
REPORTS OF THE SEMINAR

GROUP 1

THE USE OF EFFECTIVE INTERVENTIONS IN REDUCING RECIDIVISM AND PROMOTING PUBLIC SAFETY AT THE PROSECUTION AND SENTENCING STAGE

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I. INTRODUCTION

The group started its deliberations on the main theme indicated above on January 25, 2007 and elected the members of the board as listed above. The group then decided to accept the proposed agenda provided by UNAFEI, with an additional sub-topic proposed during the discussions, so that the final agenda under consideration was as follows:

- (a) Problems and challenges facing current legal systems that aim to reduce recidivism and protect society from recidivists;
- (b) Identification of other effective intervention models, including diversion mechanisms and specialized court programmes (e.g. drug court programmes);
- (c) Agencies that provide and ensure such interventions;
- (d) Problems and challenges of collaboration among related agencies;
- (e) Monitoring and evaluation of selected interventions;
- (f) The adoptability of such models in respective countries; and
- (g) Recidivism and restorative justice.

II. SUMMARY OF DISCUSSIONS

A. Starting Point of the Discussions: How to Define ‘Recidivism’?

The participants considered it appropriate to deal with the delineation of the term ‘recidivism’ as a starting point of the group deliberations. As one participant (from China) pointed out, a conceptual clarification of recidivism was needed before assessing the effectiveness of interventions against reoffending at the prosecution and sentencing stage for the promotion of public safety. The same participant identified the following factors for consideration in this regard: type of crime, type of punishment to be imposed, and the length of time between crime occurrences.

Three working definitions were proposed for further consideration. The first one was as follows: “*recidivism: act of a person repeating an undesirable behaviour after having experienced negative consequences of that behaviour or having been treated or trained to extinguish that behaviour*”. This definition was criticized by the group members, who emphasized that it was structured in general terms and it was not compatible with criminal justice aspects. The second definition was an attempt to narrow down the conceptual framework of the first definition and encompass a criminological component in it: “*recidivism: act of a person who reoffends after he or she has undergone at least one stage of the criminal justice process.*” One participant suggested that recidivism only applies to the intentional commission of an

offence after the court trial. A third definition brought before the attention of the group was an attempt to accommodate the argument raised by one participant that the element of compliance with the law that is violated by recidivists should be reflected as appropriate. This definition was as follows: “*recidivism: the continued, habitual or compulsive commission of law violations after first having been convicted on prior offences.*” However, this attempt to conceptualize recidivism was criticized by other participants who argued that further analysis might be necessary in relation to the terms “*habitual*” and “*compulsive*” commission of law violations.

Despite the abovementioned efforts to reach an accepted definition of reoffending, the group was fully aware of the fact that so far there seems to be no agreement among researchers over how reoffending should be conceptualized and measured. It was acknowledged that, in addition to the debate over what qualifies as reoffending, there is divergence of views over how recidivist events should be counted and when follow-up periods for measuring recidivism should begin and end. The group took into account all these considerations to illustrate that answering the reoffending question is by no means straightforward.

B. Problems and Challenges Facing Current Legal Systems that Aim to Reduce Recidivism and Protect Society from Recidivists

The discussion then focused on the examination of the general aims and objectives of national sentencing policies and particularly on whether such policies are conducive to reducing recidivism and promoting public safety. In general terms, it was noted that sentencing policies followed at the national level serve the purposes of deterrence (general and special), promotion of public safety, rehabilitation, treatment and/or retribution. These objectives, however, are not treated in a homogeneous manner in different jurisdictions, as the purpose of the sanction may differ depending on national priorities or the specific legislation that applies in a given case. The group recommended, in this connection, that, despite this divergence in national attitudes, rehabilitation should always be considered in conjunction with other objectives of sanctioning policies to ensure that the interests of both the offender and the community are well served.

In exploring sufficient means to reduce recidivism, the participants agreed that priority should primarily be accorded not to whether the objectives of the sentences are prescribed in the national laws, but to the way that these objectives are translated into practice in the daily criminal casework. Therefore it was suggested that a more integrated approach be followed to ensure better co-ordination among national agencies, as well as consistency of action and more effective case management in this area.

The participants further discussed the type of offences mostly committed by recidivist offenders in their respective countries. In this context, reference was made to such crimes as property offences (theft, burglary, fraud), robbery, forgery, assault, abduction, as well as drug and sex-related offences. It was generally agreed that in most national legal systems sanctions were in place to punish such criminal behaviour. However, it was stressed that the imprisonment measures *per se* cannot be always fully effective because of lack of adequate rehabilitative impact on the offenders (see also below under II.C.3). Problems in implementation of national sentencing policies resulting in ineffective treatment of offenders were also reported.

The need to combine traditional sanctions with non-custodial measures for the treatment of offenders was stressed by one participant, who also listed a number of advantages in following such an approach, including the – quite possible – reduction of the risk of recidivism by increasing the offender’s links with the community and the savings in government resources and costs. In the same vein, the group agreed that the United Nations can play an important role in promoting the use and application of the United Nations Standard Minimum Rules for Non-Custodial Measures (the *Tokyo Rules*),¹ including their wider distribution to officials across sectors at the national level .

The group members also discussed factors that contribute to the increase of recidivism rates, including the inconsistent application of criminal sanctions, as well as more general social factors such as education, employment, drug and alcohol misuse, mental and physical health, attitudes and self-control, institutionalization and life skills, housing, financial support and family networks. In this context, they took

¹ Adopted by General Assembly resolution 45/110.

into account research findings and particularly the outcome of a major meta-analysis completed in 1996 in Canada which identified factors that are associated with reductions in recidivism.²

In the same vein, some participants argued that the prolonged detention of offenders due to lengthy prosecution and investigation proceedings and delays in the adjudication of cases by courts does not contribute to their rehabilitation and may well lead to recidivism. In this connection, one participant reported that no threshold was defined in his country's legislation to authorize the early release of prisoners upon completion of a certain imprisonment period and therefore cases of disproportionate incarceration to the severity of crimes were reported. The same participant highlighted the problem of treating drug dealers as drug users, thus enabling the imposition of more lenient measures to them, including early release that may lead to the commission of new crimes. On the other hand, cases of exclusion of drug users from special treatment programmes causing their increased vulnerability to recidivism were also reported. One participant noted that in his country there was sometimes interference by other agencies in the process of police investigation, which may obstruct the aim of reducing recidivism.

A number of participants made reference to specific problems encountered in their respective legal systems in implementing policies that aim to reduce or control recidivism, including, *inter alia*, the lack of appropriate legislation to govern investigation and prosecution proceedings, delays at the investigation and prosecution stage, capacity deficiencies and lack of resources. Some participants argued that such delays and deficiencies, accompanied by lack of legal rules governing provisional measures (e.g. pre-trial detention), hinder the efforts to control recidivism among offenders effectively. Furthermore, the prolonged period between prosecution and adjudication of the case does not only violate the right of the offender to a speedy trial, but it could also have detrimental effects on that offender, who may in the meantime have smoothly integrated into the society.

Other problems identified by the group included:

- The lack of diversely skilled and well trained personnel who would be able to meet the demanding need to implement intervention strategies with a view to reducing recidivism;
- The lack of appropriate equipment and proper facilities. It was explained in this regard that the lack of the necessary infrastructure and capacity is currently among the major obstacles in developing effective crime prevention and reduction plans in many countries, mostly developing ones or countries with economies in transition;
- The lack of systematic action and the absence of task-oriented and effective social work with both recidivist offenders and victims;
- The lack of knowledge and information about the whole range of criminal justice activities that involve imprisonment and alternatives to it, as well as the absence of awareness-raising initiatives to enhance such knowledge.³ In this connection, it was stressed that the establishment of best practices in promoting public safety and controlling recidivism requires a body of reliable knowledge of what works, in which context, by which mechanisms and at which cost.

² The factors investigated in the study were divided into static risk factors (adult criminal history, pre-adult antisocial behaviour, family criminality, family rearing practices, family structure, age, gender, intellectual functioning, race and socio-economic status) and dynamic risk factors (anti-social personality, companions, criminogenic needs, interpersonal conflict, personal distress, social achievement and substance abuse).

The study demonstrated that the three factors which were most correlated with recidivism were criminogenic needs, criminal history and social achievement. Other important factors were age, gender and race, and family background. These specific factors are therefore the ones that should be assessed when determining who requires the most intervention. Other factors such as socio-economic status, intellectual functioning and personal distress were not among the most predicting factors. The results of the study also indicated that dynamic factors are slightly more effective at predicting recidivism than static factors. However, both types of factors are very similar in their predictive effect.

³ The group took into account the findings of empirical research which show that people, in general, underestimate the factual severity of sanctions, overestimate the effectiveness of criminal sanctions and have overly pessimistic view of the development of crime. Consideration was also given to the finding that those who know less of the facts of the crime and crime control also have the highest fears and most punitive demands.

C. Identification of Other Effective Intervention Models, Including Diversion Mechanisms and Specialized Court Programmes

1. Concept and Scope of Diversion in the Criminal Justice Field

The group further shed light on alternative intervention models that go beyond the conventional criminal justice process of prosecution, sentencing and imprisonment with a view to examining their effectiveness in controlling recidivism. In this context, diversion mechanisms and specialized court programmes (e.g. drug court programmes) were identified as issues of particular importance that had to be examined thoroughly and, as one of the advisers of the group noted, not necessarily separately, as they might be interrelated.

The understanding among the group members was that diversion mechanisms are geared towards re-routing to treatment and rehabilitation programmes offenders who would otherwise be convicted and penalized through the traditional criminal justice process. The group agreed that the diversion schemes should be prescribed by law, run at any point of the process, from police arrest to court sentence (diversion before investigation/diversion from trial/diversion from sentencing), and used as alternatives to imprisonment.

A number of participants underscored that diversion is not applicable to all crimes and therefore it would be important to take into account in the relevant discussions the nature and type of offences concerned. Such an approach would also be useful for measuring recidivism in a more adequate and reliable manner focusing on offending behaviour in targeted areas (for example, the effect of sex offender treatment programmes on sex reoffending behaviour). Another group member argued that diversion mechanisms alone may not be enough to address issues of recidivism and that appropriate monitoring and provision of advice to the offenders should be available to that effect.

The group also took into account the usefulness of approaches focusing on prolific offenders that are far more criminally active than others and contribute disproportionately to the overall crime rate.⁴ It was argued in this regard that prioritizing resources on the most active offenders could bring about better outcomes in terms of reduced crime rates and reoffending, as well as improve public confidence in the criminal justice system.

2. Diversion Mechanisms at the Pre-Trial Stage

Specifically with regard to the pre-trial stage, the participants recognized that the key question in national criminal justice systems is how the discretion in deciding against whom action should be taken, whom to ignore and whom to specially treat should be structured. At the policing level, law enforcement officers need to have clear instructions on when they can themselves issue warnings and take no further action, and when they should refer alleged offenders to prosecuting authorities. Similarly, prosecutors need clear guidelines on how to exercise their discretionary powers. The group was of the view that in both instances, the opinion of the victim of the alleged offences needs to be taken into consideration, although victims should not be allowed a veto over State action in the criminal justice sphere.

In China, many minor cases are settled by police. Usually, the diversion mechanism should include the following factors: first, the types of offences should be traffic offences, minor injury, negligent injury and so on (according to Chinese criminal law, these offences should not result in sentences of more than three years); second, offenders who compensate for the loss of the victim and come to reconciliation with the victim; third, the victim agrees not to prosecute the offender. When these requirements are met, the police can directly dismiss the case at the pre-trial stage.

⁴ The participants assessed concrete information and research findings presented during the plenary sessions which demonstrate that, of a total offending population of around one million, only approximately 100,000 offenders (10% of all active offenders) were responsible for half of all the crimes committed in England and Wales (U.K. Home Office, 2001). Moreover, the most active 5,000 of this group of prolific offenders were estimated to be responsible for one in ten offences (U.K. Home Office, 2002). In this connection, consideration was given to the first positive results of a recently launched programme in United Kingdom (Prolific and Priority Offenders Programme) which was designed to give the most active or problematic offenders a choice between the cessation of offending with the acceptance of support delivered by relevant agencies or to carry on offending resulting in prompt arrest and punishment.

One participant noted that a way to reduce recidivism is to use the prosecutorial powers to waive prosecution as a means of diverting a case out of the formal flow of criminal justice, or to conditionally suspend prosecution. The suspension of prosecution would require legislation, as in many cases there is no statutory basis for such a measure. In practice, the prosecutor could impose conditions for a suspended prosecution that would be similar to the conditions attached to a suspended sentence. The suspension may also be combined with other treatment measures. It was further argued that, because of different political, social, economic and cultural conditions and developments, particularly in developing countries, it would take time to apply such measures in their entirety and to the greatest extent possible. However, processes aimed at amending existing policies and practices need to be launched and gradually carried out, taking into account the needs and characteristics of each society.

One group member reported on diversionary practices currently in place in his country. The most significant of such practices include conferencing for young offenders with a view to educating them, informal and formal cautioning adopted by the police for juveniles and community based rehabilitation programmes for drug users. In addition, house confinement and banishment have been two traditional methods still widely used with offenders. The same participant noted, however, that difficulties have been encountered in the supervision of house confinement, whereas banishment has worsened the drug problem at the local level. The same participant raised concerns and doubts whether diversion could, in general, be effective in drug-related cases.

One Japanese participant explained the diversion mechanisms used by the prosecutorial authorities in Japan. The public prosecutor issues guidelines to the police authorizing them to decide the termination of the proceedings for certain petty cases. Also, the public prosecutor may suspend prosecution even when the suspicion of an offence is proved, if such prosecution is deemed to be unnecessary in light of the character, age or circumstances of the suspect, the seriousness and nature of the offence and the situation after the offence. Factors such as compensation to the victim and motivation are taken into serious consideration, among others, in practice. Thus, the prosecution authorities may suspend prosecution, where, for instance, mediation with the victim is settled, and it is widely utilized in order to divert offenders from the formal court procedure; however, the participant is of the view that if they could suspend prosecution conditional upon rehabilitative treatments, it would be more sufficient. The participant further explained that in practice, suspension of prosecution is widely used in order to avoid unnecessary stigmatization of suspects and brought to the attention of the group statistics demonstrating trends in prosecution rates and suspended prosecution rates over the last ten years. For example, in 2005, the prosecution rate was 44.8% and the suspended prosecution rate was 53.4%. For overall cases, the prosecution rate has been on a downward trend, while the suspended prosecution rate has been on an upward trend.

3. Diversion Mechanisms at the Sentencing Stage

With regard to the use of diversion mechanisms as alternatives to sentences of imprisonment, the group took into account that the Tokyo Rules list a wide range of dispositions other than imprisonment that can be imposed at the sentencing stage and which, if clearly defined and properly implemented, may also function as measures that can facilitate the rehabilitation of offenders. Building upon the ad hoc presentations delivered during the plenary sessions, in which a comparative overview of the use of different sentencing alternatives was offered, the participants exchanged views and opinions on policies and measures to implement, separately or jointly, community sanctions ranging from conditional or suspended sentences, probation or supervision and community service, to treatment orders and electronic monitoring.

While discussing this agenda item, the group members were asked to provide a brief overview of the basic sanctions stipulated in their respective legal systems as a response to the commission of criminal offences or reoffending.⁵ Imprisonment was reported to be the main criminal sanction for a broad range of offences and its length is subject to the seriousness of the crime or to recidivist incidents. The group indicated that imprisonment should be combined and complemented with other measures geared towards the rehabilitation of the offender and his/her reintegration into society (see also above under II.B).

⁵ One participant (Ethiopia) underscored that the national judicial authorities are empowered to impose aggravated punishment on recidivist offenders as far as the public prosecutor proves the guilt of these offenders and further explained that this approach is essentially both a proactive and reactive way to ensure public safety.

In this regard, one participant (Ethiopia) referred to the existence in his country of rehabilitation centres that provide basic education, vocational training and social services to offenders and may engage them in labour aiming at their rehabilitation. One Japanese participant stated that although Japanese courts deliberate on whether imprisonment is necessary for the defendant in light of preventing recidivism, as well as retribution, the Japanese legal system does not provide for many options to the court at the sentencing stage. In many cases, an increased punishment is imposed as the consequence of increased responsibility due to the defendant's repeated offences.

Another Japanese participant expressed similar concerns and, after explaining the different level of sanctions applicable in the Japanese legal system, proposed that the judge should be given more options in deciding the most appropriate sanction considering such measures as probation, supervision, imposition of fines, etc. The same participant stressed that in cases of minor offences, resort to community sanctions and fines would be the most appropriate option, whereas a combination of community sanctions and imprisonment could be productive with regard to mid-level offences.

4. Prison Overcrowding and its Impact on Controlling Recidivism

The group members devoted part of their discussions to the problem of prison overcrowding, despite its little relevance to diversion mechanisms, on the understanding that this problem seriously affects the rehabilitation of prisoners, thus undermining efforts to control recidivism. Furthermore, the participants considered it appropriate to deal with this issue, although it falls within the agenda of Working Group 2, for a certain reason: the problem of prison over-population is exacerbated by the sometimes excessive use of pre-trial detention and/or the resort to imprisonment as the only available sanction to be imposed at the sentencing stage.

Building on this consideration, the group acknowledged the need to ensure the physical presence of the defendant in the related criminal proceedings, but confirmed that the decision to detain an accused awaiting trial is essentially a matter of weighing up the suspect's right to liberty, on the one hand, and the interests of the administration of justice, on the other. Taking into account Rule 6.1 of the Tokyo Rules,⁶ the group was of the view that pre-trial detention should be used with cautious deliberation. If an alternative measure to pre-trial detention is chosen, it should be the one that will achieve the desired effect with the minimum interference with the liberty of the suspect or accused person, whose innocence should be presumed at this stage. The group members indicated that possible alternatives include the release of the person and the order to appear in court on a specified day; not to interfere with the course of justice; to remain at a specific place; to report on a regular basis to a court, police or other authority; to surrender passports or other identification papers; to accept supervision by an agency appointed by the court; to submit to electronic monitoring; and to provide financial or other forms of security as to attendance at trial.

The group further underscored that the advantages and disadvantages of various alternatives to pre-trial detention are often examined on the assumption that the authority deciding on whether detention is required is able to choose freely between various options. In reality, the competent State authorities should be in a position to create a framework for such options to function. Some alternatives require merely a formal legal power that would enable them to be imposed while other alternative measures also need the setting up of proper mechanisms and infrastructure for their implementation.

In general terms, the group members stressed that, in order to achieve the best possible results, there needs to be in place a coherent strategy that constantly emphasizes the overall objective of using alternatives to imprisonment with a view to reducing the prison population. Moreover, it would be important to pursue the adoption of alternative models, given that correction costs have an impact on the amount of public funds available for other basic services and public needs. In this connection, one participant (Ethiopia) referred to a study conducted in his country which demonstrated that the costs of imprisonment, especially of those offenders that have received jail sentences ranging from one to six months, were too high and, as an example, the expenditure for one single prisoner exceeded the salary of an average low level civil servant.

⁶ "Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim."

The same participant pointed out that prison congestion, which is the outcome of lack of alternative to imprisonment models, has adverse effects on the treatment and living conditions of prisoners and therefore high priority should be accorded to policies addressing alternatives to imprisonment.

5. Diversion Mechanisms for Special Categories of Offenders

(i) Offenders with Mental Disorders

One Japanese participant informed the group of the Japanese experience of introducing medical care and community supervision for offenders with mental disorders (insane or quasi-insane persons who have committed serious offences) as possible treatment following non-prosecution, acquittal or a suspended sentence. While some of these offenders pose a serious threat to public safety by repeating crimes, they are not criminally responsible for their actions, or are criminally responsible to a limited extent, thus resulting in non-prosecution, acquittals or mitigations of sentence. Before the new scheme was introduced, these persons were often hospitalized after non-prosecution, acquittal or suspension of sentence, but there was no formal arrangement between criminal justice agencies and medical agencies. As a result, some offenders committed further offences because of a lack of consistent inpatient or outpatient psychiatric treatment. Under the new scheme, the prosecutor, the court, the designated test hospital, the designated inpatient or outpatient hospital, the mental health agencies and the probation office co-operate to provide those offenders with proper treatment, thus enabling the relevant authorities to take flexible measures aiming at preventing these persons from committing acts against public safety.

In general terms, the participants recognized that, despite the little or lack of criminal responsibility of mentally ill offenders, their recidivist acts could greatly infringe public safety and therefore such offenders should be dealt with in a manner which also ensures that further commission of dangerous acts is prevented. It was further acknowledged that diversion of the mentally ill raises wider issues than determining criminal responsibility. Mental illness should be taken into account when deciding how to deal with this special category of offenders. The police and the prosecuting authorities should make special efforts to divert such persons from the criminal justice system.⁷ On the other hand, mentally ill offenders who remain within the criminal justice system should be given special consideration to determine whether they would not be better placed outside prison. It was argued that a community sentence with a treatment element for the offender's mental illness should be considered in appropriate cases.

(ii) Drug Offenders

The participants paid particular attention to diversion policies and programmes regarding drug offenders.⁸ There was an agreement that diversion has a major role to play as an alternative to imprisonment in the drug sphere. The main argument raised in this regard was that many offenders who violate drug laws and/or other laws commit their crimes because they are addicted to drugs themselves. It would therefore be more effective for these offenders to be treated for their addiction, rather than processed through the conventional criminal justice system and eventually punished.

The participants acknowledged that diversion of drug users may take different forms, but, in basic terms, it can follow the same pattern as for other offences in that the police and prosecutors use their discretion not to arrest suspects or prosecute them. This may be subject to the condition that drug offenders enter a drug education programme or take part in more formal treatment programmes.

One participant (Malaysia) stressed that his country was one of the few States in the region that has developed a compulsory rehabilitation programme for drug dependents. Every dependent can be ordered to undergo treatment and rehabilitation for his or her addiction for a specific period of time, as provided for

⁷ The courts have a particularly important role to play in this regard. The United Nations Principles for the Protection of Persons with Mental Illness (adopted by General Assembly resolution 46/119) encourage the creation of a legislative framework that allows the courts to intervene where the sentenced prisoners or remand detainees are suspected of having a mental illness. Such legislation "may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility," (Principle 20.3) instead of being held in prison.

⁸ The term "drug offenders" in this report is meant to include drug abusers and dependants and not drug dealers, manufacturers and traffickers, who are different types of offenders and should be dealt with in the context of organized crime.

under the laws and regulations relating to treatment and rehabilitation. The objective of the treatment and rehabilitation programme is to avoid recidivism among illicit drug abusers and to enable drug dependents to overcome the physical and psychological addiction to drugs and thereafter live a drug-free life. The same participant further specified that two methods of treatment and rehabilitation of drug dependents are implemented at the national level: rehabilitation within an institution, a controlled environment whereby the addict undergoes treatment and rehabilitation for two years; and rehabilitation in the community, two-year aftercare supervision of ex-addicts following their release from an institution.

The group further noted that in a number of jurisdictions diversion is formalized through drug treatment courts. The participants underlined the particular nature of these courts, which, although they are part of the criminal justice system, operate following a diversion strategy. In this connection, the group members examined the key feature of the drug courts to handle cases involving substance-abusing offenders through comprehensive supervision, drug testing, treatment services and immediate sanctions and incentives. They noted that the establishment and operation of drug courts reflect a transformation of the way courts traditionally dealt with criminal casework related to drug-abusing offenders. Thus, while the traditional process is adversarial and emphasizes the backward-looking adjudication of claims, rights and responsibilities of the few participants involved, the transformed process in drug courts is collaborative and put emphasis on the forward-looking adjudication of the problem with the involvement of a wide range of stakeholders (judge, prosecutor, defence counsel, substance abuse treatment specialists, probation officers, law enforcement and correctional personnel, educational and vocational experts, community leaders and educational and community anti-drug organizations).

One participant also informed the group about classification models for drug courts and the various approaches followed by them: pre-plea, pre-trial, and post-plea approaches, depending on the point at which the drug court admits the participant. Emphasis was given to the need to establish clear eligibility criteria for the participation of offenders in court-directed drug treatment and rehabilitation programmes.

The group noted that success factors for the effective operation of drug courts include, *inter alia*, the effective judicial leadership of the multidisciplinary drug treatment programme team; the strong collaboration of judges and team members; the existence of an operational manual to ensure consistency of approach and ongoing programme efficiency; the establishment of clear eligibility criteria and a screening process for participation of offenders in a drug treatment programme; the fully informed and documented consent of each participant offender; the speedy referral of participating offenders to treatment and rehabilitation; the existence of mechanisms to ensure ongoing evaluation of the programme; sufficient and sustained funding to support the process; and potential changes in substantive and procedural national laws.

The group members further stressed the importance of providing clear and timely information about drug court directed treatment and rehabilitation programmes to the community, so that its members are well informed about their real benefits compared with punishment by imprisonment or other means. In this connection, effective use could be made of the initial results of studies conducted in previous years suggesting that drug court programmes seem to be more successful than imprisonment in preventing recidivism of drug offenders. This is particularly important in cases where the community has misperceptions about these programmes being too soft on participating offenders. It is also essential to provide comprehensive information to government leaders, officials and bodies with a view to overcoming any initial reluctance to offer financial or other support.

D. Agencies that Provide and Ensure Interventions

The discussions of the group were further expanded to identify authorities and/or agencies operating at the national level which can be engaged in diversion mechanisms and possible interventions with offenders. It was agreed that such authorities or agencies involved in the prosecution and sentencing stage include the law enforcement, prosecutorial and judicial authorities, the prisons or correction and rehabilitation centres and the probation officers, as well as non-governmental organizations dealing with criminal justice issues and various community institutions.

One participant was of the view that non-governmental organizations that offer treatment to drug abusers could be helpful, but there should be a mechanism to carry out follow-up evaluations regarding the

effectiveness of their programmes. The same participant identified as related national authorities and agencies the Ministry of Justice, the police and the National Narcotics Control Bureau.

One participant (from Ethiopia) noted that religious institutions may play a role in the treatment of offenders, although that is dependent on the political, social and cultural context of each society. The group agreed that targeted interventions of agencies such as hospitals, through the Ministries of Health, forensic chemistry units, community and half-way houses could also be conducive to establishing comprehensive treatment approaches for offenders within, or in parallel with, the criminal justice processes already in place.

One Japanese participant informed the group that there are two non-governmental organizations in the country involved in outreach interventions with drug users in custody. These organizations work in collaboration with doctors, professionals in healthcare, lawyers, and probation officers with a view to providing education to prisoners through correspondence or particular sessions in prison. Lectures at schools and communities, and workshops for professionals, are among the activities of these organizations. Assistance in getting bail and pre-release support are also offered by one of these NGOs. Over the last six years, around 150 defendants took advantage of such supporting schemes. The same participant also expressed her opinion that, in general terms, the lack of legal framework and well established requirements for action render such interventions of non-governmental organizations sporadic, piecemeal and fragmented.

E. Problems and Challenges of Collaboration Among Related Agencies

All participants were of the view that one of the main difficulties and challenges encountered in their respective countries relates to the lack of effective collaboration and co-ordination among the abovementioned authorities and agencies which leads to piecemeal and fragmented interventions with limited chances to adopt and pursue a holistic approach to dealing with offenders and recidivist incidents. Most of them reported that the need for collaboration has become even more acute due to individual interventions of various stakeholders which may not be linked to a comprehensive plan of action for the treatment of offenders.

The group agreed that initiatives geared towards institutionalization of inter-agency co-operation, especially through forming inter-agency units with a common vision, goal and function, can provide solutions to overcome barriers to collaboration. The need for putting in place the necessary legal or administrative framework and ensuring the political will and commitment to initiating or streamlining joint efforts and action was also emphasized. One Japanese participant noted that the means for establishing such a framework may vary, as other countries need legislation to that effect, while others may resort to administrative schemes or arrangements. One participant specifically underlined the lack of co-operation and co-ordination amongst agencies involved in the investigation of crimes. He also noted that the same problems of lack of co-operation and communication between different actors are encountered in the field of treatment programmes for offenders as well.

Other participants highlighted the absence of an integrated information system database on recidivist incidents and rates. They further noted that this deficiency makes it difficult to carry out an in-depth evaluation and assessment of the extent and impact of the problem. In general terms, the availability of comprehensive, timely and reliable data and information is one of the essential requirements for the formulation of appropriate policies and guidelines to tackle the challenges posed by recidivism.

Some participants proposed as a means of boosting co-ordination and concerted action the designation of focal points in each authority or agency involved, as well as the establishment of a communication network between them through regular meetings, posting of liaison officers, information-sharing etc. One participant suggested that national crime information centres be established with the task to collect, store and disseminate information related to crime and justice.

F. Monitoring and Evaluation of Selected Interventions

The group further considered efficient ways and means to monitor selected interventions with offenders and evaluate whether such interventions can be conducive to reducing recidivism. All participants accorded high priority to the need for having in place a solid knowledge base and sufficient information about the offenders and the whole range of interventions used with them. It was pointed out in this regard that the availability of reliable data will enable and improve information-sharing among related agencies, thus

strengthening their co-operation and co-ordination, avoiding duplication, and ensuring the continuity element of the intervention schemes. As a result, a much more accurate picture of the real work being carried out can be produced, providing at the same time fertile ground for more streamlined future efforts geared towards enhancing the effectiveness of the overall programmes and interventions.

The group members also underlined that the systematic collection of information is a key prerequisite for conducting research, which would be important in developing an evidence-based approach and determining what works in the area of counter-recidivism strategies. In addition, it was agreed that research is an extremely useful tool for management planning, as it allows for better allocation and use of available resources and assists in eliminating programmes and interventions that do not have an impact on offenders. For this reason, the need for research staff who can carry out research projects and maintain knowledge of new and developing trends was emphasized. Moreover, it was noted that where research staff are not available efforts are needed to build relationships with universities and academia to encourage research that is consistent with local, cultural and social norms.

The participants acknowledged that, in order to conduct research in an efficient manner, it is necessary to know what is being evaluated and, thus, be in a position to describe the programme or intervention and further apply it consistently so that all participants receive the same service. On the other hand, it would not be possible to effectively evaluate programmes that are constantly under review or change, because in this case no reliable and comprehensive information on which programme is operationally successful can be made available.

Additional proposals made during the discussions included the introduction of case management systems in criminal cases, the establishment of a system of consolidated performance assessments for the authorities and/or agencies dealing with offenders, and the setting of benchmarks that have to be met by a specified date. The translation of such proposals into practice would enable schemes to be monitored for efficiency and effectiveness, as well as the identification of poor performers, so that appropriate action can be taken.

Other group members suggested that partnerships should be built to allow for effective supervision and monitoring of relevant intervention schemes. Reference was made to the involvement and role of the community in this regard. Thus, one participant (from Ethiopia) reported that there had been sporadic attempts in his country to involve the community in crime prevention and control policies, including through periodic evaluation of police performance and community patrols around vulnerable public infrastructure. In the same vein, the group agreed that local communities and all government agencies should co-operate and support efforts to control recidivism, including through monitoring of relevant interventions with offenders.

G. The Adoptability of Intervention Models in Respective Countries

With respect to implementing policies to enable the adoptability of intervention models and schemes against recidivism in their respective legal systems, the participants put emphasis on political will and commitment as the driving force for introducing changes and developing a clear policy in this field. It was further stressed that political initiatives on behalf of Governments will also enable the necessary infrastructure to be put in place and resources to be made available as appropriate. Further to that, partnerships with elements of civil society such as community organizations, organizations of professionals working in the criminal justice sector, and non-governmental organizations that are active in the field of crime and punishment, could be productive and conducive to more integrated and multifaceted action against recidivism.

Some group members identified legislative reform as a first element and component of focused and integrated strategies aiming at achieving better results with the treatment of offenders and the control of recidivism. They emphasized that the availability of a comprehensive legal framework for diversion mechanisms and alternatives to imprisonment at every level, and the existence of statutory requirements for implementing them, could provide the necessary safeguards for clearly defining roles and responsibilities of the authorities concerned and preserving public safety while taking into consideration the specific needs of offenders.

The lack of institutional capacity and experience in tackling the problem of recidivism would further require, as the participants noted, the establishment and promotion of training programmes and activities for enhancing the expertise and skills of law enforcement officers, prosecutors and judges. From this perspective, the provision of appropriate technical assistance to countries in need, especially developing countries and countries with economies in transition, was considered to be vital. The relevant role of the United Nations in providing such assistance was highlighted by one participant.

The group also referred to the need to raise awareness of programmes in action and underscored that a strategy should be developed for placing sufficient information in the public domain so that members of the community are aware of the issues at stake and can make an informed input into the relevant debate on improving counter-recidivism mechanisms. Furthermore, it was noted that the media have an important role to play in informing the public about such issues. It is therefore necessary to brief representatives of the media about the overall efficacy of diversion mechanisms and alternatives to imprisonment so that they are able to put occasional failures into a wider context.

One participant underlined that the lack of trust in rehabilitation and the perception that the treatment of offenders tends to spend too much time and resources on criminals and, in addition, is too lenient and minimally intrusive are challenges that need to be addressed by treatment providers. It was further argued that these kinds of views tend to discriminate against individuals who have completed the institutionalized part of treatment and are attempting to reintegrate into the community. Lack of employment, educational opportunities, and peer pressure, that lead to the commission of an offence in the first place, are doubled after a person is labeled as an offender undergoing a treatment programme. These social miscarriages need to be corrected for treatment to be effective and initiatives to raise awareness are a first step.

H. Recidivism and Restorative Justice

At the beginning of the deliberations, the group agreed that this sub-topic should be incorporated in the proposed agenda that was brought before its attention.

Starting point for the relevant discussions was the suggestion made by one participant (from Ethiopia) that in seeking alternative models of effective interventions with offenders and dealing with problems of recidivism, the role of the community should be considered. It was argued, in particular, that many restorative justice approaches provide for an expanded role for community members in the resolution of conflict and in responding to crime problems, usually by resorting to customary law. The contribution of such approaches to the conclusion of agreements to be adhered to by offenders, and sometimes also by other parties, may well strengthen social control capacities and preserve the social cohesion of the community. For this reason, it was further pointed out that a systemic change in criminal justice agencies and systems in order to empower community decision-making and responsibility in the response to crime and harm could be a viable approach. Such an approach can be adapted to the circumstances, legal traditions, principles and underlying philosophies of national criminal justice systems. It may also encourage the offender to gain insight into the causes and effects of his or her behaviour and take responsibility in a meaningful manner. It may further be particularly suitable for situations where juvenile offenders are involved and in which an important objective of the intervention is to teach the offenders new values and skills.

In the same vein, the group took into account that there is a considerable variability in the nature and extent of community involvement in the various restorative justice approaches. For example, in victim-offender mediation,⁹ the community is absent and the process consists of a mediator, the offender and the

⁹ Victim-offender mediation or reconciliation programmes are designed to address the needs of victims of crime while ensuring that offenders are held accountable for their illegal acts. These programmes can be operated by both governmental agencies and non-profit organizations and are generally restricted to cases involving less serious offences. Referrals may come from the police, the prosecutors, the courts, and probation offices. The programmes may function at the pre-charge, post-charge/pre-trial, and post-charge stages and involve the willing participation of the victim and the offender. They can also offer a pre-sentencing process leading to sentencing recommendations. When the process takes place before sentencing, the outcome of the mediation is usually brought back to the attention of the prosecution or the judge for consideration.

victim. In circle sentencing,¹⁰ on the other hand, the process is open to all members of a local neighbourhood, village or indigenous group. In this connection, cases were mentioned regarding the function of quasi-formal courts at the community level dealing with minor cases, or other instances where a village chief mediates conflicting parties to settle their conflict and achieve reconciliation without reporting to the police. The Chinese participant introduced the restorative justice system in his country. Restorative justice should at least include three most important factors as follows. First, the victim should participate in the criminal procedure dealing with the case. This is a conspicuous characteristic different to traditional justice. Traditional justice stresses retaliation against the offender, but doesn't attach the importance of the protection of the victim's rights. He was of the view that stressing the victim's increased participation in criminal procedure is the major change in the criminal justice system at present. Second, restorative justice underscores that offenders should try hard to compensate the victims for loss, and seek for forgiveness from the victim. Third, more non-custodial penalties should be imposed, for example, a community penalty, suspension of sentence, parole, fines and so on. In recent years, China has begun to apply the basic principles of restorative justice in dealing with criminal cases.

A number of participants acknowledged that many members of the community are likely at first to view restorative justice processes as more lenient and less effective at preventing or controlling crime than the traditional criminal justice system and its reliance on punishment. An innovative restorative justice programme may be seen as an enabling factor for a 'lighter' treatment of the offender, particularly when a more serious offence is involved. Therefore the group stressed the importance of developing materials and designing initiatives to educate the community and raise awareness of the principles, objectives and practices of restorative justice and the potential role that community members can play in responding to crime.

A number of participants further recognized that strategies of restorative justice may play a crucial role in decisions about diversion. Where mechanisms are in place to allow for settlement of disputes by restorative means, they may also encourage the use of alternatives to imprisonment. Meetings with offenders, victims, and community members where techniques of mediation and alternative dispute resolution are used to deal with matters that would otherwise be subject to criminal sanctions, have the potential to divert cases which might have resulted in imprisonment both before trial and after conviction.

Moreover, the participants underlined that where the diversion is linked to full restorative justice processes which interrupt the further operation of the criminal justice system in particular cases, it is necessary to have a parallel structure to facilitate these alternative processes. This requires administrative support that can be provided by the State authorities or by non-governmental organizations operating in partnership with criminal justice agencies.

With regard to the link between restorative justice programmes and reoffending, a number of participants noted that a growing number of empirical studies in this field have not so far provided a straightforward answer. Some of them have not shown reduction in recidivism, while others indicated that restorative justice interventions are associated with small but significant decreases in reoffending, mostly in cases of low-risk offenders. There are a few reasons for this which the group took into account. First, restorative justice includes a broad range of justice activities and processes, some of which aim to divert offenders away from traditional justice proceedings and others which run in conjunction with traditional processes. In addition, restorative initiatives may also be placed at various levels of the criminal justice process: pre-court diversion (e.g. restorative cautioning and conferencing), pre-sentence and post-sentence. It was the opinion of the group that with so many variations, it is not surprising to come up with varied research outcomes on the relationship between restorative justice and reoffending. However, the participants also acknowledged that,

¹⁰ Circle sentencing is a characteristic example of participatory justice in that members of the community can be directly involved in responding to incidents of crime and social disorder. In this process, all the participants, including the judge, defence counsel, prosecutor, police officer, the victim and the offender and their respective families, and community residents, sit facing one another in a circle. Circle sentencing is generally only available to those offenders who plead guilty. Discussions among those in the circle are designed to reach a consensus about the best way to resolve the conflict and dispose of the case, taking into account the need to protect the community, the needs of the victims and the rehabilitation and punishment of the offender. The sentencing circle process is typically conducted within the criminal justice system, includes justice professionals and supports the sentencing process.

if restorative justice processes meet the key objectives of holding offenders accountable, encouraging them to accept responsibility for their wrongdoing, not stigmatizing them, and providing a forum that promotes reintegrative and rehabilitative outcomes, then re-offending is less likely. The group highlighted the importance of attempting to understand how and why restorative justice renders change in offenders, including more detailed qualitative assessments of what offenders in restorative justice understand about the process and how this affects their future behaviour.

III. CONCLUSION AND RECOMMENDATIONS

Effective interventions through prosecutorial and sentencing decisions play an important role in bringing about reduction of recidivism and ensuring public safety. The common denominator in the discussions of Working Group 1 was that alternative intervention models that go beyond the conventional criminal justice process of prosecution, sentencing and imprisonment, such as diversion mechanisms at both the prosecution and sentencing stage and drug court programmes or other schemes targeting specific categories of offenders, may well serve the objectives of preserving public safety and order and rehabilitating the offenders with a view to controlling recidivism. In that sense, authorities and agencies involved in this area should establish an effective collaboration network to avoid fragmented action and ensure that a holistic and integrated strategy to address the problems posed by recidivism is pursued and effectively implemented.

Upon completion of the deliberations reflected above, the participants came up with the following recommendations which intend to provide a set of key principles and factors for enhancing the effectiveness of interventions in reducing recidivism and promoting public safety at the prosecution and sentencing stage:

1. Where necessary, legislative reform should be pursued and carried out as a first element and component of strategies aiming at achieving better results with the treatment of offenders and the control of recidivism;
2. There should be various options such as suspended sentences and other non-custodial measures to be applied at the pre-trial and sentencing stage, and the rehabilitation of the offender should always be considered in conjunction with other objectives of sanctioning policies to ensure that the interests of both the offender and the community are well served;
3. A more integrated approach should be followed to enable better co-ordination among national and local agencies, as well as consistency of action and more effective case management in preventing and controlling reoffending;
4. The designation of focal points in each authority or agency involved in intervention models with offenders, as well as the establishment of a communication network between them and the enhancement of information-sharing mechanisms should be prioritized as a means of boosting co-ordination and facilitating concerted action among the various stakeholders;
5. An integrated information system of database on recidivism incidents and rates should be developed to carry out an in-depth evaluation and assessment of the extent and impact of the problem and formulate appropriate policies and guidelines based on comprehensive, timely and reliable data and information;
6. In order to ensure the operational success of intervention models with offenders, primary consideration should be given to establishing the appropriate infrastructure and making available the necessary resources for supporting such infrastructure;
7. In order to address the lack of institutional capacity and experience in tackling the problems posed by recidivism, high priority should be accorded to training programmes and activities, and the provision of technical assistance generally, aiming at enhancing the expertise and skills of law enforcement, prosecutorial and judicial authorities, as well as other staff involved in criminal justice affairs;
8. Effective mechanisms primarily aimed at monitoring and assessing the effectiveness of intervention should be developed;
9. Partnerships with non-governmental organizations and other elements of civil society should be built and further encouraged to allow for multi-stakeholder involvement in the implementation of intervention schemes;
10. In seeking alternative models of effective interventions with offenders and dealing with problems of recidivism, the role of the community should be examined and restorative justice approaches can be considered as a response to crime problems, especially with regard to less serious offences.