediate or to prosecute or even to dismiss the matter. Penal mediation is generally informal but may take the shape of a formal agreement in which case charges will be formally dismissed.

#### **E. Advantages and Disadvantages**

##### **Advantages**

Penal mediation provides real advantages to the community in terms of cost savings associated with formal investigation and court procedures. It also reduces the number of cases being tried before a court of law together with the enormous stress on victims and stigmatization of the offenders.

##### **Disadvantages**

A perceived disadvantage of this process is the lack of initial engagement of the victim, which could theoretically lessen regard for his/her rights.

Due to lack of knowledge, there may also be a perception from the public that penal mediation is a soft option to harsher penalties.

#### **F. How to Apply Penal Mediation to Other Countries**

It is important to remember that initially this project, in common with many other projects, faced a low expectation of a successful outcome from all the parties. In reality, the success of penal mediation brought together a number of parties resulting in a successful intervention. The success of the trial phase led to full implementation throughout Belgium following appropriate legislative changes.

In any country, a proposal to change the legal system requires an inclusive process to be developed leading to an initial, fully evaluated trial programme. The evaluation will provide information on the strengths and weaknesses of the trial, allowing the trial project to be enhanced with a view to ensuring the full implementation of such initiative.

In all of the participating countries, penal mediation is not practiced as it is described in the Belgium case. In Japan, prosecutors often encourage offenders of minor offences to apologize and make restitution to the victim by having an attorney act as an intermediary, and make a decision of whether to prosecute or not considering the results. In practice, this serves a similar function to penal mediation in Belgium. In Palestine, mediation is commonly used in family disputes involving family break-up and divorce.

### **V. EXPLORATION OF DIVERSION**

Diversion programmes are considered as alternatives to the criminal justice process. The offender is offered assistance in counselling, medical services, education and vocational training instead of being prosecuted.

### **A. Belgium**

In Belgium, this approach is mostly used to arrive at a simple agreement between offenders and victims to provide restitution or compensation for the harm caused in cases of minor offences. These settlements can take the form of informal agreements thus precluding the necessity of invoking the criminal justice process or they can be formal written agreements, which are considered civil settlements of the cases.

There are victim oriented diversion projects at the level of the local police. In cases of minor offences causing harm and/or damage, police officers can request the offenders to take full responsibility for their actions and arrange settlements with the victims, based on direct or indirect communication between the offenders and victims. Where agreements are successfully reached no further steps will be taken. Following a successful agreement being made, police inform the prosecutorial service of the result of these settlements.

### **B. Australia**

Similar to other countries, in Australia opportunities for community based alternatives to the criminal justice system, also called diversion, occur throughout the criminal justice process. These opportunities are available at the following stages:

#### **1. Pre-Arrest**

When an offence is first detected, a police officer may use his/her discretion to admonish or warn an offender without laying a charge and this completes the matter. This disposition is often applied to juveniles who are warned by a senior police officer in the presence of the juvenile's parents. In relation to certain drug offences such as the possession of small quantities of cannabis, some jurisdictions will issue a cautioning notice, which also contains a health warning.

#### **2. Pre-Trial**

When a charge is made, before the matter is heard at court there are a number of intervention points. In Australia, all offenders are entitled to bail except if they are charged with murder, treason or major drug trafficking offences. At this stage conditions can be placed on a bail undertaking that may include attendance at assessment and treatment centers. "On the spot" infringement notices which consist of a fine are used as an administrative tool to avoid overburdening the court system for a variety of offences including traffic matters, liquor licensing matters and various other summary offences.

Particular types of drug courts that refer offenders to treatment at the charging stage and before a plea is taken are in use in some jurisdictions. A prosecutor also has the capacity to withdraw a matter and refer an offender to treatment facilities rather than pursue a prosecution. Under these circumstances, prosecutors would agree not to take the matter to court as long as the helping intervention process is completed successfully. The prosecutor would act in the belief that the community good is best served by the offender entering into a helping situation, rather than the judicial process

#### **3. Pre-Sentence**

Drug Courts are an example of pre-sentence community-based alternatives where an offender is sent to treatment after pleading guilty to possession or use of drugs but before sentence is passed. A magistrate or judge can use adjournments, assessments and other means to delay or stop proceedings prior to sentencing while the offender is assessed or treated. The defence lawyer can initiate the process. Some diversion systems allow for no conviction to be recorded if the person successfully completes the programme. Sanctions can be built in for non-compliance. A current Australian example is a pilot programme being run through the New South Wales rural center of Griffith.

### **C. South Africa**

In South Africa, diversion programmes essentially try to prevent people who have offended from being imprisoned by providing alternatives to prosecution and conviction. Diversion from the criminal justice system has a dual function: It prevents further exposure to negative influences of the criminal justice process and attempts to prevent further offending by providing a variety of alternative options.

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The existence of diversion programmes in South Africa dates as far back as 1990 where stakeholders were mainly concerned about the number of children being convicted for petty offences.

The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) a non-governmental, community based organisation in partnership with Correctional services, Welfare and Justice Departments are spearheading the diversion programmes for offenders. The prosecutorial department refers young people who committed petty offences to diversion programmes presented by NICRO.

1. The Child Justice Bill

The Child Justice Bill was recently passed in the South African Parliament and is expected to be brought into effect quite soon. Firstly, the Bill provided for the referral of children to diversion, to ensure that children's rights are protected, and that they are not coerced into opting for diversion. The condition of administration for Diversion programmes is defined in the law as follows; with the existence of sufficient evidence to prosecute, the child, with a full understanding of his/her rights, admits the offence. Also it is necessary to get the consent of his/her parents or guardian. The Law regulates the minimum standards applicable to diversion and diversion options:

- (i) No child may be excluded from a diversion programme owing to an inability to pay any fee required for such programme.
- (ii) A child of ten years or over may be required to perform community service as an element of diversion, with due consideration for the child's age and development.
- (iii) Diversion options must:
  - Promote the dignity and well-being of the child, and the development of his or her sense of self-worth and ability to contribute to society.
  - Not be exploitative, harmful or hazardous to a child's physical or mental health.
  - Be appropriate to the age and maturity of the child; and
  - Not interfere with the child's schooling.
- (iv) Diversion options are as follows: life skills include a restorative justice element which aims to heal relationships, the relationship with the victim, and an element which seeks to ensure that the child understands the impact of his or her behaviour on others. It includes victims of the offence, and may include compensation or restitution; and
- (v) Be presented in a location reasonably accessible to children; and children who cannot afford transport in order to attend a selected diversion programme should, as far as is reasonably possible, be provided with the means to do so.

2. Current Diversion Programmes

Today, diversion programmes are primarily used for juvenile offenders although adults occasionally benefit from this service. Most participants are between 14 and 18 years old, although some are older or younger. Upon the completion of a number of hours, this organisation must submit a report to the court regarding the number of hours performed, which would imply that the order would have been executed. Amongst others, NICRO has developed a five-structured diversion programme.

- (i) Youth Empowerment Scheme (YES): a six-part life skills programme that runs over a period of six weeks. It involves 15 to 25 participants and parents/guardians participate in the first and last sessions.
- (ii) Pre-trial Community Service: In lieu of prosecution, the offender has to perform a number of hours agreed to by all the parties and are monitored by NICRO who has to give reports to the public prosecutor.
- (iii) Victim-Offender Mediation (VOM): Victims and offenders are brought together in an attempt to address the needs of both parties.

- (iv) Family group conferencing: These conferences are similar to mediation in certain instances except that they involve the families of both the victim and the offender in the mediation process. The aim is to come to an agreement with the assistance of a mediator/facilitator. Preventing recidivism and stigmatization is the ultimate goal of this programme.
- (v) The Journey: An intensive and long-term programme that involves an outdoor experience for young people.

Upon completion of a diversion programme, the case is withdrawn. A failure to complete the diversion programme results in the case being referred to the court for prosecution. More than 10,000 children and young people were diverted out of the criminal justice system by way of a wide range of diversion programmes, offered by non-governmental organisation which operates in the nine provinces and in partnership with government departments at the provincial and national level.

#### **D. Advantages and Disadvantages of Diversion Programmes**

Diversion programmes can be applied at police, prosecutorial and sentencing stages of the criminal justice process, however examining diversion programmes in the pre-sentencing stage, some advantages and disadvantages can be pointed out in general. These are particular points besides those mentioned in chapter III.

##### **Advantages**

Offenders can benefit from diversion programmes with its specialized services meeting individual offender's needs, e.g. medical treatment, vocational training or education, to rehabilitate and reintegrate into society. Diversion at the pre-sentencing stage provides early incentives for those who need such special services.

Reduction of the number of offenders in the criminal justice system leads to savings in the cost of detention and the avoidance of an overload of trials. Therefore, the criminal justice system can be focused on more serious crimes, and the speed and quality of justice can be promoted.

Police-stage diversion programmes generally depend on police officer's work and decisions, police workload never reduces, nevertheless, these interventions can reduce the cost of detention, trial and correction.

##### **Disadvantages**

###### **1. Due Process**

Since diversion is only available when suspects or defendants are prepared to admit their guilt, there is a perception that offenders may not be afforded due process, which would apply during a criminal investigation and prosecution. They may have to give up some fundamental rights designed to protect them such as the right to a speedy trial, the right to confront the accusers and the privilege against self-incrimination. In addition, as suspects or defendants are diverted without conviction, they may be forced to cooperate with treatment even though evidence is not sufficient to convict them.

###### **2. Net-Widening**

There is a possibility that diversion programmes might unnecessarily control the offenders who would not have received any control in the normal application of justice. In other words, diversion programmes might run the risk of widening the reach beyond the range of criminal justice.

###### **3. Abuse of Power**

If diversion is operated based on the wide and informal use of discretion by criminal justice officials, abuse and misuse of such powers are serious concerns. Especially, when there is a possibility that the procedure to select targets and give them information regarding diversion might be conducted inappropriately and arbitrarily, which seriously violates the right of suspects or defendants.

#### **E. Target Groups**

Through the experiences from the countries mentioned above, common target groups are those who have committed minor offences, juvenile offenders, first time offenders and drug users. Like other

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community-based alternatives, screening of offenders is important. The criteria of screening are: type of offences, age of offenders, seriousness of the offence, degree of crime and tendency of offenders. Although common criteria exist, it is important to take the individual factors into consideration.

Many juvenile offenders have a low crime tendency and are more suitable for diversion. This conforms to the rationale that juvenile offenders need protection and rehabilitation, rather than punishment. For drug offenders, medical services are especially required for rehabilitation. In this regard, experimental diversion might be started with juvenile offenders or drug offenders to acquire acceptance by the public.

#### **F. Process and Procedure of Diversion Programmes**

Most diversion programmes in the pre-sentencing stage are conditional, offenders are required to keep certain conditions, refrain from criminal activities and participate in rehabilitative programmes. Prior to considering adoption or enhancement of diversion programmes, the following factors need to be taken into account:

- It is necessary to give legislative support to diversion to ensure that the police do not abuse their power.
- Several criteria should be considered for the classification of offenders to permit entry to a diversion programme.
- Offenders should admit the offence and give informed consent, prior to entry to the programme.
- Because non-governmental organisations or agencies are often engaged in the implementation of diversion programmes, it is necessary to ensure the privacy of offenders.
- The offender should be guaranteed the chance to receive legal counselling and advice prior to entry to the diversion programme.
- The offender has the right to stop the diversion programme and to go back to the traditional criminal justice system.

Cooperation among relevant organisations and/or agencies relating to diversion programmes is crucial, in order to monitor and evaluate offenders' compliance with the diversion programme, otherwise the programme may fail. If an offender fails the programme, he/she returns to the criminal justice procedure. When introducing or enhancing a diversion programme, slow steps are appropriate. The public will generally observe the result of any new system carefully to ascertain whether it works or not. As mentioned earlier, juvenile offenders or drug users are appropriate target groups for the initial stage of a diversion programme.

#### **G. Treatment Options**

There are a number of treatment options such as: mediation, medical treatment, community service, life skills, vocational training, and group counselling, etc., in a diversion programme.

### **VI. KEY FACTORS REQUIRED FOR THE SUCCESSFUL ADOPTION OF COMMUNITY-BASED ALTERNATIVES TO INCARCERATION**

It has been clearly identified that increasing prison populations is an issue for the majority of countries. There are a number of key initiatives that need to be addressed to impact on this problem. Such an undertaking involves changes to the criminal justices system and to ensure success will require a partnership between all key stakeholders.

This partnership will need to be initiated and maintained and will involve agencies such as those representing the court system, policing, corrections, social welfare, health, education and including governments both at the national and local level. A number of issues affecting community-based alternatives to incarceration are examined in the following:

#### **A. Legislative Framework**

Whilst the implementation of alternative dispositions in the justice system such as Community-based alternatives may be acceptable through policy decisions in developed countries, to achieve a similar result in developing countries would require legislative introduction or change to ensure the

efficacy and acceptability of such a course of action. To achieve such a change it is necessary to provide a clear evidence-base to politicians, the criminal justice system and the general public. This can only be successful if partnerships are developed which involves the timely exchange of relevant information between stakeholders.

### **B. Political Will**

Law and order issues are always popular with politicians particularly when elections are looming and it is common for political parties to advocate a hard line on crime and the criminal justice system. This approach potentially leads to increased prison populations that result in overcrowding. To address this, requires timely evidence to provide politicians of all persuasions with the knowledge to make informed decisions rather than reverting to populist decision-making, and to convince politicians that indeed community-based alternatives are not a soft option on crime. Ideally, political parties would demonstrate bilateral support for this important initiative.

### **C. Public Opinion and the Role of the Media**

In law and order issues public perceptions of fear and danger from criminal acts often drive political outcomes, however it is also argued that politicians can and do affect the public opinion through the effective use of media. Experience shows that engagement with the media is critical to ensure factual reporting of matters, as if the media is unable to ascertain the facts of a matter, journalistic licence is used as substitute. For any successful initiative in the criminal justice arena experience shows a need for timely research-based facts to be available. This information promulgated through the media will influence public opinion.

It must be recognised that the media is a powerful communication medium which needs to be used to its fullest for the betterment of the community.

### **D. Criminal Justice Practitioners**

Criminal justice policy is a combination of the theoretical and operational philosophies of a number of agencies including the police, prosecutors, judges, prison agencies, community corrections and an increasing number of non-governmental agencies. Successful policies to reduce incarceration requires all key stakeholders to have committed themselves to this aim. Collaboration with and assistance from the judiciary is clearly a necessary prerequisite for any changes to procedure which would enhance the use of community-based sanctions.

As in any proposed policy development, the stakeholders have to be brought together to promote policy discussions, leading to decisions as to the direction in which policy should move. A forum for co-operation and the exchange of information could be things such as seminars arranged for the judges and also exchanges of information and cooperation between different agencies. "Any policy of reducing the use of imprisonment and the length of sentences must win the hearts and minds of the judges."<sup>7</sup> The police and prosecuting authorities often exercise a major filtering influence in the criminal justice system, and efforts to provide criminal justice officials with balanced information about imprisonment must certainly extend to the police and prosecuting authorities, in addition to prison and probation services.

### **E. Capacity Building**

The experience of a number of countries demonstrates that effective programmes in the area of criminal justice, welfare, education and health inevitably require capacity building to both initiate or enhance programmes. The provision of adequate resources, financial, material and human is fundamental to ensure success. Whilst funding is important the initial and ongoing training of staff is a key factor.

### **F. Constructive Crime-Prevention Alternatives**

Crime is an ongoing problem for societies in every country. The community is affected by crime and as such the community must play a role in the prevention of crime. Engagement of communities

<sup>7</sup> Walmsley 2001. reference in III. GETTING THE MEASURES ACCEPTED AND IMPLEMENTED in 121th International Training Course UNAFEI by Tapio Lappi-Seppälä, Finland

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through mass media, campaigns and general education efforts is necessary to influence the acceptance of community-based alternatives to incarceration. Community acceptance and involvement in this type of issue must form part of any crime prevention programme instigated by the government.

**G. Utilization of the Voluntary Sector**

It is recognized that the implementation of community-based alternatives to incarceration is an ongoing need and is a labour-intensive option for the criminal justice system. All governments struggle with prioritising community needs including the provision of an effective criminal justice system in terms of resource allocation. An often under utilized resource, particularly in the criminal justice area, is the community. Whilst governments must have a team of paid workers to undertake supervision, counselling and advisory work for criminal offenders, it is clear that many countries do not take advantage of the available work force in community organisations.

There are a variety of community organisations, many of which operate on a national scale that can provide services on a non-profit fee basis.<sup>8</sup> Optimum utilization of such services can be a cost effective option for the government and may assist by providing vocational training, mediation, medical treatment, community service, group counselling, life skills and other services to support the re-integration of the offender into the community. The voluntary sector has the potential to be a critical partner with government in the implementation of community-based programmes. Experience demonstrates that community-based organisations are also extremely effective innovators in the development and enhancement of community-based alternatives. A strong partnership with government will result in effective outcomes for community-based initiatives.

**VII. RECOMMENDATIONS**

**A. General Recommendations**

We arrived at a common recognition that many countries face problems of increasing prison populations and prison overcrowding.

One of the goals of the criminal justice system is the rehabilitation and reintegration of the offender into society. Prison overcrowding is not desirable as it creates difficulties for the proper implementation of the United Nations Standard Minimum Rules for the treatment of prisoners.

Thus, in order to curb increasing prison population and prison overcrowding, and to promote rehabilitation of offenders and their reintegration into society, the importance of utilizing community-based alternatives to incarceration must be emphasized. Therefore, the police, the prosecution or other agencies dealing with criminal cases should release the offender at the earliest possible stage if they consider that it is not necessary or possible to proceed with the case at that time.

However, the protection of society, the interests of the victim and the credibility of the criminal justice system with the public should never be compromised. The basic human and civil rights of the offenders, subject to community-based alternatives, must also be strictly respected.

Thus, implementation and enhancement of community-based alternatives at the pre-sentencing stage such as diversion programmes must be discussed based upon the following conditions;

- The application of community-based alternatives to incarceration should be implemented based on a clear standard prescribed by the law or other regulations.
- Community based alternatives must only be applied when it is considered that there is no imperative to proceed with the case for the protection of society.
- Crime prevention and the promotion of respect for the law and the rights of victims should correctly be considered in the context of community-based alternatives.

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<sup>8</sup> Zubricki, 2002 "Community-Based Alternatives to Incarceration in Canada" at the 121st International Training Course of the UNAFEI

- Discretion by the judicial or other competent independent authority must be exercised only in accordance with the rule of law and must never be abused.

## **B. Recommendations for each Participating Country**

### 1. Haiti

In the 21st century Haiti's justice system still doesn't have any community-based alternative to incarceration. The non-custodial measures available can only provide part of the answer to our current prison-overcrowding problem, we have opportunities to address this issue at the pre-sentencing stage of the criminal justice system:

- Because our legislature is in the process of reforming and improving the laws, there is a real opportunity to introduce other non-custodial measures, specially community-based alternatives to incarceration.
- Introduction of such measures should acquire commitment by the Executive with the help of the Police to provide educational and awareness programmes for members of the judiciary and the general public.
- A partnership between non-governmental community-based organisations (e.g *Foundation Aristide pour la Democratie en Haiti*, COHADDE, Foundation 30 September, USAID) and the governmental agencies (e.g Office du protecteur des citoyens, secretary of public security, bureau of Social-Affairs, APENA) will be required to design a plan and implement a programme of this nature.
- Special reports, including statistics provided by a credible agency (e.g *institut des statistics et d'informatique*), should be available to the media as part of a public awareness campaign. In order to increase community awareness and gain the public support regarding the issue of prison overcrowding.
- Community-based alternatives (e.g Penal mediation, different types of diversion programmes) can provide a solution to existing problems in Haiti with respect to our culture and social life.
- The study of other countries experiences with community-based alternatives to incarceration provides positive evidence for the value of this type of approach.
- Penal mediation can be used especially in land conflicts.

### 2. Japan

Currently, Japan has no official community-based alternative systems at the pre-sentencing stage; however, the suspension of prosecution is currently actively used on a practical basis. We would like to make the following recommendation for utilizing the suspension of prosecution system as a community-based alternative that facilitates offenders' rehabilitation and reintegration into society.

Set up a mechanism for providing supervision and support to an offender under consideration for suspension of prosecution, by revising the Offenders Rehabilitation Law and other related laws and regulations.

At present, an aftercare service system for discharged offenders based on the Offenders Rehabilitation Law exists; however, this system is not very effective in terms of rehabilitation of offenders. Because, under the current system, whether an offender seeks assistance from a probation office upon suspension of prosecution is totally up to him/her and there is no way to supervise him/her. The only thing a prosecutor currently can do is to encourage an offender, subject to suspension of prosecution, to seek assistance from a probation office.

Therefore, the possible need for setting up a mechanism, with which a prosecutor can refer, when it is deemed necessary, the case to the probation office for rehabilitative programmes for a certain period of time prior to making a decision on suspension of prosecution, should be considered. Rehabilitative

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programmes provided by the probation office should include both aspects of supervision and support. Under this system, cooperation between prosecutor's offices and probation offices should be strengthened and depending on the offender's performance in the rehabilitative programmes, a prosecutor can determine whether the case should be prosecuted or not.

3. Palestine

Currently, Palestine has some community-based alternatives. These alternatives can provide a temporary answer to the transitory current situation of conflict and low number of incarcerated inmates. For enhancing the community-based alternatives in the pre-sentencing stages, some recommendations can be presented:

- Since Palestine is in the process of legislating its own laws, the mission of introducing community-based alternatives to incarceration can be made easily.
- Penal mediation and diversion can provide an appropriate answer to the problem of incarceration in the pre-sentencing stage in Palestine. Especially, when considering the culture and social life of Palestine.
- The law of arbitration (*issued by the Palestinian Legislative Council PLC – May 2000*) can provide a good basement to introduce penal mediation and diversion.
- A partnership must be developed between the official governmental agencies and the non-governmental community-based organisations in the process of adopting community-based alternatives in the pre-sentencing stage.
- Education and awareness programmes to the different players in the justice system. Also, similar programmes to members of the legislature.
- Publish special reports and statistics on the current and the expected situation of the prison population, in an attempt to lobby the public and to increase the public awareness of the incarceration problems.
- The police department must lead the process of adopting community-based alternatives in the pre-sentencing stage.
- Study the experience of other countries that have adopted community-based alternatives.

4. South Africa

There are currently few available community-based alternatives during the pre-sentencing stage in South Africa. Even those that are available are not fully utilized to realize the maximum goal of community-based sanctions as opposed to imprisonment. It is from this background that the following recommendations are made:

- In South Africa, diversion programmes are primarily used for juvenile offenders and are used minimally for adult offenders. Whereas in other countries, these services are available for both young and adult offenders. Initiatives to extend diversionary programmes to include adult offenders are a dire necessity.
- There are a number of offender reintegration services available in South Africa, but these are fairly isolated and mostly do not provide a comprehensive service that begins before sentencing and continues until after release. Therefore efforts should be made for the expansion and continuity of such services.
- The National Institute for Crime Prevention and the Reintegration of Offenders (NICRO) a community-based organisation, currently administers most of the pre-sentence diversionary programmes. Few if any other agencies in our country render such services. Therefore a need exists for Mobilization of Community based organisations to develop and render more diversion

programmes, particularly at the pre-sentencing stage. This will enhance the usage of community-based alternatives by the judiciary, as there will be a variety of agencies available at their disposal.

- Community organisations are an important component for the effective community-based treatment of the offender. Moreover, their importance lies in the fact that they can supplement government efforts. Since the government is unable to meet all the necessary rehabilitation requirements on its own. Community organisations could be sharing government's responsibility towards the treatment of offenders. Therefore, the existing partnership between government agencies and non-governmental organisations should be strengthened.
- As the South African government has embraced the Restorative Justice Approach, a thorough study and possible development of penal mediation could be considered. This would assist to fast track the current delays in the judicial system and alleviate prison overcrowding.
- Lastly, public awareness and education to all sectors of the society including magistrates and politicians regarding the community-based alternatives should be conducted.

##### 5. Saint Vincent and the Grenadines

The contemporary type of diversion as is known in Belgium and Australia is non-existent in Saint Vincent and the Grenadines. At present officials within the judicial system use the traditional type of diversion coupled with the exercise of their discretion where necessary to divert the most deserving cases away from the criminal justice process. Minor offences involving juveniles, the mentally impaired and others which can be classified as trivial are some of the cases which are diverted in this way. Due to the high cost of maintaining an overcrowded prison, there is now an urgent need for the enactment of legislation to take on board community-based sanctions as alternatives to incarceration at all stages of the criminal justice process. For the purposes of this paper the recommendations will focus on diversion at the pre-sentencing stage and are as follows:

- The first hurdle is to convince the politicians and policy makers that incarceration is not the main answer to 'get tough' on crimes. This could be done by comparing the advantages and disadvantages of incarceration and community-based sanctions. Referring to statistics such as those from Finland.
- Representatives of the media must be updated and informed of the proposed system in order to gain their support.
- Public debate will be encouraged on the issue discussing the merits and demerits of incarceration on the one hand and diversions on the other.
- Academics and intellectuals should be drawn into the debate, since they are very influential in the way public opinion is formed.
- A feasibility study must be carried out before implementation. Possibly a pilot programme initiated in order to see the system in action.
- There must be training of officials involved in the justice process; police, prosecutors, judges and magistrates and in other fields such as the social and health services.
- Encourage the development of partnerships between the police and non-governmental agencies such as Marion House and SVG I CARE.
- Guidelines must be issued to police officers in order for them to determine which offenders are eligible for diversion.
- The legal draftsman must ensure that the legislation when enacted must not have a 'net widening' effect (i.e. it must exclude those who would not be prosecuted anyway).

## GROUP 2

### ENHANCEMENT OF COMMUNITY-BASED ALTERNATIVES TO INCARCERATION AT THE SENTENCING STAGE OF THE CRIMINAL JUSTICE PROCESS

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#### I. INTRODUCTION

The group considered the topic of enhancing community-based alternatives to incarceration at the sentencing stage of the criminal justice process for discussion and the preparation of a report. The group consisted of eight participants from five countries. It was composed of four Japanese officials including an assistant judge, public prosecutor, probation officer, and a specialist in psychological assessment from Japan, a judge from Indonesia, two police officers from India and Maldives respectively and one correctional official from South Africa. It was assisted by advisors from Canada and Korea.

The group discussed available community-based alternatives at the sentencing stage of the criminal justice process as illustrated by current practices in each country. In addition, the group critically examined the advantages and disadvantages of various community-based alternatives. There will always be cases where custodial measures will be necessary as well as cases where community-based alternatives would be the most appropriate choice at the sentencing stage. Judges grapple with this issue daily in deciding which of the available alternatives to invoke. Therefore, this paper also seeks to suggest how to enhance community-based alternatives at the sentencing stage of the criminal justice process.

#### II. COMMUNITY-BASED ALTERNATIVES

##### A. What are Community-Based Alternatives?

Definitions of community-based alternatives are many and varied. In this paper, the term is defined broadly as referring to *any court-ordered sanction that occurs in the community, particularly where it provides an alternative to a custodial sanction*. Such programmes often include supervision of convicted offenders, provision of various services to them, monitoring, encouraging and enforcing compliance with sentencing conditions such as payment of fines, victim compensation, community service and restitution orders and provide for an element of punishment through increased control and accountability while in the community.

The term community-based alternatives includes many of the measures identified in the U.N. Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules, 1990) which were promulgated to encourage Member Nations to use non-custodial measures in appropriate cases. Those non-custodial measures refer broadly to sanctions for an offence that require an offender to remain in the community and to comply with certain conditions.

From the foregoing definitions, it is clear that there are many forms of community-based alternatives to incarceration. What they all have in common however, is a belief that prison is not the best way to deal with many offenders, particularly those who pose a low or manageable risk of re-offending.

#### **B. What are the Purposes of Community-Based Alternatives?**

There are various purposes of community-based alternatives among which are:

- a. To reduce overcrowding in prisons and prevent escalation of detention costs;
- b. To ensure public safety and security through effective supervision and control over offenders who serve their sentences in the community;
- c. To prevent or reduce offender stigmatization;
- d. To enhance rehabilitation and reintegration of offenders into the community in order to strengthen their ability to live peacefully with others in the community setting;
- e. To permit the offender to contribute towards his or her family in particular and to society by working instead of being confined in prison or jail;
- f. To avoid the risks of family break-up due to separation during incarceration;
- g. To avoid an escalation in deviant behaviour when new offenders are mixed with hardened criminals;
- h. To monitor and supervise offenders in order to ensure compliance with court –ordered conditions and programme requirements.

### **III. ANALYSIS OF THE CURRENT ADMINISTRATION OF COMMUNITY-BASED ALTERNATIVES**

The current utilization and administration of community-based alternatives at the sentencing stage was analysed. Advantages and disadvantages were also identified. Please refer to the appendix for the available community-based alternatives in the participating countries.

#### **A. Verbal Sanctions such as Admonition, Reprimand and Warning**

Where permissible courts, may pass verbal sanctions such as admonition, reprimand, warning or caution to the offender instead of sentencing him/her to any punishment.

This option is usually imposed on the offender whose offence is trivial and risk of recidivism is low such as a first time offender, traffic violator and juvenile delinquents who the court believes can be rehabilitated by him/herself. It is assumed from the beginning that he/she would not receive a sentence of imprisonment. Therefore, strictly speaking verbal sanctions may not be community-based alternatives to incarceration. However, these measures are widely used at the sentencing stage as well as at the pre-sentencing stage in some countries such as India (Admonition and warning) and South Africa (Caution and a discharge). In Canada, Admonition is not so widely used because usually those cases, which are suitable for verbal sanctions, are already diverted from the criminal justice process at the pre-sentencing stage or receive unconditional discharges following a finding of guilt.

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The common practice is that notice of the verbal sanction is given to the offender as an official document. Whether a record will be created however, differs among countries.

In India, these records are not provided to the public. Hence, they cannot be used against offenders. In South Africa, if the court warns the offender, the conviction is recorded as a previous conviction. In Canada, a discharge does not result in the creation of a record.

One of the advantages of these measures is that the offender continues to lead a normal community life with minimal intervention by the criminal justice system. He/she can maintain his/her productive employment and contribute to the economy of his/her community.

Disadvantages are that some offenders may not be supervised properly after verbal sanctions by the court. Nevertheless, it is believed that there is a deterrent value for the offender to be given a verbal sanction by the judge. These measures are most suitable when imposed at an early stage in terms of the offender's interests and costs.

In Japan, a similar measure is operated for juvenile delinquents. The family court has the primary jurisdiction over dispositions of all juvenile cases. When the family court considers that admonition and advice by the judge and the family probation officer is sufficient for his/her rehabilitation, the case will be dismissed after hearing.

Participants recognized verbal sanctions as a useful sentencing option for countries to consider.

**B. Economic Sanctions and Monetary Penalties, Such as Fines**

The courts may order the offenders to pay a certain amount of money as a criminal penalty.

This option is usually used for offenders convicted of wide range of minor offences including traffic violations. This option (fine) is widely used in all participating countries.

In South Africa, the court may sentence a person to imprisonment with the alternative option of paying a fine. The court will stipulate the amount of the fine and the date by when it should be paid. The court may also suspend the payment of the fine for a stipulated period on condition that the accused person is not convicted of the same offence during that period. In addition, the Criminal Procedure Act allows the court, in cases of imprisonment for a period of three months or less to combine it with a fine to reduce the term of imprisonment.

In all countries, default of payment of a fine normally results in a specified period of imprisonment.

One of the advantages of this option is that it punishes the offender by taking money from him/her, without resorting to incarceration. This option needs comparatively less manpower and budget to implement, although there may be a problem in collecting payment when the offenders do not pay. In the final analysis, however, fines and monetary penalties are a revenue source for the state. In Japan like some other countries, heavy monetary penalties are imposed to deter profit motivated economic and environmental crimes.

A disadvantage is that the offender may be made to serve a term of imprisonment when he/she cannot pay his/her fine. But in Canada, the offender can be offered the option of performing community service work instead of paying a fine. In South Africa, a community service order is available for similar cases. In some European countries, a system of day-fines is used which gears the amount of the penalty to the income of the offender.

Where they exist, community service orders and a system of day-fines are effective options to avoid incarcerating minor offenders who cannot afford to pay a monetary penalty.

Participants viewed economic sanctions as a useful sentencing option for countries to consider.

### C. Restitution or a Compensation Order

The court may order the offender to pay compensation to the victim of crime for any personal, loss and damage resulting from the offence.

The present criminal justice systems in a majority of the countries, focus primarily on actions to be taken against an offender who has committed a crime and limited consideration is given to the victim. Often the victim is the only affected person who has suffered psychologically, physically and economically. Hence, it is incumbent on the offender, society and criminal justice system to recognize and provide appropriate compensation to the victim to reduce the harm they have experienced. This restorative philosophy has been accepted by some of the countries as an important element in their criminal justice systems.

These measures are used in both India and South Africa. In India, when the court directs the release of an offender on probation, if it thinks fit, it can direct the offender to pay compensation for loss or injury caused to any person by commission of the offence. It can also direct the payment of costs of the proceedings as the court thinks reasonable. To assess the quantum of compensation, it is purely the discretion of the court to allow compensation and costs as it thinks reasonable in a particular case. However, there is limited application of the provisions of the Probation of Offenders Act, 1958. In South Africa, a court can impose a sentence of imprisonment or the payment of compensation.

The major advantage of these measures is that the victim of the crime can be assisted and better satisfied with the judgment thus reducing the chance that they will continue to feel aggrieved.

A disadvantage is that it is often difficult for a criminal court to determine the appropriate amount of compensation to be paid to the victim of crime for damages and loss. In addition, when an offender cannot afford to pay compensation to the victim, the court may have no option but to impose another sentence involving incarceration.

During the group workshop, it was generally agreed that restitution and payment of compensation are very important measures but require suitable legal authority to be implemented in the legal systems of participating countries.

### D. Suspended Sentences

Most participating countries utilize some form of suspended sentence. The Court may impose a sentence of imprisonment upon an accused found guilty of a crime and may suspend execution of the sentence in some cases with/without conditions. In Indonesia, suspended sentence with conditions that are unsupervised are referred to as a Conditional Sentence. Probationary supervision when ordered as one of the conditions will be discussed later.

In all countries the minimum conditions are that the offender does not commit a similar new offence during the suspension period. The sentences that may be suspended and duration of the suspension period are set out in the following table.

Country	Maximum Sentence	Minimum suspension period	Maximum suspension period
India	10 years	Unlimited	3 years
Indonesia	1 year	Unlimited	2 years
Japan	3 years	1 year	5 years
Maldives	3 months	Unlimited	1 year
South Africa	Unlimited	1year	5 years

In all participating countries, when a court convicts a person of an offence it may pass a sentence but suspend the operation of the entire sentence for a period of up to five years, usually on some

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condition. Most often, the court suspends the sentence on condition that the person does not commit another offence during the suspension period.

Suspended sentences allow the offenders to continue their normal activities in the community, maintaining family contacts and meeting social obligations. The offenders are also protected from possible negative effects of imprisonment and are given a chance of becoming a law-abiding citizen. Suspended sentences mean that the offenders remain in society without restrictions. Normally rehabilitation and reintegration is expected based on the offender's character and social resources.

Suspended sentences help reduce overcrowding of prisons although some view them as inappropriately lenient particularly where suspended sentence are used without thorough screening.

Nevertheless, the participants agreed that suspended sentences are useful sentencing options which could be expanded in those countries where their use is limited.

### **E. Probation and Correctional Supervision**

Probation and Correctional supervision are methods of implementing a wide range of community-based alternatives to incarceration. They allow sentences of detention in correctional institutions to be suspended with specific conditions including supervision. They facilitate the implementation of a wide range of community-based sentencing options.

Offenders, who are placed under probation supervision, are guided in the observance of specific conditions and given support and surveillance by probation officers, while leading lives in society. In the case of a violation of the conditions of probation during the probationary period, the court may revoke the probation order and set a sentence for the original offence or for the offence of "breach of probation" or may render some other decision resulting in incarceration.

These measures are used widely in many countries including India, Japan and South Africa. However, the use of these measures varies from country to country.

In India, as per the provisions of the Probation of Offenders Act, 1958, these measures can be applied to offenders who have committed minor crimes for the first time. They can be released on probation with the supervision of probation officers. Offenders may be released on probation without the supervision of probation officers on condition that they promise to conduct themselves well. However, due to its limited enabling statutory framework these measures are seldom used in India.

In Japan, these measures apply to offenders where execution of the sentence has been suspended on condition of probation. They are put under probation supervision from the date of the final adjudication until the end of the suspension of execution of the sentence.

Suspended sentence with probation may be given to a repeated offender, if the sentence of imprisonment with or without labour is for not more than one year, and if he/she committed a second offence during a previous suspension period only when the previous suspension was not accompanied by probation.

A further suspended sentence is not allowed for offenders who were given a previous suspended sentence with probation. Therefore, a suspended sentence with probation is considered to be a heavier sentence than the one without probation. These sentences may be used in a step by step fashion according to the mitigating/aggravating circumstances and the risk of re-offending. Thus in some cases suspended sentences with probation might not be reflected from the necessities of rehabilitation in the community.

As per the statistics for 2000, the number of persons who were sentenced to imprisonment in Japan in ordinary trials was 66,526. The number of persons who were given probation was 4,429 (about 6.7%). Japan makes extensive use of volunteer probation officers to supervise offenders effectively.

In South Africa, the court may impose a sentence of correctional supervision for up to three years. The sentence of correctional supervision must include the following conditions:

- placement under house arrest;
- performance of Community Service for a certain number of hours in a community project;
- participation in treatment programmes, for example, treatment for drugs or alcohol abuse or participation in a training programme which will help him/her find work; and
- the payment of victim compensation.

The court may also order additional conditions at its discretion.

In South Africa, a probation officer or a correctional official must submit a pre-sentence evaluation report before sentencing. In India and Canada, a pre-sentence assessment report is prepared by the probation officer at the direction of the court, whereas in Japan and in Indonesia pre-sentence assessment reports are used for juvenile cases only. In Maldives, there is no provision for such reports.

A pre-sentence (evaluation) report is widely used in some countries, such as South Africa and Canada. However, in India, it is not so widely used because of a shortage of human resources and limited application of the Probation of Offenders Act, 1958. In Indonesia and Japan, it is widely used in the case of juvenile delinquents.

The supervising probation officer may take action to ensure compliance with court ordered conditions in some countries. In the case of non-compliance with a probation order, it may be revoked and replaced with another sentence, in South Africa. However, in other countries such as Canada and India, when a probation order is revoked, it will result in incarceration.

Probation is less costly than prison while providing a significant degree of assistance and support to the offender in the community.

Although failure to observe conditions that do not involve a new offence may lead to incarceration, some critics consider probation as too lenient. In addition, some countries lack well-trained probation officers due to budgetary constraints.

Participating countries agreed that adequate probation services are essential to the enhancement of community-based alternatives.

#### **F. Community Service Order**

A community service order is an order of a court that punishes offenders in the community. The court may order offenders to perform a specified number of hours of unpaid work for the benefit of the community instead of sentencing them to a term of imprisonment. Before making a community service order the court must clearly explain to the offender the following:

- the purpose and effect of the order,
- the consequences which may follow if he/she fails to comply with any requirement, and
- the court will review the order if there is any change in circumstances.

A community service order is imposed on offenders who have committed offences punishable by imprisonment. Additionally, this measure may be used in cases of default of payment of monetary penalties and those who have committed minor or petty offences. In South Africa, this option can be used as an independent sentencing alternative to short-term imprisonment. In some countries such as Canada and Korea, a community service order can be used as supplementary to other sanctions such as imprisonment, fine or probation. This option is used widely in the above countries.

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The administration of community service orders varies from country to country. In both Canada and Korea, probation services are charged with the responsibility of supervising offenders who serve community service orders. Supervision by the probation service is obligatory for community service orders. This kind of supervision entails a duty to check on the fulfillment of the obligation to work. Minor first time violations of the conditions may lead to a warning by a probation officer. On the other hand, the court will hand out more serious penalties if it is satisfied that the breach is serious. In South Africa in some cases, the direct supervision of offenders on community service orders is done independently by the supervising agencies and not by the Department of Correctional Services. This arrangement has reportedly proven to be insufficient to ensure that conditions of the order are met.

In most countries such as Canada, Korea and South Africa, failure to comply with this order will constitute a breach of probation or a community service order. In cases of a breach of a community service order, the court may issue a warrant for the arrest of the offender. If the court is convinced that the offender has failed without reasonable excuse to comply with the order, it may fine him/her or commit him/her to imprisonment.

The advantages of community service orders are: the community can benefit because some form of restitution is paid by the offender, offenders benefit because they are given an opportunity to rejoin their communities as a law-abiding and responsible member, the courts benefit because sentencing alternatives are provided and offenders sentenced to community service orders may be individually placed where their skills and interests can be maximized for community benefit.

A community service order can be a valuable alternative in cases where a monetary penalty such as a fine, restitution or compensation order is not practical due to the limited income of the offender. It also offers unique therapeutic opportunities both in terms of involving the offender in regular work patterns which may be unfamiliar to him or her, and in a wider array of pro-social models and relationships than he or she may have previously had access to.

The disadvantages of community service order include amongst other things: the court may impose a custodial sentence if offenders do not satisfactorily comply with this order; the administration of community service orders require administrative oversight that may exceed the capacity of non-governmental organisations to provide and public exposure may result in stigmatization.

Participants regard community service orders as meaningful sentencing option, if probation services or correctional services and any other governmental agencies are involved in the administration and management of community service orders. Therefore, community service orders should be considered by those countries, which are not applying them yet. Finally, countries, which have applied these measures, should further enhance them to be more effective and efficient alternatives.

### **G. House Arrest**

This is a form of punishment that requires the offender to remain in his/her own home with certain restrictions.

This option is widely used in South Africa and Maldives as an alternative to incarceration during the pre-sentencing stage but there is no common practice of this option in these two countries.

In South Africa, house arrest is used as a condition of correctional supervision. It is not an independent sentencing option if a person is under house arrest. He/she can work, earn income, visit people and receive visitors with prior approval from the supervisor. However, in Maldives this option is an independent sentencing option. If an offender is placed under house arrest his /her movement is restricted to his/her home only and he/she cannot go out to work or far away, except in medical emergency cases. Therefore, this is a more strictly controlled alternative sentence to incarceration than other community-based sentences.

The offender placed under house arrest may continue his/her normal life with a family and help to reduce prison overcrowding.

House arrest strictly restricts the offender's movement. Finally, it prohibits his/her association with undesirable elements but also can lead to job losses.

It is recommended that the laws, which are currently governing this measure, be made sufficiently flexible to allow positive social interaction and ensure that it is an actual community-based alternative to incarceration.

#### **H. Referral to a Treatment Center**

In Maldives and South Africa, a court may order an offender to undergo treatment at a rehabilitation center. He/she may perform work, undergo physical training or attend education classes and as far as possible he/she may avoid interference with working hours or school attendance.

This option generally is used for the offender who abuses drugs.

In South Africa, to require the offender to undergo treatment, several requirements must be met. There must be evidence of an offence and a probation officer's report recommending treatment. In Maldives, it is not necessary to meet such requirements.

In South Africa, the court can postpone the order of treatment for a period, but not in Maldives.

The advantage of this option is that offenders are able to undergo treatment and are encouraged to abstain from using drugs/alcohol.

However often there are few rehabilitation centers due to lack of resources.

Treatment orders are a desirable concept, but to implement them member nations will have to consider the availability or creation of treatment centers.

#### **I. Banishment**

In Maldives, banishment is an available sentence, which occurs in the community and is widely used. The court may order the offender to be re-located to an inhabited island from his/her native island for a specified period. His/her movement is free within that island and the chief of the island has the responsibility to monitor him/her for the duration of the sentence.

One of the advantages is that banished offenders can continue to lead a community life and some offenders would be able to establish new relationships with the local community. On the other hand, although the chief of the island monitors offenders, professional supervision and guidance such as counselling is usually unavailable. Sometimes, banished offenders may impact negatively on the local community by continuing to commit crimes. Therefore, this measure is currently under debate by the concerned authorities.

In Japan, some juvenile delinquents leave their community and live in their employer's house for a certain period under the tentative probationary supervision by the family court probation officer. Sometimes a change of residence is a good opportunity for an offender to improve his/her lifestyle and social relationships but removal from one's home community can seriously disrupt established positive social relationships and should be used with great caution.

### **IV. RECOMMENDATION FOR THE ENHANCEMENT OF COMMUNITY-BASED ALTERNATIVES AT THE SENTENCING STAGE**

The safe use of community-based alternatives to incarceration for appropriate offenders, offers the general advantages that they:

- Reduce upward pressure on prison populations and costs
- Protect public safety as effectively as prison
- Reduce stigmatization
- Promote social reintegration of offenders

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- Prevent recidivism.

To develop and maintain a successful system of community-based alternatives, a criminal justice system should have:

- A wide array of community-based alternatives programmes available in the community
- A wide array of flexible sentencing options available to the court
- A system to assess offenders and available community-based programmes to assist the court in matching appropriate offenders with appropriate sentencing options and community-based alternatives
- A system to effectively coordinate, administer and supervise the sentences of offenders in the community.

An adequately resourced probation service helps achieve the foregoing by coordinating community-based alternatives programmes, providing pre-sentence assessments to the court to assist with sentencing decisions and to provide assistance and supervise compliance with conditions while offenders are under probation supervision. Together with the development of innovative community-based alternatives like Community Service Orders, Member Nations can realize significant improvements.

#### **A. Probation Services**

The creation or expansion of probation services may appear to be deceptively costly. However, when measured against the social and financial cost of not doing so they may be seen as a wise investment, particularly where extensive use of volunteer probation officers is feasible. Their costs are easily offset by avoidance of the over-reliance on incarceration due to the lack of sufficient community and sentencing alternatives, more successful outcomes of effective matching of offenders with sanctions and the improved quality of pre-sentence information on which courts can base their decisions without increasing (or even decreasing) the workload of prosecutors and other court officials.

In addition to counselling, monitoring and managing the cases of individual offenders, probation services can engage in community development work. They can be instrumental in mobilizing existing community resources and establishing new community correctional programmes like halfway houses, recreational, social programmes and specialized correctional treatment programmes in areas such as substance abuse and domestic violence. As well as contributing to the treatment of offenders, such programmes can help reduce the pressure on police who often end up by default working with unsupervised offenders in the community.

Well managed and properly trained probation officers also provide a valuable service to courts in making sound decisions about the appropriate sentencing options and community-based alternatives for certain offenders.

#### **B. Information to the Court and Pre-Sentence Assessment**

Courts often have limited relevant information about the circumstances of offenders that appear before them. Even when they have considerable information before them it is often assembled for a purpose other than sentencing i.e. to determine guilt or innocence during an adversarial process. Sometimes such information will contain an objective assessment of the risk posed by the offender or about the availability of feasible treatment options that the court may consider. Probation services typically have the skills, training experience and knowledge that allows them to provide such information to the court, when requested to do so.

On the one hand the risk posed by the offender can be systematically assessed even using specialized actuarial risk-assessment techniques and on the other the availability and appropriateness of various community alternatives can be assessed and balanced against custodial options. In countries where pre-sentence reports already are in use, their expansion and improvement should be considered since their usefulness is often compromised when full investigations cannot be conducted due to insufficient resources. Pre-sentence reports can help reduce the burden on prosecutors and the court while improving the ability of judges to make appropriate and proper sentences.

In such countries where pre-sentence reports are not available now, they are encouraged to review their system and make it more effective to collect information for the courts to arrive at an appropriate sentence.

It is also suggested that there is a further need for better coordination through regular meetings/conferences and the exchange of information among police, prosecutors, judges and probation officers regarding information about the offender.

### **C. Community Service Orders**

Community service orders are an example of an innovative community-based alternative that can be facilitated by the probation services and in which pre-sentence reports can help judges to decide whether and when to use them.

To be successful community-based alternatives require a network of participating organisations with which liaison must be maintained and a method to coordinate the assignment of offenders to these work placements, to monitor their work performance, to counsel offenders and adjust assignments as necessary and to report reliably and objectively to the court. This is usually done by a probation or correctional official. Other models that rely on unsupervised work assignments, such as one model practiced in South Africa, may be unreliable and therefore not credible in the eyes of the court and others.

Canada reported good success with community service order systems that are managed by the probation services. Although community service order programmes are comparatively more work intensive than simple probation supervision, they are the less costly alternative where incarceration would be the only other alternative to pay a fine. Canada reported the introduction of community service orders originally as a “fine option program” to help reduce the number of offenders in custody due only to defaulting on the payment of a fine.

Other nations reported the lack of community service orders in their systems but there was general agreement that such a mechanism would be a welcome addition to the statutory options available to their courts. Those who already have probation services might find it easier to introduce such measures. Those countries that do not now use pre-sentence reports would have to consider ways to provide reliable and timely information to sentencing courts on the availability of suitable programmes that match the particular circumstances of particular offenders.

Whether considering the introduction, development or expansion of community service order programmes, participants raised questions about the availability of resources to do so. In general, the expanded use of community service orders should prove to be cost-beneficial to criminal justice systems by helping ease the over-reliance on imprisonment. However there is not now an abundance of cost analyses or evaluations of such programmes and each country would need to examine its own situation to confirm the steps that would be required to effectively implement community service orders. At the same time further research on the effectiveness of these measures is required.

Nonetheless it was generally agreed that Member Nations should be encouraged to consider the introduction of community service order programmes.

## **V. CONCLUSION**

Prison crowding is above all the result of over-reliance on sentencing options and sentencing rules that lead inexorably to the prison gates. In some countries this pattern continues in the face of the same declining rates of crime and recidivism achieved by other nations who rely far less on imprisoning their citizens. In some other cases where crime rates appear to be rising, many believe prison to be the only credible deterrent despite decades of research that proves that increased punishment including escalating rates of imprisonment do not result in increased deterrence of crime.

Recent evidence (Gendreau et. al., Canada 2002) confirms that community based sanctions are at least as effective as imprisonment in preventing repeat offending. Indeed, it was found that the highest

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risk offenders receiving the longest prison sentences had their rate of recidivism increased by as much as 7%. Without this knowledge before them, many political and public movements believe that the only effective response to crime is ever-tougher measures despite the social and capital cost of such policies.

The international working group of officials assembled at UNAFEI in Tokyo 2002 concluded otherwise. We concluded that there are many credible and effective community based alternatives to imprisonment, all of which are practiced in at least some of the participating countries, that may be adopted and expanded in nations who are concerned about affordable, humane and above all effective correctional measures.

At the sentencing stage of the criminal justice process where sanctions are determined on a case by case basis, it was seen as imperative to offer a sufficient array of flexible sentencing options that can lead down a path to the community as easily as to the prison in those cases where it is safe to do so. We examined a wide range of community based – or at least non-custodial – sanctions and concluded that they all may be considered as available sentencing options as per the requirements of the individual country. We examined verbal sanctions (including warnings and admonitions), monetary penalties (fines), victim compensation and restitution orders, suspended sentences with and without conditions, probation and correctional supervision, community service orders, treatment orders, house arrest and even banishment in the context of the unique circumstances of Maldives. We concluded that these all (with the possible exception of banishment) have a place in a modern and effective criminal justice system.

They all hold out promise of controlling recidivism when the right offenders are matched with the right sentencing options and when community based programmes are adequately resourced and administered with integrity. We concluded that possibly the most important measure to be considered by any nation is the creation, expansion or consolidation of an adequately resourced and trained probation service. Probation services can be instrumental in both assisting courts in choosing appropriate sentencing options for each offender by providing thorough pre-sentence assessment reports. Moreover, probation services facilitate the creation, coordination and management of community-based programmes and of individual cases to breathe life into the sentence of the court and to help ensure compliance with the court's expectations and conditions. In the final analysis good communication and coordination within and among criminal justice systems is the best guarantee of implementing measures effectively.

Probation services and the community-based alternatives are inexpensive when compared to custodial options. By helping reduce the need to construct and operate new prisons, high capital and on-going costs can be avoided. Social costs can also be avoided by keeping offenders in the community, close to family and employment as well as to a wide range of positive social relationships and influences. As individual failures including re-offending are inevitable, the rate of recidivism – or put another way, the threat to public safety – is as low or lower than that posed by offenders released following prison sentences.

Ultimately the representatives of participating countries concluded that all nations should be urged to adopt community based alternatives that can be utilized by sentencing courts and facilitated by well-resourced and managed probation services.

APPENDIX

Presently Available Community-Based Alternatives

No.	Sentencing stage	India	Indonesia	Japan	Maldives	South Africa	Canada	Korea
1.	Verbal sanctions (e.g. admonition, reprimand, warning, caution)	○	×	×	×	○	○	×
2.	Economic sanctions and monetary penalties (e.g. fine)	○	○	○	○	○	○	○
3.	Restitution or a compensation order	○	×	×	×	○	○	×
4.	Suspended sentences	○	○	○	○	○	○	○
5.	Probation and judicial supervision	○	×	○	×	○	○	○
6.	A Community service order	×	×	×	×	○	○	○
7.	House arrest	×	×	×	○	○	○	×
8.	Referral to a treatment center	×	×	×	○	○	○	×
9.	Banishment	×	×	×	○	×	×	×

○ Available      × Not available

## **GROUP 3**

### **ENHANCEMENT OF COMMUNITY-BASED ALTERNATIVES TO INCARCERATION AT THE POST-SENTENCING STAGE**

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#### **I. INTRODUCTION**

The 121st Training International Course on Crime Prevention and Treatment of Offenders with the theme Enhancement of Community Based-Rehabilitation as an Alternative to Incarceration at all Stages of the Criminal Justice Process, aims to find solutions to problems that have been encountered in implementing the system.

Our group composed of countries from the Republic of Korea, Japan, the Philippines, Thailand, Tonga and Vietnam has been assigned to analyse effective utilization of Early Measures of Release and Temporary Release Measures at the Post Sentencing Stage and the strengthening of the implementation structure of community-based supervision, e.g. various forms of supervision orders and supportive measures.

We decided to concentrate on the current Community Based Alternatives available in each country such as their definition, procedures on implementing them, the current situation, the factors that contributed to its usage, the problems they encountered and recommended possible solutions.

Early release measures and temporary release measures are a part of the Community-Based Alternatives to Incarceration in the Post-Sentencing Stage; we mainly focused on the following measures:

- a. **EARLY RELEASE MEASURES**
  1. Parole
  2. Pardon
  3. Remission
  
- b. **TEMPORARY RELEASE MEASURES**
  1. Furlough
  2. Temporary Leave Programme

For better understanding, each system was defined in a definition acceptable to all countries, but the procedure in availing the system differs with each country, thus it was discussed thoroughly in the following pages.

## II. THE CURRENT ADMINISTRATION OF COMMUNITY-BASED ALTERNATIVES AT THE POST-SENTENCING STAGE

Among participating countries, parole is relatively utilized in Japan and the Philippines, collective pardon is moderately utilized in Vietnam, remission is relatively utilized in Thailand and Tonga and temporary release measures are solely utilized in Korea.

### A. Early Release Measures

#### 1. Parole

##### (i) Available System: Definitions and Procedures

The common definition of parole for group 3 countries is a conditional release of an inmate from prison after serving part of his sentence, and a supervision period till the end of their sentence.

A “part of sentence” or conditions for parole eligibility varies with each country. In Japan, Korea, Thailand and Vietnam, the minimum term of the sentence that must be served is 1/3 of the definite sentence and the minimum to be served shall be changed to 10 years if prisoners are sentenced to life imprisonment. The Philippines use another method, the Indeterminate Sentence System, an inmate must serve a shorter period of the sentence before eligible for parole. Tonga has release on license, functionally it is equivalent to the parole system, for which inmates must have served 4 years before they can be considered for the King’s consideration or 2 years if the King wishes to grant release on license. Aside from the mandatory minimums, inmates must also be of good behaviour.

In Thailand, convicted inmates are classified into 6 classes, which are Excellent, Very Good, Good, Fair, Bad and Very Bad. Each class is entitled to different privileges. For example, inmates in the Good class or above are considered for granting parole.

The procedures in selecting qualified inmates are almost the same in every country except Tonga. In Tonga, the King approves the release on license. While in other countries, a committee or a board has been formed to examine the records of the inmates and other relevant information to consider those who meet the requirements.

##### (ii) Current situation

**Table 1. The Current Situation of Parole**

	Japan	Republic of Korea	Philippines	Thailand	Tonga	Vietnam
<b>Year</b>	2001	2000	2001	2000	2001	2001
<b>Number of parolees</b>	14,423	8,035	1,669	703	0 9 (1998)	281
<b>Total release</b>	25,715	19,774	2,194	N/A	141	N/A
<b>Prison population total</b>	65,508	62,989	23,965	223,406	271	71,151
<b>Convicted prisoners total</b>	53,283	37,040	N/A	132,337	253	59,010
<b>Parole rate*</b>	56.1	40.6	76.1	N/A	0	N/A
<b>Occupancy rate**</b>	101	109	178	248	310	119
<b>Source***</b>	MOJ data	MOJ data	Annual Report	Annual Report	Annual Report	Vietnam Statistics

\* “Parole rate” = Number of parolees / (Number of parolees + Number of inmates released on termination of sentence) ×100

\*\* “Occupancy rate” = prison population total / official capacity × 100

\*\*\* Source of the data shown in this report is as same as above.

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It is worth mentioning the supervision system of each country. For example, in Korea and Japan, the parolee reports to and is supervised by professional probation officers (PPOs). In Thailand the parolee reports to and is supervised by prison officers in charge of parole. In Vietnam, there is no supervision but parolees must report to the local government. In Tonga, the parolee reports to the police every three months.

(iii) *Problems*

There are different problems being encountered by every country. The most noticeable is that the parole system is not fully utilized.

In Vietnam, the problem is the lack of proper information or education on the procedures and how to utilize the system among correctional officers. Once the authorities noticed the overcrowding, they would summon correctional officers to release prisoners to adjust prison population. Although the released inmates get assistance from the local government for job placement, the rehabilitation aspect is hampered by the high recidivism of releasees.

In Thailand, the law is conflicting. Inmates will be eligible for parole when 1/3 of their sentence has been served. But the parole period granted to inmates is up to 1/3 of the sentence for excellent class inmates. Thus the parole system is hampered. Moreover, the measure in selecting qualified inmates requires many conditions which a lot of inmates are unable to meet.

In Japan, although many inmates are theoretically eligible for parole at an early stage, in practice, many inmates actually serve at least 80% on the average of their original sentence before they are released on parole. There are various reasons for this delay. For example, as the number of PPOs is too small, PPOs have no time to examine parole applications. Moreover, under the current system, elderly inmates or inmates suffering from physical/mental illnesses are difficult to release on parole because of their difficulties in making the environmental adjustments, etc. Thus, close cooperation and collaboration among the relevant agencies are needed to enhance the present practice.

Tonga's case is different from the others. Their problem lies in the process of selecting qualified inmates. The warden selects the prisoners who are granted release on license. No supervision is available for parolees. Occasions where the King grants release on license are rare, the last one being in 1998 where the King granted release to 9 inmates. The other problem is the public's perception of dangerous offenders.

Another problem, which is common in Japan, Korea and Thailand, is the staff strength of PPOs who handle the supervision cannot cope with the entire population of parolees. As the population of prisoners increases, the releasees increase resulting in too big a caseload for PPOs who handle their supervision. All countries mentioned that budgetary increases are needed to ensure full and continuous implementation of the programme.

(iv) *Solutions*

1. To enhance the rehabilitation process of parolees, there is a need to reduce the caseload handled by the PPOs, it can be done by increasing the number of personnel and enhancing the VPO system. Promoting the rehabilitation of offenders should be a priority. The through care should be the fundamental concept to establish and manage these systems and measures. In this regard, we should establish an effective classification system and standard for a risk and needs assessment scale for offenders. Moreover a classification system needs to be introduced to allocate appropriate resources in order to determine levels of supervision.

Thus it also needs to have an additional fund for human resources, and to maintain continuous implementation of the diversification system.

2. Revision of the current procedures based on evidence-based practice such as research, statistical analysis and scientific and systematic evaluation is also needed. This evidence-based practice will improve the present policies and quality of various services. Likewise, extensive but

attainable criteria should be used with an assurance that the system would only be granted to deserving prisoners to avoid the increase in the recidivism rate.

There is a need for legislation, to amend some rules and regulations regarding the implementation. The objective must be to make the law focus more on the community-based alternative measures, enhanced mobilization and coordination of available resources.

3. In order to prevent arbitrary decision-making and abuse of discretionary power by relevant authorities, which may often lead to social injustice and corruption, an accountable and transparent system should be established in the relevant authorities to grant parole and other early release/temporary release measures.
4. Public awareness or information should be emphasised. This will erase the negative notion of the public regarding the effects of the system. More knowledge about the effectiveness of community-based treatment would lead to more support from the public.
5. There should be a single policy, coordinated by one authority so as to avoid confusion.
6. In Vietnam, training of correctional personnel regarding the implementation of a parole system is necessary. This will give the correctional authorities a better understanding of the system, its procedure and mechanics. They could innovate some strategies to further enhance the application of parole.

## 2. Pardon

### (i) *Available Systems: Definitions and Procedures*

Another early release measure available in group 3 countries is a pardon. As commonly defined, pardon shall refer to the reduction or termination of a sentence, with or without conditions. Some countries include the early release of detainees or erasure of the criminal records in the meaning.

The common feature for this kind of early measure is that the highest authority approves the pardon. The Kings of Thailand and Tonga, the President of Vietnam, Korea and the Philippines, and in Japan the cabinet will decide and the Emperor is the one who attests it.

Usually, there are 2 types of pardons. In Korea, Japan, Vietnam and Thailand, an individual pardon is granted in view of the correction or rehabilitation of each offender and a collective pardon is available contingent upon special events. Aside from good behaviour as the top criteria, those who may qualify vary from country to country. In Tonga, only a collective pardon is available, but it rarely happens. It is granted to well-educated prisoners and their criminal records are erased.

In the Philippines, the criteria for applying a pardon is that the prisoner must have served 1/2 of the minimum sentence (indeterminate sentence) before he can be considered.

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(ii) *Current Situation*

**Table 2. Current Situation of Pardons**

	Japan	Republic of Korea	Philippines	Thailand	Tonga	Vietnam
<b>Year</b>	2001	2000	2001	1999	2001	2000
<b>Number of pardons</b>	108	N/A	85	N/A	0 1(2000)	23,327
<b>Individual</b>	108	N/A	N/A	N/A	/	0
<b>Collective</b>	0	N/A	N/A	23,940	/	23,327
<b>Prison population total</b>	65,508	62,989	23,965	205,340	271	71,151
<b>Occupancy rate</b>	101	109	178	228	310	119

(iii) *Problems*

The most common problem is that it has been rarely used in all countries. Public opinion varies from different countries, but generally it is negative. In some countries, the pardon is used for political reasons. Therefore, interest groups of prisoners would be considered for pardon.

(iv) *Solutions*

A rehabilitation programme should be considered before granting a pardon. Since in most countries, the approving authority lies at the discretion of the head of state, there is a need to have cooperation/coordination between the Executive and the Judiciary about standards and criteria to grant pardons. This will erase the suspicion that the pardon was used for political reasons.

3. Remission

(i) *Available System: Definitions and Procedures*

Another measure that enables inmates to be released prior to the termination of sentence is remission. Almost all countries from group 3 apply remission in their correctional systems, except Korea and Japan.

As defined in the Philippines, Tonga and Vietnam, remission is a process of reducing the sentence of the offender without supervision as an incentive for having excellent behaviour while in confinement. In those countries, remission once granted cannot be revoked. In Thailand, good time allowance and public work allowance are used to reduce the sentence, but inmates released by this measure still retain prisoner status until the end of the supervision period. Once their accumulated remission days are equivalent to the remaining sentence, such inmates will be released on supervision. Inmates who fail to comply with supervision conditions will be returned to prison to serve the remaining sentences.

In Tonga, remission is the most used. Male prisoners can be granted remission for 1/4 of their sentence while the female offender can be granted 1/3 of the sentence. In order to earn full remission, every prisoner shall obtain 1 bonus mark for steady hard work and another 1 bonus mark for good conduct.

In Thailand, good time allowance started in 1978. Inmates in Good Class and above who demonstrate their good conduct may receive no more than 5 days remission in a month. Moreover, a public work allowance was introduced in 1980 to provide an employment opportunity for prisoners and utilize prison labour for the community. Inmates whose remaining sentence is less than 2 years are allowed to engage in public work outside prisons. The number of working days are recorded as remission days. Once their accumulated remission days are equivalent to the remaining sentence, such inmates are released under supervision.

In Vietnam, remission is applied when prisoners have served at least 1/2 of their sentence and 20 years imprisonment for prisoners with life sentences.

In the Philippines, remission is called good conduct time allowance. The good conduct or behaviour of any prisoner entitle him to the following deductions from the period of his sentence: 5 days for the first two years, 8 days during the third to fifth year, 10 days during the following years to the tenth year, and 15 days during the eleventh and successive years. A deduction of 1/5 of the period of his sentence shall be granted to a prisoner who having evaded the service of his sentence gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the passing away of a calamity or catastrophe. An additional 5 days reduction shall be granted to prisoners who are assigned to work in penal farms.

(ii) *Current Situation*

**Table 3. Current Situation of Remissions**

	<b>Philippines</b>	<b>Thailand</b>	<b>Tonga</b>	<b>Vietnam</b>
<b>Year</b>	2001	2000	2001	2001
<b>Number on remission</b>	N/A	18,618	78	4,500
<b>Prison population total</b>	23,965	223,406	271	71,151
<b>Occupancy rate</b>	178	248	310	119

(iii) *Problem*

The number of remission days is not effective enough in Thailand in achieving early release of inmates.

(iv) *Solution*

The number of remission days written in the law should be changed. In Thailand prisoners can earn good time allowance no more than 5 days a month in order to be released early. This number of days is not effective enough in terms of early release. Therefore, the number of remission days should be expanded to 10 days.

**B. Temporary Release Measures**

(i) *Available Systems: Definitions and Procedures*

Temporary release measures permit inmates to serve their sentence outside the institution for a given period of time and then return back to serve the remaining sentence. Among the countries from group 3, only Korea has temporary release measures, which are as follows.

- a) Furlough – a leave from duty for a certain period
- b) Temporary Leave Programme – a leave between 12 hours to 72 hours

To be selected for the above programmes, the remaining sentence is taken into consideration. In Korea, the prisoners must have served a term of more than 1 year and the remaining sentence must be at least 6 months.

The goals for the temporary release measures in Korea are as follows; to help prisoners get adjusted to society better before their release, to help their families regain confidence during difficulties (death of beloved ones) and to help the inmates cope with financial difficulties. Moreover, this measure is a great help for the correctional authorities in maintaining discipline among their wards as well as for achieving a smooth transition from institution to community-based treatment.

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(ii) *Current Situation*

**Table 4. Current Situation of Furlough and the Temporary Leave Programme in Korea**

<b>Year</b>	<b>2000</b>
<b>Number on furlough</b>	555
<b>Number on temporary leave program</b>	294(1999)
<b>Prison population total</b>	62,989
<b>Occupancy rate</b>	109

(iii) *Problems*

1. Limited to once a year and 5 times during the term of the prisoner's sentence.
2. Correctional officers tend to be hesitant in conducting these programmes since they would be held responsible and given administrative sanctions if absconding or other incidents happen.

(iv) *Solutions*

1. Strict selection of inmates should be encouraged. Selection criteria should be revised so that only eligible and deserved inmates can avail of the privileges.
2. In case of absconding, prison guards who escort the inmates should only be held responsible if proven beyond a reasonable doubt that they had enough foreseeable knowledge regarding the incident.

**III. ADVANTAGES AND DISADVANTAGES OF EARLY RELEASE AND TEMPORARY RELEASE MEASURES**

So far, we have examined the current situation, problems, and counter measures for various temporary release and early release measures. Major advantages and disadvantages of each measure can be summarized as follows, although they are not exhaustive.

**A. Parole**

*Advantages*

- a. provides an incentive for rehabilitation.
- b. facilitates prison control and discipline.
- c. controls the size of prison population.
- d. can rectify unjust disparity in sentencing.

*Disadvantages*

- a. good conduct does not directly reflect the degree of actual rehabilitation of the inmate.
- b. If the parole procedure is not transparent enough and the discretionary power of granting parole is abused, it causes serious violations of human rights.
- c. Without an effective classification system and a risk and needs scale for inmates, the parole system may release many high-risk offenders into the community. In times of community anxiety about crime and the pressures for law and order, there has been great pressure on parole boards to be more conservative in granting parole. Therefore, this is not a solution to controlling the size of the prison population.

## **B. Remission and the Good Time System**

### *Advantages*

- a. Inmates' efforts to keep good behaviour are directly reflected in remission of sentence lengths, which can be a good incentive for keeping a disciplined prison environment.
- b. Sentence-reduction by remission may relieve prison overcrowding.

### *Disadvantages*

- a. Good behaviour in institutions does not necessarily mean good rehabilitation of inmates and the prevention of recidivism.
- b. If the authority abuses its power to grant remission without sound accountability and transparency, then the significance of the judicial decision on the original sentence may be obscured, which also may lead to dysfunction of the criminal justice system.

## **C. Pardon**

### *Advantages*

- a. If a collective pardon is applied widely and frequently for the prison population, then we can expect a short-term reduction in the prison population.
- b. By utilizing pardons, offenders may achieve earlier reintegration into society.

### *Disadvantages*

- a. If the conditions for endorsing pardons are lax, then there may be a possibility of increased recidivists in the long run.
- b. Abuse of power in granting pardons may cancel the effect of punishment and cause social injustice.

## **D. Temporary Release Measures**

### *Advantages*

- a. Various measures of temporary release can be an incentive for good behaviour in prisons, it thereby contributes to a disciplined and peaceful atmosphere in the institutions.
- b. In the furlough programmes, more humane treatment of offenders is realized by assisting contacts with family members and people in the community.
- c. Through work-release and educational-release programmes, we can utilize various resources for assisting rehabilitation in the community, which also enhances self-reliance and a sense of responsibility in the inmates. In terms of cost, we can reduce expenditures for various prison work and education programmes.

### (v) *Disadvantages*

- a. If these programmes are enforced without a careful screening process, then there may be incidents such as escapes, re-offending, etc., which cause various management problems in addition to the negative impacts on the attitudes of the general public toward the community-based treatment.
- b. If such programmes are conducted with escorts or other surveillance measures, then they may be costly in terms of human and monetary resources.
- c. Evaluative studies have not proven their effectiveness in reducing recidivism.

**IV. STRENGTHENING THE IMPLEMENTATION STRUCTURE OF COMMUNITY-BASED SUPERVISION – SUPERVISION OF OFFENDERS IN THE COMMUNITY**

**A. Probation**

(i) *Available System: Definitions and Procedures*

Probation is imposed by the court when it suspends sentence. The purposes of the system are to recognize that reintegration of offenders back into society is better than imprisonment, to promote community awareness of their responsibility in crime prevention and to emphasize the role of the offender as a member of society and to encourage the dignity and pride of offenders.

All countries except Vietnam widely use the probation system. In Japan, it has been used for 50 years. However, there are some problems related to the implementation of the system in every country. Hence the need to strengthen or enhance its implementation structure in the community, therefore community-based supervision has to be addressed.

Although the procedure varies in each country, the common factor is that the offender must be guilty. To make it more clear and understandable, we summarized the general criteria, the range of suspended execution of sentence and the length of supervision below.

The following points are usually taken into account in selecting probationers: (1) age, (2) past criminal record, (3) behaviour, (4) intelligence, (5) education and training, (6) health, (7) mental condition, (8) habit, (9) occupation, (10) circumstance/living conditions, (11) nature / seriousness of the offence, (12) risk and needs assessment, and (13) recommendation by PPO and / or psychologist.

Apart from the general criteria, in some countries, for example in Japan, the requirements for a probationer are: (1) the offender has not been sentenced to imprisonment in the last 5 years, (2) the offence in question was not committed during a probation term previously ordered.

In the Philippines, probation can be granted once in a lifetime.

In Thailand the offenders must not have received imprisonment previously, except for offences committed by negligence or minor offences.

The conditions for suspended execution of sentence are summarized in Table 5:

**Table 5. Conditions for Suspended Execution of Sentence**

<b>Japan</b>	<b>Republic of Korea</b>	<b>Philippines</b>	<b>Thailand</b>	<b>Tonga</b>	<b>Vietnam</b>
Imprisonment (Not to exceed 3 years) Fine (Not to exceed 500,000yen)	Imprisonment (Less than 3 years)	Imprisonment (Less than 6 years)	Imprisonment (Not to exceed 2 years)	Imprisonment (Not to exceed 3 years)	No system of probation

The length of the supervision period is summarized in Table 6:

**Table 6. The Length of the Supervision Period**

Japan	Republic of Korea	Philippines	Thailand	Tonga	Vietnam
1 to 5 years	1 year	1 year (Less than 1 year sentence) 2 years (More than 1 year sentence)	Not to exceed 5 years	3 years	No system of probation

(ii) *Current situation*

Table 7 shows the current situation of probation among participating countries.

**Table 7. Current Situation of Adult Probation**

	Japan	Republic of Korea	Philippines	Thailand	Tonga	Vietnam
<b>Year</b>	2001	2000	2001	2001	2001	2000
<b>Number of probationers</b>	15,797	45,648	40,556	123,789	21	No system of probation
<b>Number of PPOs</b>	750	394	1,079	314	2	/
<b>Number of VPOs</b>	48,760	17,741	243	6,691	21	/
<b>Case load*</b>	21.1	115.9	37.6	394.2	10.5	/
<b>Prison population total</b>	65,508	62,989	23,965	247,865	271	71,151
<b>Recidivism Rate</b>	36.4% (2000) *Newly sentenced for a repeat offence committed during their probation supervision	3.5% *Committing another offence during their probation supervision	1.93% *Violation of conditions of probation	30.7% *Violation of conditions of probation	38.1% *Violation of conditions of probation	/

\* "Case load" = Number of probationers / number of PPOs

(iii) *Problems*

Problems relating to the probation system could be divided into external problems and internal problems. The latter one is also classified as the structural issues and the functional issues.

1. External problems

The probation system has not been fully utilized at the sentencing stage due to various reasons: e.g. more reliance on incarceration, lack of understanding on its effectiveness and penal populism.

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2. Internal problems

a. The structural issues

- (i) High caseload of PPOs
- (ii) Shortage of PPOs and other staff
- (iii) Limited budget for the probation system
- (iv) Poorly organised training for PPOs
- (v) In the recruiting process of PPOs, there is a tendency to put less emphasis on the social work orientation.

b. The functional issues

- (i) An effective rehabilitation programme has not been developed and not fully implemented
- (ii) The recidivism of probationers is lower than persons released from prison without supervision, but is still relatively high (See Table 7)
- (iii) Too lenient conditions for the probationers

(iv) *Solutions*

1. *External problems*

Dissemination of the effectiveness of community-based offenders treatment system such as the probation system and other early release measures to the judiciary. The research evidence shows that a community-based offenders treatment system is able to reduce recidivism better than correctional treatment (incarceration of offenders). From this point of view, the education of judges and providing persuasive information to judges based on evidence collected through research, systematic review and meta analysis are a crucial issue. Holding regular seminar and training courses for judges are important.

2. *Internal problems*

(a) The structural issues

The high caseload and limited budget has caused a shortage of PPOs and other staff. The dissemination of the effectiveness of a community-based offenders treatment system to the politicians is as important as the education of judges. Research and evaluation should be the important instruments for policy makers and executives for using information in decision and planning.

Beside that, we also have to consider the effective utilization of the VPO system and the establishment of a network of community resources. Japan, Korea, Thailand and the Philippines have a VPO system. In addition to this, these countries, Vietnam and Tonga have various kinds of community resources. We should develop and organise them more effectively (This issue will be discussed in the latter part of this paper).

PPOs, VPOs and members of organisations and individuals who support activities of the probation service should be given systematic training.

For the recruiting of PPOs, criminal law as well as social work orientation should be emphasized more.

(b) The functional issues

To develop an effective rehabilitation programme to reduce the recidivism of probationers and improve the quality of life of the probationer, we have to refer to research evidence and also conduct further research in a scientific way. Based on this research we need to enhance the number and variety of programmes, utilize special conditions, and treatment and support should be implemented. We should also introduce a variety of conditions of probation at the statute level to solve the issue of imposing too lenient conditions for probationers.

**B. Supervision for Probationers**

Types of probation supervision are: regular; intensive; and special probation. In all countries represented in group 3, regular probation supervision is available.

The specific probation conditions required by the courts during probation are shown in Appendix 2.

### C. Supervision for Parolees

#### 1. Pre-Release and After-Release

##### (i) *Available System: Definitions and Procedures*

Almost all of the correctional facilities in the group 3 countries provide pre-release and after-release programmes. They are usually assisted by volunteers. Pre-release programmes would help the offender to achieve a smooth transition to social life, to establish future prospects, and to ease anxiety over life following the release. After-release programmes would help parolees through job placement, financially, and guidance, etc. The continuation from prison to society may contribute to the rehabilitation of offenders.

Pre-release programmes include guidance and counselling, family contacts and orientation, and preparation conducted inside the prison facilities. Moreover, group counselling to develop personality, pro-social attitude and behaviour were provided.

The procedure for pre-release programmes however, differs in each country that has adopted the system. For example, in Korea, there are education and welfare officers, who conduct life and guidance programmes, classification officers who classify the prisoner in accordance with their qualification for release and PPOs who assist the Board in their decision as to whether the application is granted or denied.

In Japan, there are guidance support and visiting public employment social security office or probation office as a pre-release programme in the prison, where they interview and discuss with correctional officers as pre-parole investigation, seconded PPO system in some prisons, inquiry into and adjustment of living condition by VPOs, and intensification of parole examinations for inmates serving long terms for pre-release. As after-release programme, emergency assistance for parolees during the parole period and after release programme for discharged offenders can be provided.

In Thailand, a pre-release programme in each prison is available. The programmes include interviews, group counselling, group guidance and family-relation with family members. In terms of after-release programmes, community service, e.g. cleaning and repainting of public places was carried out.

Tonga does not have any pre-release nor after-release programmes.

Vietnam does not have any pre-release programmes but the local government will assist those released to find a job to earn a living.

The Philippines has various programmes to prepare prisoners for their eventual release from prison. Education from elementary to college level and informal vocational training is offered. Therapeutic community modalities are also conducted for drug offenders. Prison work is offered by the private factories situated inside the prison. Also, the system has newly adopted the halfway house system. This is also situated inside the reservation and caters to pre-release prisoners. Its main objective is to prepare prisoners economically, socially and physically.

##### (ii) *Some Suggestions for the Further Improvement of the Supervision of Parolees*

1. Pre-release programmes in institutions and after-release programmes should be well organised in order to provide effective through care for offenders. For example, studies on evidence-based practice indicate that some programmes such as Therapeutic Community (TC) can achieve better offender rehabilitation if the institutional TC programmes are followed up by community-based TC programmes.

2. Close cooperation and information exchange between the pre-release stage and the after-release stage are one of the important keys to enhance earlier release for parolees and smooth their

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reintegration into society. Therefore, correctional institutions, probation offices and parole boards should make concerted efforts to enhance necessary arrangements for parole supervision.

3. A risk and needs assessment is very important for arranging both pre-release and after-release programmes. Individual needs should be matched by the most available services with close attention paid to possible risks, which will determine the levels of required supervision.

#### **D. Community Involvement in Community-Based Supervision**

##### **1. Volunteer Probation Officer (VPO) System**

###### **(i) *Available System***

Another main problem encountered by countries in group 3 was lack of human resources to supervise the recipient of a community-based alternative to incarceration. In Thailand, the ratio of probationers to PPOs is 1:394. Hence, there is a need to search for another alternative to official supervisors. Therefore, a VPO system was introduced in the criminal justice system specifically for the treatment of offenders.

However, this scheme needs to be further enhanced and strengthened. In countries like Japan, Korea and Thailand where the scheme is widely used but it still encounters a lot of problems while in the Philippines it needs re-introduction. Tonga has no problem regarding the system since there is no requirement as to who will become a volunteer. In Vietnam, there is no probation system since the released offender goes to the local government for assistance.

The common policy in adopting the system is to promote community involvement. The most common criteria in choosing volunteers is being a responsible member of the community. They are carefully selected on the basis of their voluntarism spirit, their ability, willingness and readiness to serve the community, financial status and etc. They are often appointed by the highest authority in the agency, for example, the Minister of Justice in Japan. In Tonga, the discretion of choosing the volunteers depends on the PPO and available members of the community who are willing to accept the supervision. VPOs can be local officials of the town, church leaders or any officer of an existing community organisation in an area where the probationer resides.

###### **(ii) *Problems***

1. Difficulties recruiting qualified persons as VPOs and a shortage of VPOs.
2. Since the VPO who has been assigned the case is often too busy to supervise the probationer enough, the risk of recidivism becomes relatively high.
3. Difficulties of providing supervision and support for offenders in the same level.
4. The VPO system is not fully utilized because of the complicated procedure of case referral to VPOs.
5. Sometimes, the generation gap might cause a communication difficulty in view of life and priorities between a senior VPO and a youthful offender.

###### **(iii) *Solutions***

1. A practical VPO recruitment system consists of effective ways for recruitment and retention of VPOs as volunteers. In the recruitment process, firstly, effective dissemination of relevant information to the public and community continuously by various means, e.g. using the mass media including TV, radio, newspapers and internet web sites, campaign activities in the local community are also important. At this stage, we have to show what type of people are needed, what skills and experience are required and also what skills and experience the organisation can offer potential volunteers. It means people expressing an interest in volunteering can be given a clear, honest picture of what to expect. Secondly, we have to establish standards of qualification to become a VPO and a transparent screening process. Members of the VPO screening committee should be impartial. Thirdly, after recruitment, we have to think of the sustainability of VPOs. In this regard, establishment of a VPO

organisation, a database of VPOs and a sustaining mechanism for VPOs are vital. It is also important to keep up the motivation of volunteers. People are most likely to remain volunteers if their work is satisfying or enjoyable. Knowing that their contribution as a VPO is making a difference is important, perhaps more so with time than with money. Like paid workers, volunteers need to feel they are supported and valued. Getting on with the people they work with is important too. Fulfillment of expectations, such as the chance to learn new skills, will obviously keep volunteers motivated.

American researchers Rick Lynch and Steve McCurley (1996)<sup>1</sup> have identified five key times when volunteers are likely to give up volunteering. They are after initial contact with an organisation, when people feel ill at ease, and pick up on any sign that they are not welcome, during the first month of volunteering, when it becomes clear that the experience does not match expectations, after the first six months, where volunteering can come into conflict with outside life, at the first anniversary, which can involve taking stock and thinking about the future, and in the longer term, where changes to the volunteer role or within one's personal life are the main factors that can effect involvement.

2. For effective assignment of a case to a VPO, we establish a database system of VPOs to match the risk and needs of offenders with the VPO's profile. The VPO's profile includes his/her specialities, time availability, geographical arrangement, age, sex and previous experience of treatment and so forth.

3. A systematic and effective training system for VPOs must be developed. This system should provide not only periodical training at the central level but also on-going training in the community.

4. To make a speedy referral of the case to the VPO, a standard format and procedure for the referral should be introduced.

5. Utilizing other community resources such as the Big Brothers and Sisters Movement (BBS) may ease the generation gap.

## 2. Community Resources

To realize effective supervision and support for offenders, it is also necessary to establish a network of community resources for providing various kinds of support to offenders. The following shows examples of available community resources in each participating country. When we utilize them, we should introduce a database of community resources and a performance evaluation system.

### (i) *Available System*

#### Tonga

(1) Salvation Army (support and compensate the victim and the family of the probationer, and run an anger management programme), (2) Church, (3) Rotary Club

#### Thailand

(1) The Offenders Rehabilitation Foundation of the Ministry of Justice, (2) VPOs Association, (3) Collaboration between the Department of Probation, the Department of Mental Health, the Department of Skill Development and the Department of Public Welfare to provide essential services.

#### Vietnam

(1) Women's Union (support to find jobs), (2) Youth Union, (3) University Students

#### Korea

(1) Rehabilitation Public Corporation (half government, provide training and financial support), (2) Civilians who are registered with a government license will provide training and financial support

#### Japan

(1) Women's Association for Rehabilitation Aid (WARA), (2) BBS, (3) Cooperative Employers, (4) Halfway houses (101 houses, approximately 70% funding from the government), (5) Rehabilitation Aid

<sup>1</sup> Rick Lynch and Steve McCurley (1996). *Volunteer Management: Mobilizing All the Resources of the Community*. Heritage Arts Pub.

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Associations (66 associations, providing monetary support), (6) VPOs Association, (7) Rehabilitation Service Promotion Association

Philippines

(1) Education and vocational training: four educational organisations, (2) Religious volunteers in all sects, (3) Job Placement: three organisations, (4) Halfway house: six organisations support one halfway house.

3. Community Service Order (CSO)

Among group 3 participating countries, only Korea has the CSO and the attendance center order (ACO).

(i) *Available System: Definition and Procedures*

For the definition of a CSO refer to the Group 2 workshop report.

(ii) *Current Situation*

**Table 8. Number of Community Service Orders (CSO) in Korea**

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
CSO	2,460	3,355	3,278	4,671	5,284	7,418	22,030	37,506	33,391	33,580

(iii) *Problems*

- a. There are no clear national standards for applying CSOs by judges.
- b. The number of offenders subject to a CSO has dramatically increased. Therefore CSOs are not effectively implemented so it is very difficult to implement this option.
- c. Because of a shortage of PPOs, they cannot thoroughly supervise the offenders.

(iv) *Solutions*

- a. It is necessary to develop a reasonable national standard based on research on the effectiveness of CSOs.
- b. PPOs should have the expertise through the systematic training in order to implement this system efficiently and effectively.
- c. The number of PPOs and the budget should be increased.

4. Attendance Center Order (ACO)

(i) *Available System: Definition and Procedures*

Among participating countries, only Korea has this system. The ACO is a system to have a habitual or drug addicted convict attend lectures or field trips or participate in discussions, or psychological treatment etc. in the probation office or a special institution which the probation office designates instead of confinement.

An ACO should be given up to 200 hours where an offender has been given a suspended sentence and up to 100 hours for domestic violence offenders given a suspended sentence.

Discretionary conditions are:

- a. Obligation to obey instructions of a PPO.
- b. Notifying the PPO when he moves his residence or travels for more than 1 month within the country.
- c. Specific conditions which the court imposes.

(ii) *Current Situation*

**Table 9. Number of Attendance Center Orders (ACO) in Korea**

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
ACO	1,340	1,434	1,217	1,770	1,880	1,755	1,664	2,995	3,803	6,502

(iii) *Problem*

The number of PPOs is not enough because of heavy caseloads. Therefore, close attention cannot be addressed to the individual circumstances of the offenders.

(iv) *Solution*

- a. Increase the number of PPOs and the budget.
- b. Improving the specialty of PPOs to operate the ACO efficiently.
- c. Substantial training and instruction are also needed to enhance the skills of PPOs.

## V. CONCLUSION

### A. Early Release Measures

1. The availability of early release measures and temporary release measures varies country to country due to the differences in penal philosophies, current laws, practices, attitudes and reactions from each society. When we think of the positive utilization of early release and temporary release measures, promoting the rehabilitation of offenders should be a high priority. In other words, the through care should be the fundamental concept to establish and manage these systems and measures. From this point of view, we should establish an effective classification system and a standard risk and needs assessment scale for offenders. Without having these systems, early release and temporary release measures could just be a valve for the adjustment of the prison population. Under the present system, many high-risk inmates will be released on early release and temporary release measures without sufficient supervision and support.

2. Parole systems among participating countries are not fully utilized due to various reasons: e.g., conflicting provisions in laws, shortage of the budget and/or manpower, etc. As we suggested before, solutions to tackle such problems need to establish a multidisciplinary approach that incorporates key persons among relevant agencies. We recommend that the following measures should be taken in relevant countries: e.g. the introduction of an objective screening process and the allocation of appropriate resources in terms of the offenders' needs and risks, the establishment of an independent authority which incorporates accountability and transparency in decision-making, etc.

3. Utilization of temporary release measures are rare among the participating countries. They do not usually have a significant impact on reducing the prison population. However, such kinds of programmes can be the primary means of bridging institutional treatment and community-based treatment by enhancing privileges for inmates and opportunities to prepare for the through care process, i.e. smooth transition and reintegration into the community. Thus, more emphasis needs to be added to the utilization of temporary release measures if we want to conduct penal reform.

4. These measures should always be closely monitored and evaluated in order to achieve and continue effective results that are based on evidence-based practice such as research, statistical analysis and scientific and systematic evaluation. This evidence-based practice will improve the present policies and the quality of various services. The enlargement of community-based options also depends upon the support and trust of the general public who are well informed with reliable evidence.

### B. Strengthening the Implementation Structure of Community-based Supervision

1. To strengthen the implementation structure of community-based supervision depends on the people who carry out the measures. The philosophy, values and assumptions or in summary the

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ideology of the people will determine to a large extent how the measures are implemented or how the difficulties can be overcome. This starts from recruitment, followed by induction or orientation of staff to on-the-job and on-going training of staff. It is important to recruit staff who share the ideology or philosophy that are behind the measures.

After recruitment, it is important to continue to train people who are committed to the job and to train them to work as a team. And also, to ensure that there should be a system of on-going communication and consultation that enhances the quality of services.

2. Programme design for community-based supervision should be based on evidence based research. We must draw on research findings such as the impact of interventions on human behaviour to determine how much intervention is needed and therefore where limited resources should be invested.

3. Enhancement of community involvement such as effective recruitment of VPOs and other volunteers for community-based supervision and establishment of a network of community resources is vital. Continuous and diversified dissemination of evidence based information related to community-based supervision will be useful to get support for community-based supervision systems from people and the community.

Keeping the service standard of community-based supervision, the provision of systematic and on-going training for these volunteers is a basic requirement.

A sustaining mechanism for VPO volunteers is as important as recruitment. By establishing an effective sustaining mechanism for VPOs, we have to consider the following key times;

1. The initial contact should be welcoming and the response should be prompt. Give a clear picture of what volunteers can expect from your organisation.
2. During the first month, make sure volunteers go through an induction process. Make it clear that help and support is always on hand. Introduce some training, being careful not to overwhelm the volunteer.
3. After six months, review the period with the volunteer. Look at whether they need a change of role or further responsibility. Discuss training needs, and what skills they would like to acquire.
4. The first anniversary can be celebrated in some way, formally or informally. Achievements can be noted and shared with others. For example, volunteers can be encouraged to take an active part in the running of the organisation, through the management committee.
5. When people have been volunteering for over a year, it is important that they are not taken for granted. They have skills that should be utilized, perhaps by providing support for less experienced volunteers.

**APPENDIX 1**

**Available Community-Based Alternatives**

	<b>Japan</b>	<b>Republic of Korea</b>	<b>Philippines</b>	<b>Thailand</b>	<b>Tonga</b>	<b>Vietnam</b>
<b>Post Sentencing Stage</b>						
<b>(Early release measures)</b>						
<b>Parole</b>	◎	◎	◎	◎	△	○
<b>Pardon</b>	△	○	△	△	△	◎
<b>Remission</b>	×	×	◎	◎	◎	○
<b>(Temporary release measures)</b>						
<b>Furlough</b>	×	◎	×	×	×	×
<b>Temporary Leave Program</b>	×	◎	×	×	×	×

◎ Widely used

○ Sometimes used

△ Occasionally used

× Not available

**APPENDIX 2**

**The Conditions for Probation**

1. Conditions for Regular Probation

a. Common conditions in participating countries:

1. Do not commit further crime / keep good conduct
2. Report to the PPO regularly
3. Do not change residence without permission of PPO
4. Engage in a lawful business
5. Notify the probation office of his/her specific place of residence
6. Refrain from associating with those who are apt to commit crime

b. Others:

1. Abstain from drinking intoxicating beverages to excess (Philippines)
2. Meet his/her family responsibilities (Philippines)
3. Do not change employment without the prior written approval of the PPO (Philippines)
4. Make restitution to the victim of the offence (reference: USA Federal probation)

2. Conditions for Intensive Supervision Probation

No participating country of this group has an intensive supervision probation system. But at a functional and practical level, Japan and Thailand have a kind of supervision scheme. Based on the classification system in Japan and Thailand, if a probationer is classified as Class A or High Risk, he/she will be the subject of intensive supervision, e.g. meet with PPO two or more times a week and the PPO will visit the residence of the probationer once a week.

3. Conditions for Special Probation

1. Attend or cooperate with a treatment programme (such as drug addiction, physical, mental treatment) (Thailand, Tonga and Philippines)
2. Continue prescribed education or vocational training (Philippines)
3. Attend or reside in a facility established for the instruction, recreation or residence of persons on probation (Philippines)

In Japan, there is no special probation system. But on a functional and practical level, the categorized treatment scheme of the Japanese probation system functions as a kind of special probation such as providing drug treatment, assisting job placement and so forth.

## **APPENDIX**

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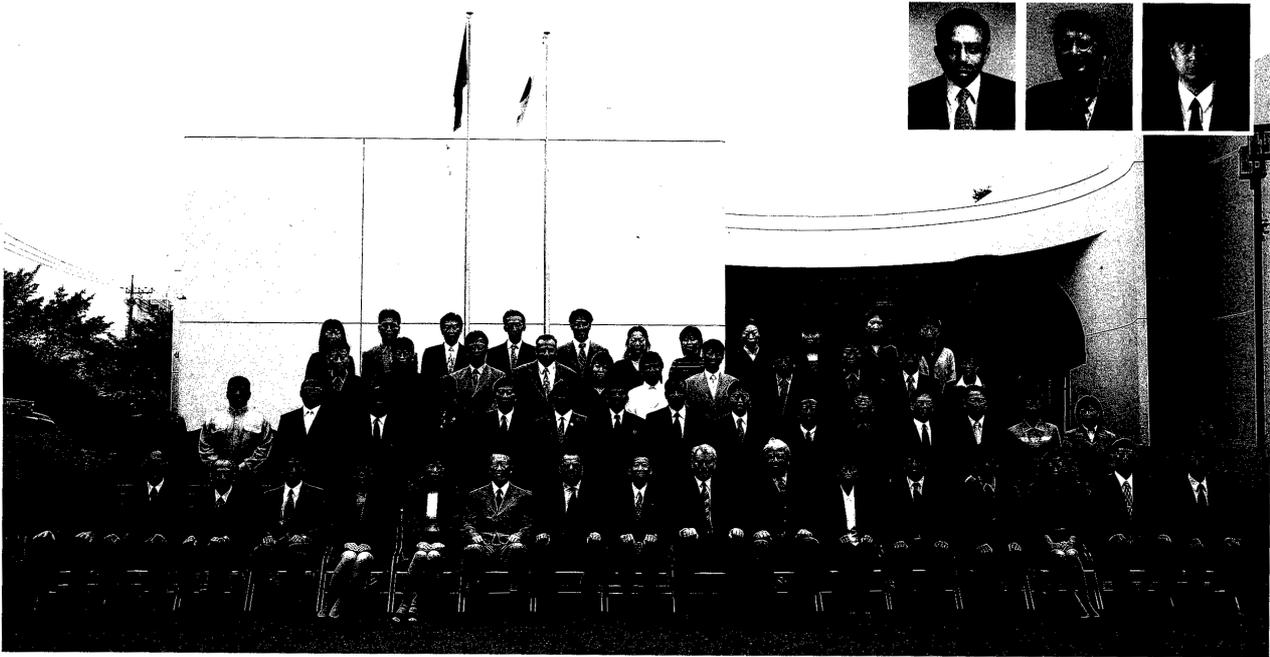
***COMMEMORATIVE PHOTOGRAPH***  
***• 121st International Training Course***

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**UNAFEI**

# The 121<sup>st</sup> International Training Course



**Left to Right:**

**Above:**

Mr. Muzaffar (Pakistan), Dr. Lappi-Seppälä(Finland), Prof. Tachi

**4th Row:**

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**3rd Row:**

Mr. Koyama(Staff), Mr. Ihara(Staff), Mr. Inoue(Staff), Mr. Nasser(Palestine), Ms. Yamamoto(Japan), Mr. Malacad(Philippines), Mr. Hoshino(Japan), Mr. Oki(Japan), Mr. Hashizume(Japan), Mr. Takahashi(Japan), Ms. Akada(Japan)

**2nd Row:**

Ms. Atchara(Thailand), Mr. Longopoa(Tonga), Mr. Millet(Haiti), Mr. Pompey(St. Vincent), Mr. Dlula(South Africa), Mr. Tuan(Vietnam), Mr. Ntuli(South Africa), Mr. Haleem(Maldives), Mr. Sandhu(India), Mr. Nozawa(Japan), Mr. Hermawansyah(Indonesia), Mr. Lee(Korea), Mr. Kawase(Japan), Mr. Watanabe(Japan), Ms. Kanokpun(Thailand), Ms. Uda(Japan)

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