

Report of the Workshop

**REDUCING REOFFENDING: IDENTIFYING RISKS AND  
DEVELOPING SOLUTIONS**

Fourteenth United Nations Congress  
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\* Denotes keynote speaker



## FOREWORD

Reducing reoffending is of critical importance to enhancing public safety and to achieving sustainable development. On the basis of this recognition, Workshop 2 on “Reducing reoffending: identifying risks and developing solutions” was convened on 8 March 2021 in Kyoto, Japan, within the framework of the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice (the “Kyoto Congress” or the “Congress”).

The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), an institute of the United Nations Crime Prevention and Criminal Justice Programme Network (PNI), in collaboration with the Thailand Institute of Justice (TIJ) and the United Nations Office on Drugs and Crime (UNODC), took the leading role in the administration, organization and preparation of Workshop 2 as an official component of the Congress. As it has done since the Tenth Crime Congress in 2000, UNAFEI offered to publish the report of the workshop.


Workshop 2 drew links between reducing reoffending and sustainable development and underscored the importance of providing effective, evidence-based treatment and support to facilitate offender rehabilitation and reintegration in rehabilitative environments throughout all relevant stages of the criminal justice system. Consisting of three panels – creating rehabilitative prison environments, community-based approaches that contribute to reducing reoffending, and taking a multifaceted approach to ensure continuous support and services for rehabilitation and reintegration of offenders – the workshop offered an opportunity for government representatives, experts and practitioners to exchange information on strategies and best practices for reducing reoffending. The conclusions of the panel discussions, as summarized by the Chair of Committee II, appear at the end of the Workshop Report, which is published herein.

The present publication is a compilation of all the presentations and discussions and all the reference papers made available to the workshop. It is our great pleasure to publish this comprehensive report of the workshop to further disseminate its outcomes globally.

I would like to express my sincere appreciation to the keynote speakers and the panellists of the workshop – prominent experts from all over the world without whose strenuous contributions the workshop would not have been such an outstanding success. Furthermore, I would like to thank the UNODC for its guidance and support, the Thailand Institute of Justice for its assistance in planning and preparation and all the individuals whose unselfish efforts behind the scenes contributed significantly to the realization of both the workshop and this publication.

Finally, I am convinced that this publication is essential reading material for all those who are interested in reducing reoffending, including criminal justice practitioners, policymakers and academics. I am also confident that it will serve as a valuable reference source for international, as well as local, training activities.

November 2021



MORINAGA Taro  
Director of UNAFEI



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# INTRODUCTION

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## BACKGROUND PAPER FOR WORKSHOP 2

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## WORKSHOP PROGRAMME







# **Fourteenth United Nations Congress on Crime Prevention and Criminal Justice**

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**Integrated approaches to challenges facing the  
criminal justice system**

## **Workshop 2. Reducing reoffending: identifying risks and developing solutions\*\***

**Background paper prepared by the Secretariat**

### *Summary*

Reducing reoffending is critical to building inclusive, sustainable societies as envisioned in the 2030 Agenda for Sustainable Development. To reduce reoffending effectively, criminal justice systems must prioritize offender rehabilitation and social reintegration. The background paper explores the creation of rehabilitative prison environments, the adoption and implementation of community-based approaches that contribute to reducing reoffending, and multi-stakeholder approaches that ensure continuous support and services for offender social reintegration, as solutions to reduce reoffending.

\* A/CONF.234.1.

\*\* The Secretariat wishes to express its appreciation to the members of the United Nations crime prevention and criminal justice programme network of institutes, especially the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, for assisting in the preparation and organization of the workshop.

## I. Introduction

1. Sustainable Development Goal 16 of the 2030 Agenda for Sustainable Development (General Assembly resolution 70/1) is to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. To achieve this goal, it is important for criminal justice authorities to take measures that ensure the rehabilitation and reintegration of offenders into society as productive and law-abiding citizens. Reoffending<sup>1</sup> refers to the perpetration of a new criminal offence by a person who has already been the subject of a criminal justice intervention. Although reliable global statistics on reoffending rates are currently not available, both developed and developing countries experience reoffending. Reducing reoffending leads to fewer victims, greater community safety and less pressure on, and lower costs for, the criminal justice system. To reduce reoffending, there must be effective offender rehabilitation and social reintegration practices in prison, in the community and throughout the offender's time in contact with the criminal justice system. Yet seamless and rehabilitative interventions cannot be accomplished by criminal justice authorities alone. It is imperative that criminal justice authorities develop robust partnerships with various public and private sector stakeholders, engaging them throughout the process towards the offender's social reintegration.

2. The United Nations standards and norms in the field of crime prevention and criminal justice recognize and encourage rehabilitative approaches. The revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (General Assembly resolution 70/175, annex), in particular, highlight the fact that the purposes of imprisonment, namely, "to protect society against crime and to reduce recidivism", can only be achieved if the period of imprisonment is used to ensure the reintegration of offenders into society upon release, so that they can lead a law-abiding and self-supporting life. The Rules recognize the necessity to tailor treatment to the individual needs of offenders by assessing the risks that prisoners may pose and the needs that they may have and preparing a programme of treatment suitable to their needs, capacities and dispositions. With regard to offenders with special needs, in particular women and juveniles, careful individual assessments taking account of those needs should be undertaken, and specific rehabilitation and reintegration programmes should be developed, as emphasized in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) (Assembly resolution 65/229, annex) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Assembly resolution 45/113, annex). Similarly, the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) (Assembly resolution 45/110, annex) promote the use of non-custodial measures, such as probation, parole and fines, and emphasize the importance of the involvement of volunteers and other community resources in the process of offender rehabilitation and reintegration.

3. In practice, rehabilitative responses should be based on reliable empirical evidence. This evidence base, which incorporates the monitoring, measuring and evaluation of programmes, should serve to

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<sup>1</sup> The term "reoffending", a synonym of "recidivism", has been used in the present paper in line with the wording used by the General Assembly in its resolution 72/192 for the topic of the workshop.

plan and improve future interventions. Significant research has been dedicated to the development of empirical tools to identify appropriate treatment goals and improve the effectiveness of rehabilitation and reintegration. In particular, the risk-needs-responsivity<sup>2</sup> framework identifies dynamic risk factors associated with reoffending, also referred to as “criminogenic needs”, that must be addressed by treatment. In addition to risks and needs, the framework also encompasses “responsivity”, which considers the elements that have an impact on treatment effectiveness, such as how and in what context it is delivered, and the motivation, characteristics and situation of the offenders. Cognitive behavioural therapy has been identified as one of the most effective treatment measures from the standpoint of responsivity. Similarly, the desistance theory emphasizes the provision of support to offenders “to see themselves in a new [and more positive] light”,<sup>3</sup> encouraging them to find hope for the future and helping them to build new prosocial identities by focusing on family relationships and employment.

4. The United Nations standards and norms and collective professional knowledge gained through practice have brought forth the following important issues that bear consideration:

(a) It is well known that imprisonment alone is insufficient to prevent reoffending and that it has a large adverse effect on social reintegration prospects caused by stigmatization, restricted contacts with the outside world, including the offender’s family, and the risk of institutionalization, that is, the risk for people to spend long periods of time in prison and to develop deficits in their social and life skills. Thus, imprisonment should be imposed as a measure of “last resort”, without prejudice to the principle of proportionality, the protection of society and the rights of the victims;

(b) Imprisonment can have a positive impact on reducing reoffending, in that imprisonment can be the “hook for change”<sup>4</sup> in the lives of offenders if the prison environment is appropriate and if prison administrations follow a rehabilitative approach to prison management compliant with human rights standards;

(c) The use of imprisonment as the “default option”<sup>5</sup> leads to prison overcrowding, which continues to undermine severely proper prison management, and thus has a negative impact on the quality and quantity of rehabilitative interventions in prisons;

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<sup>2</sup> James Bonta and D. A. Andrews, *The Psychology of Criminal Conduct*, 6th ed. (New York, Routledge, 2017).

<sup>3</sup> United Nations Office on Drugs and Crime (UNODC), *Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders*, Criminal Justice Handbook Series (Vienna, 2018), p. 8.

<sup>4</sup> Peggy C. Giordano, Stephen A. Cernkovich and Jennifer L. Rudolph, “Gender, crime, and desistance: toward a theory of cognitive transformation”, *American Journal of Sociology*, vol. 107, No. 4 (January 2002), pp. 990–1064.

<sup>5</sup> Matti Joutsen, “International patterns in the use of community-based sanctions”, paper presented at the Twenty-fifth Anniversary Seminar of the United Nations Standard Minimum Rules for Non-custodial Measures, held by the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders in Tokyo, from 7 to 9 September 2015. “Throughout the world, imprisonment has solidified its position as the main punishment imposed for medium-level and more serious offences, and as the ‘default option’ against which other sanctions are compared. The assumption that imprisonment fulfils the various functions of punishment and thus is suitable for medium-level and more serious offences has resulted in a general growth in the number of prisoners.”

(d) Community-based treatment, as compared to imprisonment, is more cost-effective and better supports the social reintegration of offenders, as it enables offenders to benefit from necessary interventions and support while maintaining their lives in the community and avoiding social barriers stemming from institutionalization;

(e) The overuse of non-custodial measures, as well as their use without appropriate community support, can lead to “mass supervision” and “net widening”, whereby the number of persons controlled by the criminal justice system increases.<sup>6</sup> The excessive use of supervision for low-risk offenders may increase the reoffending risk, owing to unnecessary interventions;<sup>7</sup>

(f) Interventions and support must be gender-responsive and tailored to each offender’s individual risk and needs, which need to be continuously assessed and reassessed;

(g) Preparation for re-entry into society should commence in prison, and interventions should continue until a successful reintegration is completed;

(h) In the pursuit of rehabilitative goals, multi-stakeholder involvement is indispensable.

5. Reducing reoffending is critical to building inclusive, sustainable societies as envisioned in the 2030 Agenda. To reduce reoffending effectively, criminal justice systems must prioritize offender rehabilitation and social reintegration by creating rehabilitative prison environments, adopting and implementing community-based approaches that contribute to reducing reoffending and taking a multifaceted, multi-stakeholder approach.

## **II. Crime prevention and criminal justice issues, policies and practices to reduce reoffending**

### **A. Creating rehabilitative prison environments**

6. Rehabilitative prison environments are necessary for the successful rehabilitation and reintegration of incarcerated offenders. Prisoners in facilities affected by high levels of violence, rampant drug use, organized crime, violent extremist ideologies and human rights abuses will find it difficult, if not impossible, to start their paths toward desistance from crime<sup>8</sup> and rehabilitation. Prison environments plagued

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<sup>6</sup> See, for example, Fergus McNeill and Kristel Beyens, “Offender supervision in Europe: COST Action IS1106–final report” (March 2016), p. 2; Michelle S. Phelps, “Mass probation and inequality: race, class, and gender disparities in supervision and revocation”, in *Handbook on Punishment Decisions: Locations of Disparity*, vol. 2, Jeffery T. Ulmer and Mindy S. Bradley, eds. (New York, Routledge, 2018), pp. 45–47; Marcelo F. Aebi, Natalia Delgrande and Yann Marguet, “Have community sanctions and measures widened the net of the European criminal justice systems?”, *Punishment and Society*, vol. 17, No.5 (November 2015), pp. 589–590.

<sup>7</sup> See, for example, James Bonta, Suzanne Wallace-Capretta and Jennifer Rooney, “A quasi-experimental evaluation of an intensive rehabilitation supervision program”, *Criminal Justice and Behavior*, vol. 27, No. 3 (June 2000), pp. 312, 314 (“The risk principle suggests that the intensity of treatment should be matched to the risk level of the offender. That is, low-risk offenders require few (or no) services, and higher risk offenders require intensive levels of service.”).

<sup>8</sup> “Desistance” is a term used in criminology to refer to the cessation of criminal behaviour.

by overcrowding and corruption are guaranteed to exacerbate criminal tendencies among prisoners, increasing their risk of reoffending upon release. The emerging threat of violent extremism in prison and correctional settings has often been met with attempts to introduce highly specialized counter-terrorism strategies and initiatives for violent extremist prisoners. However, it is often overlooked that, for such strategies and initiatives to be effective, they need to be built on stable, sound and well-run prison management systems, which are compromised in many countries.<sup>9</sup>

7. Estimates suggest that there were more than 11 million people in prison globally in 2018, including both pretrial and sentenced prisoners.<sup>10</sup> Prison overcrowding remains one of the greatest challenges that stand in the way of creating rehabilitative prison environments, with the number of prisoners exceeding the official prison capacity in 121 countries.<sup>11</sup> In overcrowded facilities, there is no capacity, in terms of space, infrastructure and human resources, to provide prisoners with tailor-made interventions, treatment and support. Also worrying is the trend towards harsher sentencing policies and long-term sentences. The number of persons sentenced to life imprisonment increased by almost 84 per cent between 2000 and 2014, and an estimated 479,000 persons are currently serving formal life sentences worldwide, which poses fundamental questions about their treatment and rehabilitation prospects, as well as challenges to manage and care for people who are ageing and dying in prison.

8. Some countries are prioritizing efforts to reduce overcrowding. In response to prison overcrowding, Kazakhstan thus drastically reduced its imprisonment rate to 194 prisoners per 100,000 people and closed eight prisons.<sup>12</sup> This was achieved through justice reform driven by strong political will, reducing the length of prison terms and increasing the use of non-custodial sanctions for minor offences.

9. Lack of access to legal representation and inability to pay monetary bail are closely linked with poverty and result in excessive pretrial detention and imprisonment. To ensure equal access to a fair justice system and the elimination of unnecessary pretrial detention, criminal justice systems should enhance, inter alia, the offenders' unrestricted access to a legal advisor, including through adequate legal aid mechanisms, fair bail practices, the use of proper offender file management and, resource permitting, electronic monitoring.

10. Corruption and violence inside prison environments<sup>13</sup> also undermine the implementation of rehabilitative approaches. Transparency and accountability in prisons can be ensured through strict adherence to all safeguards outlined in the Nelson Mandela Rules, including internal and external monitoring and inspection schemes, as well as external investigations into all cases of torture or other ill-treatment, death in custody, disappearance or serious injury, conducted by an authority independent of the prison or corrections administration. The Federal Penitentiary Service of Argentina has taken

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<sup>9</sup> UNODC, *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, Criminal Justice Handbook Series (Vienna, 2016).

<sup>10</sup> Ibid., p. 2.

<sup>11</sup> Roy Walmsley, "World prison population list", 12th ed. (London, World Prison Brief, Institute for Criminal Policy Research, Birkbeck, University of London, 2018).

<sup>12</sup> Yerbolat Uatkhanov, "Kazakhstan's prison population drops dramatically in criminal justice reform breakthrough", *Astana Times*, 17 February 2018.

<sup>13</sup> UNODC, *Handbook on Anti-Corruption Measures in Prisons*, Criminal Justice Handbook Series (Vienna, 2017).

steps to tackle corruption through preventive and punitive approaches, such as the creation of the Corruption Prevention Service, a complaint hotline, whistle-blower protection rules, staff training and monitoring and inspection services.

11. Prisoners face a range of social, economic and personal challenges that tend to complicate significantly their social reintegration, such as a history of social isolation and marginalization, physical and emotional trauma or abuse, physical or mental disabilities, poor interpersonal skills or low levels of education, among many others. Simply putting offenders in prison does not prevent them from reoffending, nor does it facilitate their rehabilitation, in particular if imprisonment fails to address their needs. Without effective programmes to help offenders to face their multiple challenges, the likelihood of their successful social reintegration is very poor. Institutional programmes and interventions designed to prepare offenders for social reintegration include tailored physical and mental health-care interventions, such as programmes to treat drug use disorders, sports activities, counselling, psychosocial support, education and vocational training courses, creative and cultural activities, work opportunities and regular access to well-stocked library facilities. Within the prisoners' rehabilitation component of the Global Programme for the Implementation of the Doha Declaration, the United Nations Office on Drugs and Crime (UNODC) has developed a *Roadmap for the Development of Prison-based Rehabilitation Programmes* and supported Member States in the establishment or enhancement of education, vocational training and work programmes for prisoners, with a view to their effective rehabilitation and social reintegration. UNODC also specifically promotes gender-sensitive prison-based rehabilitation programmes and post-release services in line with the Bangkok Rules.

12. Prisoners should be assessed as soon as possible upon admission to prison, as treatment programmes and interventions are most effective when they are based on such assessments and individualized treatment plans. Individual risk and needs assessments are key components of prisoner rehabilitation and are essential for ensuring that prisoners are allocated to facilities that are equipped to meet their education and training needs, taking into account social, legal, health-care and other rehabilitation considerations. Assessments that are exclusively based on the prisoner's criminal offence are insufficient. Rather, some evidence based on risk-needs-responsivity shows that specific risk and needs factors, such as criminal history, pro-criminal attitudes, pro-criminal associates, antisocial personality pattern, family and marital relationships, school or work relationships and performance, substance abuse and leisure and recreation activities, can assist in predicting future crime and should be targeted in treatment programmes and interventions.<sup>14</sup> Attention should also be given to responsivity considerations that may influence how the correction or prison officer will relate with the offender and supervise the case, such as motivational barriers, denial or minimization of the offence, interpersonal anxiety, gender-specific, cultural or ethnicity issues, communication barriers, mental disability or disorder and psychopathy.<sup>15</sup> In addition, research demonstrates that positive outcomes are more likely to be achieved when interventions and services are based on a "strength-based" approach to make use of "human capital", which refers to the capacity of the individual to make changes and achieve goals, and "social

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<sup>14</sup> Andrews and Bonta, *The Psychology of Criminal Conduct*, p. 44.

<sup>15</sup> D. A. Andrews, James L. Bonta and J. Stephen Wormith, "Level of Service/Case Management Inventory (LS/CMI)" (Toronto, Canada, Multi-Health Systems, 2004).

capital”, which helps offenders to address personal challenges to ensure a successful reintegration, such as employment and family support.<sup>16</sup> Providing prisoners with the resources and motivation to achieve their goals constructively is likely to reduce their prospects of getting involved in criminal behaviour upon release.

13. To achieve effective interventions, prisons must ensure sound programme delivery, good case management practices and the presence of well-trained staff with the skills and expertise necessary to manage and deliver the interventions.<sup>17</sup> Prison officers can be key players in prisoners’ rehabilitation, encouraging them to participate in education and training activities and offering other support. Positive and prosocial relationships between prisoner and staff are also important to the success of rehabilitation. This approach is captured in the concept of dynamic security, which focuses on the creation and maintenance by staff of daily communication and interaction with prisoners based on professional ethics. Creating a sound therapeutic alliance with prisoners is a pivotal component of effective intervention. Working collaboratively with them in developing treatment goals, displaying empathy and warmth and offering encouragement and rewards for progress facilitate the change process.<sup>18</sup> Furthermore, the capacity and willingness of prison officers to communicate openly with prisoners, to use a non-authoritarian manner and to respond firmly and fairly are the requisite ingredients of appropriate prison management. Acknowledging the crucial role of prison officers, including with regards to fostering a rehabilitative approach to prison management, UNODC has developed an e-learning course on the Nelson Mandela Rules<sup>19</sup> tailored to prison staff and other persons working in prison. This innovative tool couples theoretical learning with 25 interactive videos, which were filmed in selected prison facilities in Algeria, Argentina and Switzerland. In those scenarios, the user needs to choose among various options on how to react to a given situation of daily prison life, including five that address the role of prison officers in the field of rehabilitation and social reintegration. In Kyrgyzstan, UNODC supported prison authorities in building the capacity of prison officers to establish prosocial relationships with violent extremist prisoners and to introduce vocational training, including for such prisoners.

14. Treatment programmes pursue the goals of desisting from crime and achieving social preadaptation by focusing on changing offenders’ attitudes and behaviours. Risk-needs-responsivity calls for the use of cognitive behavioural techniques to influence change because they are the most effective techniques to help offenders to develop new attitudes and behaviours. In addition, preliminary empirical research suggests that the desistance approach can enhance approaches based on risk-needs-responsivity, especially in terms of improving the subject’s engagement in treatment.<sup>20</sup> Cognitive behavioural therapy has a well-developed theoretical basis and is adaptable to a range of offenders and many cultural and social contexts. By providing rehabilitation

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<sup>16</sup> Steve Pitts, “The effective resettlement of offenders by strengthening ‘community reintegration factors’”, in *Resource Material Series No. 82* (Tokyo, Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, 2010).

<sup>17</sup> UNODC, *Introductory Handbook on the Prevention of Recidivism*, pp. 6, 12 and 20.

<sup>18</sup> See, for example, Tony Ward and Claire A. Stewart, “The treatment of sex offenders: risk management and good lives”, *Professional Psychology: Research and Practice*, vol. 34, No. 4 (2003), pp. 353–360.

<sup>19</sup> UNODC, UNODC Global eLearning, Public courses, “The Nelson Mandela Rules”. Available at [www.unodc.org](http://www.unodc.org).

<sup>20</sup> See, for example, Theresa A. Gannon, and others, “Good Lives sexual offender treatment for mentally disordered offenders”, *British Journal of Forensic Practice*, vol. 13, No. 3 (August 2011), pp. 153–168.

programmes, the Namibian Correctional Service not only aims to adhere to evidence-based practice, but also aspires to address the specific needs and characteristics of the Namibian offender population. Programmes are tailor-made for, and respond to, the Namibian population, realities and environment. Like most other prison-based programmes, they can also be offered successfully in the community.

15. The fundamental aim of rehabilitation is to enable prisoners to return to their community with skills and attitudes that will help in preventing reoffending. Education, vocational training and work programmes allow prisoners to engage in constructive activities while gaining new skills for potential future work. Many jurisdictions have made efforts to provide vocational training, education programmes and prison employment opportunities.<sup>21</sup> Studies have confirmed that prisoners who receive education and vocational training during imprisonment are less likely to reoffend and more likely to find work than those who do not receive such opportunities.<sup>22</sup> Efforts should be made to closely link vocational training programmes to actual demands in the outside labour market, and to implement those programmes in close cooperation with vocational training providers in the outside community.

16. Furthermore, as indicated in the Bangkok Rules, efforts should be made to address the special social reintegration requirements of women and to ensure that women prisoners have access to a balanced and comprehensive programme of activities that takes account of gender-specific needs without falling into gender stereotyping. Indeed, training women in “feminine” occupations often limits their prospects of obtaining well-remunerated employment after release. The UNODC Global Programme for the Implementation of the Doha Declaration has thus supported the Plurinational State of Bolivia in providing vocational training to women prisoners in the construction sector, giving women prisoners a real chance to find employment upon release by training them in a sector where their skills are in demand.

17. The more isolated and confined a prison environment is, the harder it will be for a person to return to freedom successfully. The principle of normality (or “normalization”),<sup>23</sup> that is, the idea that life in prison should be as close as possible to life in the community, is one of the cornerstones of the modern Norwegian Correctional System. Prison authorities in Norway seek to maintain the lowest possible security level, and prisoners retain as many rights as possible within the framework of deprivation of liberty. During incarceration, crucial services for reintegration are delivered to the prison by local and municipal service providers. This means that the staff delivering medical, educational, employment, clerical or library services are providing these services in the same manner as they would in the community.

18. Owing to social barriers to re-entry, it is not easy for incarcerated offenders to return to the community and restart their lives upon release.

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<sup>21</sup> The importance of “vocational training, education programmes and prison employment opportunities” for offenders was observed in the report of the Asia and Pacific Regional Preparatory Meeting for the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, held in Bangkok from 22 to 24 January 2019 (A/CONF.234/RPM.1/1, para. 34 (e)).

<sup>22</sup> Sharon Critoph, *The Rehabilitation and Social Reintegration of Women Prisoners: Implementation of the Bangkok Rules*, Martha Crowley, ed. (London, Penal Reform International and Bangkok, Thailand Institute of Justice, 2019), p. 29.

<sup>23</sup> UNODC, *Roadmap for the Development of Prison-based Rehabilitation Programmes*, Criminal Justice Handbook Series (Vienna, 2017), pp. 4–5.



Continuity in interventions and support, achieved through collaboration between prison staff and community-based treatment providers, are extremely important to facilitate rehabilitation and reduce reoffending risks. Interventions and support in prisons should be aimed at preparing prisoners for their return to the community. Thus, prisons should encourage prisoners to establish and maintain regular contacts with their family members or other significant others who will support them after their release.

19. Advances in technology provide prisons with new ways of delivering education programmes for prisoners. The prevalence of electronic devices holds great promise for cost-effective prison-based use, including the use for videoconferencing in legal proceedings, family visits and medical consultations. The use of videoconferencing should not, however, replace face-to-face meetings, as this would be contrary to the principle of normalization and further reduce a prisoner's contact with the outside world. In Singapore, the use of video-counselling is being explored, and a mobile application to help former offenders to reintegrate has been created.<sup>24</sup> In Kyrgyzstan, with UNODC support, the Skype application is used for some family visits to reduce the financial and travel burdens for those living far away.

## **B. Community-based approaches that contribute to reducing reoffending**

20. Community-based approaches, including non-custodial measures and restorative justice processes, can effectively reduce reoffending by ensuring that offenders receive appropriate support and, when necessary, treatment, which maximizes the opportunities for them to live productive and independent lives as responsible members of society. In many countries, people with drug use disorders represent a significant part of the prison population or population in contact with the criminal justice system. For that population, evidence-based treatment and care interventions have proven to be effective.<sup>25</sup> In their joint publication entitled *Treatment and Care for People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment*, UNODC and the World Health Organization examine various options to divert into treatment people with drug use disorders who are in contact with the criminal justice system.

21. Non-custodial measures can be applied at any stage of the justice process. At the pretrial stage, they include conditional discharge, bail and diversion from prosecution, such as through a restorative justice process, for example, victim-offender mediation. In the case of people with drug use disorders, treatment and care can be provided as an alternative to conviction or punishment. Sentencing-phase options include fines, community service orders, probation and suspended sentence. Post-sentencing options for incarcerated offenders include parole and conditional release. Furthermore, restorative justice programmes at various phases can pave the way for or be used in conjunction with non-custodial measures or early release. Some of these non-custodial sanctions involve community supervision or other interventions. In many countries, new methods of supervision, such as

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<sup>24</sup> Aquil Haziq Mahmud, "Prisons exploring use of digital platforms to help ex-offenders better reintegrate into society", *Channel News Asia*, 11 January 2019.

<sup>25</sup> For cases related to personal consumption and other relevant cases of a minor nature, the international drug control conventions allow for treatment and rehabilitation measures to be applied as an alternative to conviction or punishment (United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, art. 3, para. 4 (c) and (d)).

electronic monitoring, are increasingly used as a component of community supervision in case of conditional release.

22. Sentencing or case-disposition decisions must be made in line with the principle of proportionality, as well as the fundamental rights of the offenders, the rights of the victims and concern for public safety. The practical application of those principles has its challenges, including gaps in legal and policy frameworks, a lack of capacity among criminal justice practitioners or insufficient public awareness and acceptance of alternatives to imprisonment. The use of non-custodial measures is more likely in jurisdictions where the general public has a positive attitude towards offender rehabilitation in the community and where the system is capable of delivering rehabilitative community interventions (“community-based treatment” or “community corrections”). Some jurisdictions have codified legislative options for non-custodial sanctions, but those have little to no application in practice owing to low levels of public understanding and acceptance or the lack of authorities or institutions responsible for, or familiar with, delivering community-based treatment.

23. In deciding adequate penalties or case dispositions and providing rehabilitative interventions, assessments are necessary to identify the offenders’ individual risks, needs and environmental factors that may have a positive or negative impact on their chances of successful social reintegration. Thus, relevant information needs to be collected at the relevant stages of the criminal justice process, for example, through the use of pre-sentencing or social inquiry reports at the sentencing stage and of risk and needs assessments in prison. Furthermore, several countries have developed sentencing guidelines or established advisory sentencing councils or commissions to ensure fairness and incorporate rehabilitative perspectives in the sentencing process.

24. In order to incorporate rehabilitative perspectives in pretrial or sentencing decisions, it is also important to make the judiciary or other decision-making institutions aware of rehabilitative perspectives, in particular the role of prisons and of those responsible for community-based treatment in offender rehabilitation. In Canada, the “Judges to Jails” programme gives opportunities to judges to learn about prisons and parole, including through visits to prisons and listening to parole hearings. In Kenya, the police department, prison department, children services department, prosecution, judiciary and probation department engage in continuous collaboration and information-sharing throughout the juvenile justice process, so that each authority, including the judiciary, may perform its role effectively.

25. Restorative justice programmes can contribute to reducing reoffending when they are implemented in accordance with procedural safeguards, giving due regard to the rights and needs of both offenders and victims.<sup>26</sup> As a flexible approach to dealing with crime, they can be implemented at any stage of the criminal justice process (police, prosecution, courts and prisons), or even independently from it. By giving offenders an opportunity to fully understand and recognize the consequences of their actions and the impact that those actions have had on the victims, their families and members of the community, restorative justice programmes can contribute to reducing reoffending by increasing the chance that offenders will take responsibility for their behaviour and desist from crime. The participatory, flexible and

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<sup>26</sup> Basic principles on the use of restorative justice programmes in criminal matters (Economic and Social Council resolution 2002/12).

problem-solving approach of restorative justice programmes encourages a more prosocial attitude, which can reduce reoffending. When community members participate in a restorative justice process, their informal support can help offenders to acquire prosocial behaviours, thus motivating them to change.<sup>27</sup> In Austria, for example, it is reported that 84 per cent of offenders who participated in victim-offender mediation did not reoffend afterwards.<sup>28</sup> In the Philippines, the *barangay*, the smallest unit of local government, plays an important role in the restorative justice process. Stakeholders who participate in the process typically include *barangay* officials, religious members, family members of the offender and the victim and community volunteers.

26. It is crucial that community-based approaches be implemented with the individual situations of offenders and community in mind. Data on persons serving community or semi-custodial sanctions and measures from the Council of Europe SPACE II project show that an increase in the use of community sentencing does not automatically result in a reduction in the use of imprisonment.<sup>29</sup> The indiscriminate and excessive use of community sanctions without adequate attention given to individual cases and the community's capacity brings risks of mass supervision and net-widening by imposing community supervision in cases that might previously have resulted in financial sanctions or other less restrictive options. This practice would not alleviate prison overcrowding and may exceed the capacity of the community corrections agency, posing difficulties in delivering appropriate interventions to those who need them. Furthermore, unnecessary supervision and interventions for low-risk offenders increase their reoffending risks.

27. Community-based treatment can facilitate the social reintegration of offenders subject to non-custodial sanctions or dispositions or released from imprisonment. The goal is to provide the appropriate balance of supervision and support through effective collaboration between criminal justice agencies and community-based stakeholders, including by seeking community participation. This will create favourable conditions for the reintegration of offenders into the community under the best possible conditions, considering their situation.

28. A common strategy to establish and implement effective community corrections is to make full use of existing community resources. For example, the active use of volunteers has been an effective way to engage the community and provide necessary support to offenders with multiple needs while, at the same time, saving governmental resources. In Japan, the volunteer probation officers play a vital role in community corrections by assisting professional probation officers in conducting community supervision and pre-release coordination of the offender's social environment. Similar systems are in place in other countries, including Kenya, Malaysia, the Philippines, the Republic of Korea, Singapore and Thailand.<sup>30</sup> While the duties of

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<sup>27</sup> See, for example, Andrew Day and others, "Promoting forgiveness in violent offenders: a more positive approach to offender rehabilitation?", *Aggression and Violent Behavior*, vol. 13, No. 3 (June–July 2008), pp. 195–200.

<sup>28</sup> Veronika Hofinger and Alexander Neumann, "Legalbiografien von Neustart Klienten" (Vienna, Institut für Rechts- und Kriminalsoziologie, 2008).

<sup>29</sup> Vicki Prais and Frances Sheaban, *Global Prison Trends 2019*, Martha Crowley, ed. (London, Penal Reform International and Bangkok, Thailand Institute of Justice, 2019), p. 40.

<sup>30</sup> Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, "Report of the second Asia Volunteer Probation Officers meeting", in *Resource Material Series No. 104* (Tokyo, March 2018), pp. 149–150.

those volunteers vary from country to country, the core concepts are to conduct community-based supervision and counselling in a prosocial environment, using the local knowledge of an established member of the community to connect the offender with local resources and creating positive personal relationships that last beyond the term of supervision. In Croatia, a new probation system was introduced by taking a step-by-step approach after long and thoughtful planning. Croatia established its probation service in 2009 upon enacting enabling legislation but chose to establish only a small number of offices in the first three years, to focus on quality over quantity of service delivery. In 2017, Croatia merged its prison and probation services, which facilitated the exchange of information and promoted cooperation between prison and probation practitioners, who often serve the same clients.

29. When prisoners are released into the community, they frequently encounter a wide range of social barriers to re-entry, such as challenges in access to employment, housing, treatment for drug use disorders and prosocial support. The continuum of care from prison to the community through robust coordination, in particular between institutional and community corrections services, is crucial. Ensuring an adequate period of support facilitates a smooth transition to society. This can take the form of a support staff assigned to work with the offender in prison and in the community during an initial transition period, to assist the offender in finding housing and employment, and generally helping the offender to navigate through the initial stages of re-entry. In Canada, “statutory parole” is granted when two thirds of the sentence has been served; furthermore, “full parole” allows for earlier release with community supervision upon the decision of the Parole Board. Full parole had an extremely high completion rate of more than 98 per cent from 2017 to 2018. The Parole Board of Canada carries out initiatives to make the parole process transparent and accessible to the public.

30. Simply monitoring offenders’ compliance with conditions of release is insufficient for successful community supervision. Appropriate supervision involves managing the offenders’ risks, coordinating resources to meet their needs, and developing and maintaining a trust-based human relationship with them.<sup>31</sup> Other critical activities include teaching, support, reinforcing positive behaviour and enforcing consequences for negative behaviour.<sup>32</sup> The process of supervision must be informed by an understanding of reoffending and must focus on developing the offenders’ motivation and capacities for change. Supervision can contribute to reducing reoffending when it is based on an adequate assessment of the offenders’ needs, motivation and situation and on a sound case management approach. Staff training and guidance are particularly important for officers and volunteers involved in supervision. The Practice Guide for Intervention<sup>33</sup> developed in New South Wales, Australia, is a series of structured exercises and activities designed to guide interventions and enhance the behaviour-change focus of supervision sessions. The Strategic Training Initiative in Community Supervision,<sup>34</sup> which is used in a number of jurisdictions and has contributed to a remarkable decrease in

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<sup>31</sup> UNODC, *Introductory Handbook on the Prevention of Recidivism*, p. 59.

<sup>32</sup> Ibid.

<sup>33</sup> Mark V. A. Howard and others, “Innovations in a model for enhancing the behavior change content of supervision with community-based offenders, *Advancing Corrections Journal*, 7th ed. (June 2019).

<sup>34</sup> James Bonta and others, “Taking the leap: from pilot project to wide-scale implementation of the Strategic Training Initiative in Community Supervision (STICS)”, *Justice Research and Policy*, vol. 15, No. 1 (June 2013), pp. 17–35.

reoffending, trains parole and probation officers to better adhere to the risk-needs-responsivity-based model in their interviewing techniques.

### **C. Taking a multifaceted approach to ensure continuous support and services for rehabilitation and reintegration of offenders**

31. The importance of public-private partnership and of engaging members of society in the pursuit of sustainable societies is emphasized in both the Sustainable Development Goals (in particular in target 17 of Goal 17) and the Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation adopted at the Thirteenth Congress on Crime Prevention and Criminal Justice (General Assembly resolution 70/174). In the criminal justice context, the rehabilitation and social reintegration of offenders cannot be accomplished by criminal justice authorities alone. All segments of society need to be involved at all stages of the process towards social reintegration. Public-private partnerships and the active involvement of the community are particularly important to ensure the continuity of interventions and support for the prisoners' smooth reintegration into the community. Moreover, community-based approaches cannot be achieved without the understanding and acceptance of the community and the public at large. It is of vital importance to take a multifaceted approach by incorporating the active participation of a wide range of relevant sectors and persons into the rehabilitation and reintegration process. Political will plays a key role in involving relevant stakeholders in multifaceted initiatives. Criminal justice authorities must also identify, activate and mobilize existing public and private community resources and make efforts to build robust partnerships with relevant stakeholders. For example, Japan has adopted comprehensive government-wide strategies whereby various rehabilitative initiatives addressing employment, housing, education, social welfare, health care and family relations are undertaken on the basis of enhanced public-public and public-private partnerships.

32. Stakeholder engagement is critically important in coordinating employment, housing, education, social welfare, health-care, family and peer support, enhancing the offenders' human and social capital, community supervision and other interventions, awareness-raising and technical assistance. Stakeholders can be from the public sector (at the State and local levels, as well as representing international or regional bodies), from the private sector (including non-governmental organizations (NGOs), employers and peer support groups) or individuals (family members, experts, volunteers or community members). It is imperative that criminal justice authorities, in particular corrections and rehabilitation authorities, engage those stakeholders and develop cooperative partnerships with clearly defined roles.

33. Employment is a key factor for successful reintegration, as it is not simply a source of income but helps offenders to reconnect with the community and contributes to the enhancement of their self-esteem, self-confidence and self-efficacy.<sup>35</sup> A number of interventions to help

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<sup>35</sup> Joe Graffam and others, *Attitudes of Employers, Corrective Services Workers, Employment Support Workers, and Prisoners and Offenders towards Employing Ex-Prisoners and Ex-Offenders* (Burwood, Melbourne, Victoria, Deakin University, School of Health and Social Development, 2004), p. 4.

offenders to find and sustain employment can be delivered as in-prison or community-based programmes, such as vocational training, teaching job application and interview skills, and offering job placement and career counselling services. Effective support should also be provided to employers, such as public subsidies for employing former offenders, compensation for damage, preference in public procurement and tax credits or deductions. Furthermore, matching the needs of the offenders and businesses is key to successful support. The Safer Foundation, an NGO based in the United States of America and working independently and in partnership with government, offers a range of services to help formerly incarcerated individuals to secure employment and has achieved a high rate of sustained employment.

34. The lack of suitable housing poses a reoffending risk and is a major challenge that former prisoners face at the time of re-entry.<sup>36</sup> Many offenders coming out of prison are or become homeless and face strong stigmatization, including from their own families, which impede them from returning to live with their families. Without adequate accommodation, it is extremely difficult to sustain employment and live independently. Thus, housing support should start in prison as an important preparation for re-entry. Since accommodation forms the basis of life in the community, each offender's individual circumstances should be taken into account, and special consideration will be necessary for offenders with special needs, such as those with physical or mental disabilities, the elderly and those suffering from drug dependence. Housing support will function best when linked with initiatives to support employment, social welfare, health care and recovery from drug use disorders by community development bodies, housing authorities and non-profit and faith-based organizations. Prison and community corrections authorities should work together with such initiatives and organizations to coordinate housing. In the United States, the Safer Foundation operates adult transition centres accommodating former offenders in partnership with the Government of the State of Illinois. In Japan, the probation service begins coordinating offenders' post-release accommodation at the time of incarceration. If the prisoner cannot rely on family, relatives or friends, the Government provides offenders with temporary housing options, including publicly run or subsidized rehabilitation facilities and private housing. In addition, accommodation in social welfare facilities can be arranged for the elderly or disabled.

35. The Nelson Mandela Rules point to the need to provide prisoners with education and to integrate such programmes into the country's educational system. Access to the job market requires a level of functional literacy and numeracy, as well as other basic working skills, which many prisoners have simply not achieved. Functional literacy and a secondary school diploma, or a higher-level degree, facilitate employment. Robust and continuous partnerships with public and private education need to be developed. The EQUAL Initiative of the Directorate-General for Employment, Social Affairs and Inclusion of the European Commission has taken steps to improve access to education and training for prisoners in order to facilitate their reintegration into the labour market, such as distance learning in prisons.<sup>37</sup> The Global Programme for the Implementation of the Doha Declaration is supporting the Government of El Salvador in setting up e-learning university and technical studies in several prisons.

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<sup>36</sup> UNODC, *Introductory Handbook on the Prevention of Recidivism*, p. 45.

<sup>37</sup> *Ibid.*, p. 50.

36. Prison- and community-based rehabilitative approaches should be sensitive to offenders with specific needs, such as women, young people, the elderly, persons with disabilities, foreigners, the poor and marginalized groups. Accordingly, building partnerships with stakeholders that can address those specific needs is crucial. Female offenders, for example, require gender-specific reintegration initiatives, as outlined in the Bangkok Rules. Fewer rehabilitation opportunities are available to women, and the opportunities that exist tend to be less varied and of poorer quality than those offered to men. In Georgia, Penal Reform International, an international NGO, works with local partner organizations to deliver rehabilitation and support services to female prisoners and their children who have experienced violence and discrimination.

37. The offender's family is usually the most important stakeholder for successful reintegration, because they provide offenders with social, financial and mental support. Therefore, it is crucial to involve family members in the rehabilitative process whenever possible by facilitating continued contact with the offender during the incarceration period, with appropriate exceptions in domestic violence cases. However, many families also face negative impacts from the incarceration of offenders, whom they may not be willing or able to support upon release. Therefore, support for family members may be necessary, including timely notification of the offender's release and assistance offered to family members in emotional, financial and interpersonal aspects.

38. Peer support and mentoring by former offenders is valuable to social reintegration because mentors can empathize with the offenders, and their input is less likely to be viewed with suspicion. Peer support focuses on attitude, spirituality and other factors that facilitate social reintegration. Operating in Sweden and several other countries, Kriminellas Revansch I Samhället (Criminals Return into Society), is an NGO operated by former offenders that helps other offenders on their path to reintegration by listening to offenders' concerns and giving them advice.

39. The use of volunteers is an efficient way to involve the community and provide necessary support. The importance of the role of supervised volunteers properly trained in the social reintegration of offenders is stressed in the Tokyo Rules. In addition to the use of volunteer probation officers in Japan and a growing number of countries, other examples include community member participation in mediation and restorative justice programmes and volunteer-led NGOs that support offender rehabilitation.

40. Awareness-raising activities will foster understanding and cooperation of stakeholders and generate public acceptance. Awareness-raising efforts should be directed to various target groups, including policymakers, and conducted in an appropriate manner. For example, fostering among the general public a general understanding of the importance of offenders' social reintegration is necessary. A good way to convince the general population could be to showcase success stories. Various electronic media, such as the Internet, short message services and mobile phone applications, can be effective means to raise awareness both in terms of cost and impact, allowing for a wide dissemination of information and interactive communications. To convince specific stakeholders to engage in rehabilitative support, face-to-face consultation or other forms of direct communication can also be effective.

41. Over the past 15 years, the Yellow Ribbon Project in Singapore has made significant progress in achieving awareness, generating acceptance and inspiring community action. The joint efforts by community members and partners, coupled with sustained media outreach, have built a national culture of acceptance and empathy towards former prisoners and their families. In a survey conducted in 2018, about 65 per cent of the respondents indicated that they were ready to accept former prisoners at school, in the workplace, in the family and in the community. Beyond its success as an awareness-raising campaign, the Yellow Ribbon Project has been linked to a decrease in the reoffending rate.<sup>38</sup>

42. Technical assistance can be and has been provided by various players, including UNODC, the Programme Network Institutes of the United Nations Crime Prevention and Criminal Justice and other international or regional organizations. For example, the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders has undertaken long-standing capacity-building for criminal justice personnel around the world through international training courses focusing on the reduction of reoffending, paying particular attention to the United Nations standards and norms and the Sustainable Development Goals. The private sector and NGOs can be key partners by leveraging relationships within the community and making use of their expertise, skills and knowledge of the social, religious and cultural backgrounds of the area that they serve. Technical assistance in partnership with non-criminal justice sectors may also be effective in addressing root causes of crime, such as poverty and discrimination.

43. Penal Reform International and the Thailand Institute of Justice have developed a practical guide for the rehabilitation of female prisoners with many innovative examples of promising practices from various jurisdictions, which can be used for capacity-building around the world.<sup>39</sup> Hedayah, the international centre of excellence for countering violent extremism, has developed and launched a monitoring, measurement and evaluation smartphone and desktop application to help to design programmes to counter violent extremism and to forecast programme impact. Although focused on countering violent extremism, the application is well suited to the design of any offender rehabilitation or reintegration programme. Known as “MASAR”, the application is a free online tool that provides step-by-step guidance on developing a “theory of change” to guide each programme, identifying community-based resources and designing frameworks for effective evaluation.

### **III. Conclusions and recommendations**

44. Reducing reoffending is critical to building inclusive, sustainable societies, as envisioned in the 2030 Agenda. To reduce reoffending effectively, criminal justice systems must prioritize creating rehabilitative prison management and environments, adopting and implementing community-based approaches that contribute to reducing reoffending, and taking a multifaceted, multi-stakeholder approach. To those ends, criminal justice systems should ensure rehabilitative processes and environments throughout all stages and pathways leading to successful reintegration.

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<sup>38</sup> Santhi Pandian and others, “Singapore’s Yellow Ribbon Project: unlocking the second prison”, *Advancing Corrections Journal*, 7th ed. (2019), pp. 60–72.

<sup>39</sup> Critoph, *The Rehabilitation and Social Reintegration of Women Prisoners*, p. 29.



45. The attainment of rehabilitative processes and environments requires continuing efforts by criminal justice actors, including prosecution, judicial, prison and probation authorities, as well as actors in the community, to solve problems stemming from overcrowding, avoid excessive use of imprisonment, ensure seamless interventions and smooth transition from prison to community, properly implement community corrections, enhance offenders' abilities to live crime-free lives and foster acceptance by and cooperation of the community. As such measures encompass many fields, reducing reoffending requires a multifaceted approach with active and robust partnerships among a wide range of public and private stakeholders. These stakeholders must act in a concerted manner, taking account of the diversity among justice systems and the social, cultural and other backgrounds of each jurisdiction.

46. Bearing this in mind, and considering the recommendations adopted at the regional preparatory meetings, the participants in the workshop may wish to consider the following recommendations:

(a) Member States should ensure rehabilitative processes and environments throughout all stages and pathways leading to successful reintegration, with special focus on: (i) where appropriate, the imposition of less restrictive sanctions and the active and adequate use of non-custodial penalties and dispositions in line with the Tokyo Rules and the Bangkok Rules; (ii) effective interventions and support responding to each individual's specific needs, based on empirical evidence both in prison and in the community; (iii) the continuity of interventions and support throughout the process, in particular from prison to the community; and (iv) adopting a multifaceted, multi-stakeholder approach;

(b) Member States should take consistent steps to establish a rehabilitative environment in all prisons by: (i) ensuring proper prison administration and case management and eliminating corruption, overcrowding and violence in prisons; (ii) providing interventions, treatment programmes, education, vocational training and work to help offenders to develop skills to lead law-abiding lives; (iii) enabling offenders to maintain their community and family ties; and (iv) ensuring that prisoners are treated fairly and with the respect due to their inherent dignity as human beings. The provisions of the Nelson Mandela Rules and the Bangkok Rules should be adhered to and applied in practice;

(c) Member States should seek to develop and implement interventions and treatment options that contribute to reducing reoffending, based on empirical evidence. They should undertake to collect relevant statistics, conduct research and share such information nationally and internationally;

(d) Member States should develop and implement specific gender-responsive rehabilitation and reintegration policies and programmes in line with the Bangkok Rules and based on existing good practices;

(e) Member States should tailor interventions and treatment programmes to the individual needs of each offender, in particular for those with specific needs, such as young people, the elderly, persons with disabilities, the poor and marginalized groups, and eliminate barriers to social reintegration;

(f) Member States should recognize the importance of rehabilitative community-based interventions and support to reduce reoffending and should endeavour to develop effective community-based approaches. In introducing or implementing community-based treatment, Member States should identify and strengthen existing community resources, involve community stakeholders, including volunteers, enhance their capacity through guidance and training and ensure that a mandated and sufficiently resourced public entity is in place to manage, supervise and support offenders in the community, such as a dedicated probation service;

(g) Member States, in implementing multi-stakeholder approaches to reduce reoffending, should establish, foster and improve mechanisms and platforms and establish an organizational culture to continuously involve all relevant stakeholders, including the public sector at both the State and local levels, the private sector, faith-based organizations, academia, volunteers and community members, so that all relevant stakeholders are able to work together towards the social reintegration of offenders. Member States should seek to promote public-public and public-private partnerships, inter alia, to help offenders to secure timely job placement and housing after release and access to social and medical services, educational opportunities and vocational training;

(h) In the introduction and implementation of effective rehabilitative mechanisms, Member States should seek a realistic, step-by-step approach that considers the availability of resources and the feasibility of steps to be taken within a certain time frame and that allocates adequate resources. Taking such an approach, Member States should make full use of existing resources, including those in the community, refer to established measures and experiences in other jurisdictions and explore the cost-effective use of information technology;

(i) Acknowledging that public understanding and cooperation are key elements to offender rehabilitation and reintegration into society, Member States should undertake, and allocate adequate financial and human resources for, awareness-raising activities directed to the general public, the private sector, NGOs, volunteers, employers and the family members of offenders;

(j) Member States are encouraged to offer or seek technical assistance, as appropriate, for the adoption or implementation of effective rehabilitative measures. Furthermore, Member States should actively share information on promising practices and support capacity-building efforts for criminal justice practitioners aimed at reducing reoffending. Member States may also consider seeking technical assistance from UNODC, the Programme Network Institutes of the United Nations Crime Prevention and Criminal Justice, other international and regional organizations and relevant non-governmental stakeholders.

## **WORK PROGRAMME**

<b>Day One (8 March 2021)</b>			
<b>Opening Session</b>			
<b>JST</b>	<b>Speakers/Panellists</b>	<b>Contents</b>	<b>Participation Type</b>
13:00	Dr. Matti Joutsen Special Advisor, TIJ Chair of Committee II	Opening	in-person
13:10	Dr. Kittipong Kittayarak Executive Director, TIJ	Opening Remarks	online
13:20	Mr. SETO Takeshi Director, UNAFEI	Presentation of the Workshop by the Scientific Moderator	in-person
<b>Panel I on "Creating rehabilitative prison environments"</b>			
13:30	Dr. Fergus McNeill University of Glasgow	Keynote Address I Reducing Reoffending and Enabling Reintegration	online
13:50	Ms. Vera Tkachenko Crime Prevention and Criminal Justice Officer, Justice Section, Division for Operations, UNODC	Creating Rehabilitative Prison Environments	online
14:05	Ms. Mariana Martin Commissioner-General: Rehabilitation and Reintegration, Namibian Correctional Service, Ministry of Home Affairs, Immigration, Safety & Security	Applying Risk-Need-Responsivity-Based Rehabilitation: The Namibian Experience	online
14:20	Dr. Emiliano Blanco President, ICPA Latin America (Former National Director of the Federal Prison Service of Argentina)	Creating Rehabilitative Prison Environments: Anti-corruption Policies	online

14:35	Ms. Heidi Bottolfs Deputy Director General, Directorate of Correctional Service Norway	The Principle of Normality – In Regular and Extraordinary Times	online
14:50	Interventions		
Panel II on “Community-Based Approaches that Support Desistance”			
JST	Speakers/Panellists	Contents	Participation Type
16:00	Dr. Matti Joutsen Special Advisor, TIJ Chair of Committee II	Keynote Address II Community-Based Approaches That Support Desistance: A Reassessment in the Context of the Sustainable Development Goals	in-person
16:20	Ms. Jennifer Oades Chairperson, Parole Board of Canada	Community-Based Approaches That Support Desistance	online
16:35	Ms. Jana Špero Assistant Minister, Prison System and Probation of the Republic of Croatia	Introducing a Probation System Through a Step-by-Step Approach	online
16:50	Hon. Lady Justice Teresia Matheka Judge, High Court of Kenya, Nakuru Law Courts	Community Approaches to Desistance: Meeting of Purpose: The CCPO and the Special Taskforce on Children Matters – a Kenyan story	online
17:05	Dr. Manuel Goloso Co Former Administrator, Parole and Probation Administration of the Philippines	Village Justice (Katarungang Pambarangay) System the Inspiration of the DOJ-PPA’s Individualized Community-Based Restorative Justice	online
17:20	Wrap-up by the Scientific Moderator		
17:25	Interventions		
17:50	Dr. Matti Joutsen Special Advisor, TIJ Chair of Committee II	Closing	in-person

Day Two (9 March 2021)			
Panel III on "Multifaceted approaches to ensure continuous support and services for rehabilitation and reintegration of offenders"			
JST	Speakers/Panellists	Contents	Participation Type
9:00	Mr. IMAFUKU Shoji Director-General, Rehabilitation Bureau, MOJ	A Multi-Stakeholder Approach to Ensuring Continuous Support and Services for Rehabilitation and Reintegration of Offenders: Focusing on Housing Support	in-person
9:15	Ms. Sodiqa Williams General Counsel and Vice President of External Affairs, Safer Foundation	Building Safe Pathways to Successful Re-entry for Returning Residents in the Chicago Area and the State of Illinois	online
9:30	Ms. Olivia Rope Executive Director of Policy and International Advocacy, PRI	Rehabilitation of Women in Prison	online
9:45	Mr. Ali Reunanen Secretary General, KRIS	Kriminellas Revansch I Samhället (KRIS) / Criminals Return Into Society (CRIS)	in-person
10:00	Ms. Maria Cristina Mattei Program Manager, Hedayah	Multifaceted Approach to Ensure Continuous Support and Services for Rehabilitation and Reintegration of Offenders	online
10:15	Interventions		
10:40	Mr. SETO Takeshi Director, UNAFEI	Workshop wrap-up and remarks	in-person
10:50	Dr. Matti Joutsen Special Advisor, TIJ Chair of Committee II	Closing	in-person



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## **PAPERS AND CONTRIBUTIONS**

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### **PANEL 1**

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### **PANEL II**

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### **PANEL III**





## **PANEL I**

### **KEYNOTE ADDRESS**

Dr. Fergus McNeill (University of Glasgow)

### **PRESENTATIONS**

Ms. Vera Tkachenko (UNODC)

\* \* \*

Ms. Mariana Martin (Namibia)

\* \* \*

Dr. Emiliano Blanco (Argentina)

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Ms. Heidi Bottolfs (Norway)



# REDUCING REOFFENDING AND ENABLING REINTEGRATION

*Dr. Fergus McNeill\**

## I. INTRODUCTION

Reoffending by people who have been through criminal justice is a challenge for governments and societies around the world. A recent review<sup>1</sup> suggests that in most developed countries reoffending rates after sanctions fall in the 30–50 per cent range. To sum up a very broad evidence base, we know that:

- Men tend to be reconvicted more often than women;
- Younger people tend to be reconvicted more often than older people;
- Among offence types, theft and property offences have the highest reconviction rates;
- Among different sanction types, imprisonment has the highest reconviction rates;
- Among prison sentences, short sentences have higher reconviction rates.

The costs of reoffending are not just economic. Behind these statistics, there are citizens, families, groups and businesses suffering crime victimization; and very often, it is those who are *already* disadvantaged in a variety of other ways that suffer repeated victimization. Since the protection of citizens – and especially vulnerable citizens – is a key duty of the state, the failure to protect is also a political problem; indeed, it strikes at the legitimacy of the state itself.

But this legitimacy problem also has another important aspect. If a key aim of our penal systems is to secure the reintegration of those who have offended (see du Bois Pedain, 2017), then it seems uncontroversial to suggest that when a punished person goes on to reoffend, then their punishment has failed in an important sense.

Evidence of the impact of the Covid-19 pandemic on criminal justice is only now being gathered and analysed, but we know that in many countries pandemic-related restrictions have impoverished correctional regimes, limiting opportunities for rehabilitation of people serving sentences in prisons and communities, and that they have exacerbated re-entry challenges for those leaving prisons only to enter communities in “lockdown”.<sup>2</sup> Reoffending rates might then be expected to rise yet further, unless we take appropriate action now.

In many states, the paradoxical reaction to such failure has been to do more of the same (see *Figure 1* below); imposing even *more* punishment and *more* control and restriction on those who have offended. Sometimes perhaps, this is the response that hurt, fearful or angry

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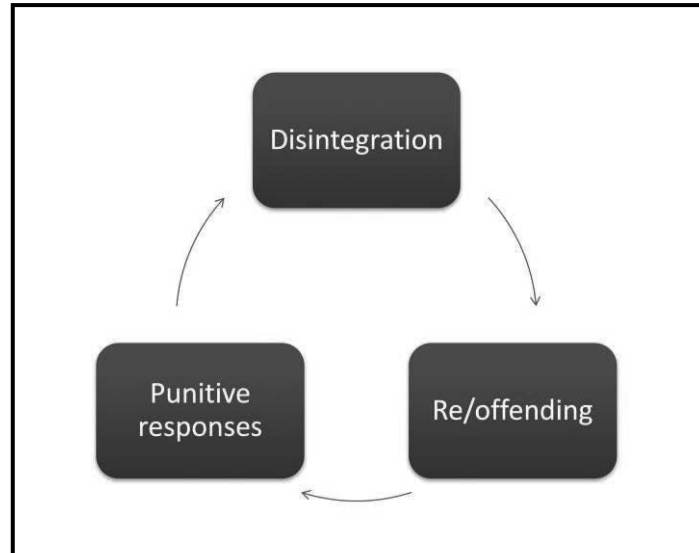
\* Professor of Criminology and Social Work, University of Glasgow, Scotland.

<sup>1</sup> See <<https://www.sccjr.ac.uk/wp-content/uploads/2012/12/Reducing-Reoffending-FINAL-Dec-2012.pdf>>, accessed 15 January 2020.

<sup>2</sup> See, for example chapter 5 of this report, <[https://scotlandinlockdown.files.wordpress.com/2020/12/scotlock\\_project\\_report\\_full\\_dec2020-2.pdf](https://scotlandinlockdown.files.wordpress.com/2020/12/scotlock_project_report_full_dec2020-2.pdf)>, accessed 4 February 2021.

communities demand of their leaders (although, on closer inspection, public opinion about punishment and reintegration turns out to be much more complex and nuanced than that; see Maruna and King, 2009).

Figure 1: The penal paradox



But, as well as being expensive, increasingly punitive responses also come into conflict with international standards in relation to human rights. Since they tend to worsen the *dis*-integration and disadvantage that is sadly so typical of those who find their way into prison, they also waste precious resources, instead fuelling the vicious cycle of reoffending. In consequence, social stability and solidarity are weakened, and with them, so are the prospects for the kinds of collective flourishing that we all seek, and which are reflected in the UN Sustainable Development Goals. In this sense, therefore, reintegration is a key challenge for sustainability – and getting reintegration right is key to criminal justice’s contribution to that wider goal. Both the UN’s Mandela Rules and the Tokyo Rules in different ways reflect this key aspiration – to move away from merely punitive punishment and towards rehabilitative and reintegrative approaches, whether in prisons or in the community.

Thankfully, as well as these important standards, there is also a rapidly developing evidence base that we can use to re-direct our policies and practices towards reducing reoffending and enabling reintegration. It is that evidence base to which I now turn.

## II. PRINCIPLES, EVIDENCE AND REINTEGRATION

### A. Parsimony, Proportionality and Productiveness

But before I turn to this positive evidence base, it is important to say something briefly about what *doesn’t* seem to work. One very robustly designed longitudinal study – the Edinburgh Study of Youth Transitions – has demonstrated convincingly that, controlling for all other factors, contact with formal authorities tends to *slow down* rather than accelerate young people’s movement away from crime and towards integration. It seems that once a young person is labelled and processed as an “offender”, they become more vulnerable to re-processing; the label “offender” sticks hard and does both symbolic and material harm to young people’s prospects, often driving them back into offending and

further criminalization and penalization (McAra and McVie, 2009).

It follows that, wherever possible, we must respond to individual misconduct and interpersonal conflict in ways that avoid formal criminalization. As the Howard League for Penal Reform in England and Wales<sup>3</sup> puts it, even before we think about doing justice better, our priority should be to “stem the flow” of people into criminal justice.

When prosecutors decide that formal criminal justice processing is unavoidable, the question then becomes not just how to respond most constructively, but also how to minimize the harm that accompanies formal processing? In this regard, we should apply the principles of *parsimony* – never intervening in more demanding and intrusive ways than we must – and *proportionality* – always ensuring that the scale of the response is commensurate with the seriousness of the offending. I add a third principle – *productiveness* – stressing that the form and focus of our approach should reflect positive efforts to rehabilitate and reintegrate (McNeill, 2019).

#### 1. Four Forms of Rehabilitation

There are four forms of productive rehabilitative intervention that we should always consider, and which very often need to be combined, if we are to achieve the goal of reintegration (see Burke, Collett and McNeill, 2018; McNeill and Graham, 2020):

- **Personal rehabilitation** aims to develop new or existing motivation to change, as well as building new skills, capabilities and capacities for living differently.
- **Judicial rehabilitation** is a process of formal, legal “de-labelling” where the status and rights of the citizen are reinstated. This is a duty that the punishing state owes to those citizens who have completed their sanction; it signifies and secures the end of punishment.
- **Moral and political rehabilitation** is more informal and focuses on dialogue between citizen, civil society and state – a civic and civil conversation that looks back not just at the offence but at what lies behind it, and that explores harm and repair.
- **Social rehabilitation** concerns the individual’s social position and their social identity. It is about their connections and resources, their social capital; the help and welcome that they require from other citizens along the path to reintegration.

It is easy to see why these four approaches most often need to be combined. Personal transformation can easily come undone when confronted with informal social obstacles and formal legal barriers to building and sustaining a law-abiding life.

#### 2. What Works? Risk-Needs-Responsivity

Especially in Anglophone countries, policy and practice have been very much preoccupied with personal rehabilitation. On the plus side, this preoccupation has generated compelling evidence about the kinds of interventions, programmes and staff skills that best support the kinds of shifts in attitudes, values and behaviours that support a move away

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<sup>3</sup> See <<https://howardleague.org/>>, accessed 16 January 2020.

from offending. Perhaps the most developed evidence base surrounds the “Risks-Needs-Responsivity” model of rehabilitation (see Ziv, 2020). Summing this up, the model argues, firstly, that we should match the level and extent of rehabilitative intervention with the level of risk of reoffending that a person presents; the greater the risk, the more work needs to be done. Secondly, we should focus our efforts on “criminogenic” needs; meaning those needs that are most associated with offending – for example, anti-social attitudes, peer groups, substance use, etc. Thirdly, we should intervene in ways that are responsive to people’s learning styles, since this will maximize the chances that they will be able to learn what they need to learn, and that they will be motivated to do so.

RNR therefore represents a quite specific form of personal rehabilitation. The model’s advocates claim that this narrow focus on criminogenic need has been shown to be effective in terms of reducing reconviction. This may also suit correctional systems in as much as it provides managers and practitioners with a way of pursuing rehabilitation that does not require complex partnerships beyond prisons and probation. Because RNR tends to locate the problem mainly within the “offender”, it situates the solution mainly within the prison or probation “treatment” room.

### 3. Who Works? Staff Skills

More recent research suggests that people supervised by staff who demonstrate the skills required to effectively apply these principles, who can develop constructive relationships with their supervisees, who model pro-social behaviour and who act as brokers for the other services their supervisees need, tend to have lower reconviction rates than those supervised by less skilled staff (see Chadwick, Serin and Lloyd, 2020; Haas and Smith 2020; Trotter, 2020). This body of work helpfully broadens thinking both about the mechanisms of delivery of effective practice – from programmes to practitioners – and, to a certain extent, about its aspirations: Whereas, the RNR model does not aim ultimately at reintegration, settling more narrowly for reduced reoffending, these skills-based approaches do often stretch to include work around social integration.

### 4. The Good Lives Model

The second influential model of rehabilitative practice is broader than RNR both in its aims and in its approach. The Good Lives Model (GLM) (see Purvis and Ward, 2020) rests on the assumption that interventions should aim to promote a person’s “goods” as well as to manage or reduce risks. Hence it aims to help a person develop a “good life plan” that identifies ways of effectively securing “primary human goods” without harming others. These “primary human goods” include, life, knowledge, excellence in play and work, agency or autonomy, inner peace, friendship, community, spirituality, happiness, and creativity. Clearly, this is not just about tackling “criminogenic needs”; it entails a much bigger project of personal rehabilitation involving the rebuilding of person’s aspirations and identity as well as their behaviour. Also, though still focused on the individual, the GLM requires practitioners to see the individual within the context of their social relationships and environment. The GLM is a more recent development than RNR and so the evidence base is less mature, but it is developing rapidly (see Purvis and Ward, 2020), with many countries adopting GLM-inspired approaches.

### III. SUPPORTING DESISTANCE AND REINTEGRATION

#### A. Desistance Theories and Research

Clearly, proper evaluation is critical to the development of the most effective approaches to rehabilitation, and I will return to this issue later. But in this field as in any other area of human development, evaluation research alone is insufficient to guide policy and practice. It is equally important to better understand the *processes of change* we are trying to support. For example, teachers need to understand how and why children learn and develop, and not just how best to teach them.

Fortunately, within criminology, there is a rapidly expanding evidence base about how and why people desist from offending. This is important, not least because there is plenty of evidence that most people stop offending *without* and sometimes even *in spite of* criminal justice intervention.

Many desistance theories thus offer accounts of a kind of “natural” or “spontaneous” rehabilitation.

To say that the process of desistance often happens naturally is not necessarily to say that it is or should be unassisted; crucially, nor is it to suggest that it cannot be accelerated (see Graham and McNeill 2017, 2020; Johnson and Maruna 2020). Indeed, many of the most common explanations of desistance, on closer examination, do imply some important forms of assistance. For example, desistance is linked to physical and psychological maturation, but we should understand this not just as a spontaneous and inevitable process associated with ageing, but also as a *social* process which can be enabled or impeded by a person’s associates and environments. Similarly, desistance is often linked to the development of new social bonds like those associated with intimate relationships, parenthood or employment; but it should be obvious that we find our ways into these important connections not entirely by accident. More often, they reflect supported changes in our social positions. Similarly, desistance often involves a gradual shift in identity and personal narrative (towards a more positive sense of self). But that too is a process which, for most of us, requires a receptive audience for the reformed (or evolved) self; one that endorses and supports the change within us.

In other words, in each of these cases, while rehabilitation is not always or even often engineered by a criminal justice practitioner, it is being supported by other social actors, relationships, and contexts – and it can be just as easily undermined by them.

#### B. Supporting Desistance in Criminal Justice

Over the last 20 years, researchers have been exploring whether and how criminal justice policies and practices can draw on desistance research to find ways to actively prompt, sponsor, support and sustain desistance. This is where the research on desistance and rehabilitation has begun to meet and merge. Much of this work has focused on reforming probation practice, though it has wider applications. To summarize some of the key principles that have emerged (see also McNeill, et al., 2012; McNeill, 2016; Burke et al., 2018):

1. Desistance is not a linear process; it usually involves numerous lapses and setbacks. We need to find ways to use these as learning opportunities, *supporting people towards compliance* rather than rushing to punitive enforcement.

2. Desistance is process of personal development which different people experience differently; studies have explored differences, for example, related to gender (Barr, 2019) and ethnicity (Calverley, 2013), as well as those related to different social and cultural contexts (Farrall, 2019). So, we need to individualize the forms of support we offer, *respecting diversity*.
3. Desistance is associated with the development of hopefulness and a sense of agency, or increasing control over the direction of one's life. We should therefore work in ways which nurture hope and which *enable self-determination*, for example, engaging people in planning their own pathway through and beyond their sentence, and helping them develop the capacities required to direct their lives.
4. Relationships are central to desistance; *social relations and social capital play key roles*, so we should also work with partners, families, friends and communities to find ways together to support people through desistance (see Weaver, 2015; Kotova, 2020).
5. Desistance involves constructive changes in people's routine activities and social situations. This means we need to *provide practical support* for such changes, for example via public assistance with financial need, housing, access to health services, education and training, etc.
6. Recognition of people's efforts to change has a reinforcing effect. By contrast, if the attitudes, language and practices of criminal justice practitioners and of communities undermine change (for example, by reinforcing criminalization and exclusion), then they will undermine change. We should therefore focus on *finding ways to recognize, certify and celebrate change*.

It is easy so see how these principles correspond to the four forms of rehabilitation discussed above. Whereas principles 1-3 guide our approaches to personal rehabilitation, principles 4 and 5 direct us towards the importance of social and moral rehabilitation. Principle 6 connects with the importance of judicial rehabilitation.

### **C. Rehabilitative Prisons?**

If we turn our attention to another important site where rehabilitation is pursued – the prison – then we find important parallels with findings from yet further kinds of research. Jewkes and Gooch (2020) have recently examined the concept of the “rehabilitative prison”, exploring whether this is a contradiction in terms. It is not difficult to see why, in theory and on the available evidence, we might reach that conclusion. By its very nature, imprisonment seems an unpromising context in which to support maturation, the development of positive social relationships and constructive changes in identity, all of which are key to desistance. And, indeed, the empirical evidence from many – perhaps most – prison systems seems to suggest that, at least as currently configured, prisons are much more likely to be sites of suffering and struggle than places of change and growth (McNeill and Schinkel, 2016); and as I have already noted, the pandemic has very probably heightened levels of suffering and struggle while impeding the rehabilitative possibilities.

Yet, it is also undeniable that, perhaps for a small number of people, prisons can sometimes be places of change and growth (Aresti, et al., 2010; Giordano, et al., 2002;



Kazemian, 2019; Schinkel, 2015). Jewkes and Gooch (2020) therefore examine how the planning, design, management, operationalization and culture of prisons might be better adapted for rehabilitation, noting the current popularity of “trauma-informed” approaches (Levenson, 2020) and of “normalisation” (Todd-Kvam, and Ugelvik, 2020). Both concepts are related to efforts to create healthier and more rehabilitative prison environments, in which personal development becomes more possible.

The Cambridge-based criminologist Alison Liebling has done some of the most important work on what constrains and enables personal development within prisons, based on a careful and sophisticated combination of ethnographic and survey research across multiple research sites in many jurisdictions around the world. Liebling (2020) finds that the “big five” dimensions of prison quality that influence personal development are:

- **Bureaucratic legitimacy:** meaning the transparency and responsiveness of the prison and its moral recognition of the individual
- **Humanity:** meaning an environment characterized by kind regard and concern for the person
- **Staff professionalism:** meaning staff confidence and competence in the use of authority
- **Help and assistance:** meaning support and encouragement for [addressing] problems (including drugs and health care) and progression
- **Organization and consistency:** meaning the clarity, predictability and reliability of the prison regime.

Prisons that score more highly on these indicators also score highly on personal development and on a range of other measures (including lower rates of self-harm and suicide, disorder and misconduct; there is also some evidence of lower post-prison reconviction rates). Importantly the whole prison environment, and not just the “treatment” or intervention room, needs to reflect these qualities. Specific rehabilitative interventions, like those we have discussed above, are more effective within such contexts. At the most fundamental level, “seeing and working with the prisoner as an ‘emergent person’ seems to be transformational” (Liebling, 2020: 204).

Crucially, almost all prison researchers agree that the possibility of developing these kinds of prison environments diminishes as prison systems swell in size and scale; overcrowded, under-funded and under-staffed institutions cannot provide rehabilitative environments. Therefore, as Liebling (2020: 205) says: “We should make prison a minor, and therefore properly affordable, but morally intelligible and ‘enabling’ part of the rehabilitation effort”.

#### **D. Other Ways of Supporting Desistance and Reintegration**

Whether we look at probation research, prison research or desistance research then, we find that seeking and supporting changes in behaviour depends on and is secured by actively developing the institutional climates and cultures, and the social relations and contexts, within which people are enabled to flourish. Absent these systemic and social preconditions, efforts to reduce reoffending are insecure at best.

This explains why, ultimately, we need to look beyond – and reach beyond – criminal justice to secure reintegration. As the concepts of judicial, moral and social rehabilitation imply, we need to strive to create societies that respect the rights of restored citizens to fully participate in all forms of social life. That means examining our legal systems and developing approaches that, as in some Nordic countries, seek to provide “reintegration guarantees”; securing access to both public services and labour market participation. It means that we should work energetically and enthusiastically to educate the public about reintegration and to encourage them to play their part in it; here, we might follow the example of Singapore’s pioneering Yellow Ribbon Project, or of an innovative Scottish project called “Distant Voices: Coming Home” which uses creative methods to engage citizens in public dialogue about reintegration.<sup>4</sup> With our citizens better educated about and better engaged in reintegration, we might be more able to follow Japan’s example in mobilizing volunteers to support people through probation, building bridges rather than walls within our communities.

And if, as Liebling (2020) insists, we choose to see and engage the person behind the criminal label, then we may also start to see in people within our penal systems strengths, capabilities and assets that can be mobilized for the common good, rather than just threats and liabilities to be managed (LeBel, 2020). The very promising development of peer mentoring schemes in criminal justice (Buck 2020), of sports-based (Meek, 2020) and of arts-based (Caulfield and Simpson, 2020) initiatives, and the notable recent accomplishments of collectives and mutual aid groups of people with convictions point to the enormous, and largely untapped potential, that we too often lock-down instead of guiding and releasing.

Lastly, if, as I argued above, moral rehabilitation is also a critical part of the process of reintegration, then we would do well to attend to the lessons of indigenous and traditional community justice in many places in Africa, the Americas and Australasia, as well as to the global movement around restorative justice (Chapman, 2020). These practices have much more to say to the crucial, relational aspects of punishment and reintegration than the formalized justice systems of liberal democracies.

#### **IV. CONCLUSIONS: DEVELOPING REINTEGRATION THROUGH RESEARCH AND EVALUATION**

I will end by briefly commenting on how we might best develop our services and practices through research and evaluation. Important though it is to collect reconviction data, evaluative studies that rely on this outcome measure represent an insecure basis for criminal justice development. The reasons are obvious: An offence does not become a conviction unless and until it is witnessed, reported, detected, prosecuted, convicted and sentenced; so, *re-conviction* is as much a measure of how people and systems *respond* to alleged reoffending as it is of behavioural change.

It follows that we need to supplement and compare reconviction data with other kinds of evidence. Indeed, if we are genuinely concerned with building safer and fairer societies, then we need to generate and use all the forms of evidence reported above, and to employ a range of knowledge exchange strategies to guide us.

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<sup>4</sup> See <[www.distantvoices.org.uk](http://www.distantvoices.org.uk)>, accessed 17 January 2020.

One good place to start is with listening much more carefully to the experiences of people themselves engaged in the struggles for desistance and reintegration. Studies that critically analyse this sort of evidence have helped us understand why reintegration is so difficult for many people to achieve. Setting aside the profound problems created by the multiple forms of social deprivation apparent in the lives of our penal populations, and the evidence about how punishment itself often serves to further de-habilitate and dis-integrate them, recent “re-entry” studies have provided a fine-grained picture of the multiple barriers that people face when released from prison (e.g. Western, 2018; Halushka, 2020), and of the pains that they experience in the process (Durnescu, 2019). Halushka (2020: 533) neatly summarizes this evidence; though his focus is on the USA, similar evidence exists elsewhere:

As a *lived experience*, prisoner re-entry is typically a life course transition marked by severe material deprivation (Desmond, 2015; Western, 2018). The population returning home is composed primarily of disadvantaged men of colour, who come from and return to some of America’s most racially segregated and economically disadvantaged urban neighbourhoods (Clear, 2007). They face a variety of formal and informal barriers to securing stable sources of employment and housing, and disproportionately suffer from a variety of social vulnerabilities, including low levels of human capital and histories of trauma, substance abuse, physical disability, and mental illness (Harding et al., 2014; Herbert et al., 2015; Western et al., 2015; Western, 2015).

The “informal barriers” that Halushka mentions refer to the stigma and, more broadly, negative social attitudes that former prisoners face, and to the associated social isolation they commonly suffer (Schinkel, 2014). The “formal barriers” are largely state produced through policies and practices of exclusion and disqualification; other studies also highlight the challenges faced by former prisoners in navigating complex and, to them, baffling state bureaucracies, including those putatively intended to help them (Durnescu, 2019; Western, 2018). It might be wise to focus our research and development partly at least on better identifying these barriers and, crucially, on discerning what kinds of laws, policies and practices work to reduce or remove them.

One of criminology’s failings, perhaps, has been to use evaluation approaches that settle for measuring mainly the absence of negative outcomes – like reoffending – rather than the achievement of positive social goods. Until recently, in a move partly inspired for me at least by desistance research, criminology has also failed to properly articulate the end-state that criminal sanctions seek.

But if we want to create flourishing and sustainable communities and societies, then we have to be brave enough to imagine what these look like. One eminent scholar who did so was Nils Christie (2004). He suggested firstly that if we believe in kindness and forgiveness as values, then we ought to keep “the institution of penal law” a small one; secondly, that if we believe in keeping civil societies civil, then we should keep the institution of penal law small; and thirdly, that if we value living in cohesive, integrated societies, then we must restrain the growth of that institution.

In closing my remarks, I would add only that we should also work to ensure that, when we must have recourse to the penal law, we should measure and judge it and its implementation not principally by reconviction rates, but rather by a much more exacting standard: We should measure the extent to which it secures the reintegration of those that

it punishes. The means and the markers of integration are to be found in employment, housing, education and health and well-being. Success in these areas is underpinned by our social connections and facilitated both by the knowledge and skills we have acquired and by our sense of safety and stability. At the foundation of integration lies our enjoyment of rights and citizenship. To flourish in our lives and work, we need security, safety, competence and connection (Ager and Strang (2004, 2008).

Reintegration is or should be seen as the central social function of punishment. It follows that we must both conceptualize and measure the success or failure of our penal systems accordingly. The questions we must ask and answer are these: Do these systems re-establish rights and citizenship? Do they create safety, stability and competence? Do they build social connections? Do they enable people to secure work, housing, education and health?

Wherever and whenever the honest answer to these questions is “No”, then it is the system we must strive to change, and perhaps the social frailties that it reflects. Because systems and societies that fail to reintegrate also inevitably fail to meet Goal 16 of the 2030 Agenda for Sustainable Development<sup>5</sup>; which seeks to establish peaceful and inclusive societies, to provide access to justice for all and to build effective, accountable and inclusive institutions. That is and must be the mark and the measure for all Member States.

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<sup>5</sup> A/RES/70/1.

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# CREATING REHABILITATIVE PRISON ENVIRONMENTS

*Vera Tkachenko*\*

Excellencies,

Ladies and gentlemen,

It is an enormous honour for me to be here and speak at the world's largest and valuable forum in the field of crime prevention and criminal justice. I want to express sincere gratitude to the Government of Japan for organizing this event during the unprecedented challenges posed by the pandemic.

This pandemic continues to cast a heavy shadow over our world, and our prospects of achieving the Sustainable Development Goals and leaving no one behind are in real danger.

The aim of this presentation is to present areas that contribute to creating safe, decent and rehabilitative environments in prisons that facilitate the offender's successful reintegration into society.

Over 11 million people are imprisoned globally, the highest number yet. A large number of prison systems around the world are at a stage of crisis. It harms prisoners, their families and societies as a whole. The reality in many prisons tends to be not only far from international standards, but also risks undermining the ultimate purpose of a sentence of imprisonment: the protection of society from crime.

Around 130 countries reported critical (79 countries > 120 % of capacity) and extreme (51 countries > 150% of capacity) overcrowding, with prison occupancy levels of over 120 and 150 per cent.

Given the global trends and the continued growth of the prison population, it is crucial for the Member States to give special attention to men, women, and children who are marginalized in justice systems and often in the wider community.

Ladies and gentlemen,

The size of the prison population is defined by two simple factors: how many people are sent to prisons and how long they are kept there.

Despite this dire situation, since 2000, the number of people in pre-trial/remand imprisonment has grown by just over 30 per cent and the world prison population by 24 per cent, with considerable differences between and within the continents. The total prison population in Oceania has increased by 86 per cent, that in the Americas by 41 per cent, that in Asia by 38 per cent and that in Africa by 29 per cent; in Europe, by contrast, the

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total prison population has decreased by 22 per cent. The European figure reflects large falls in prison populations in Russia (45%) and also in central and eastern Europe; the prison population in Europe other than Russia has increased by 3 per cent. Particularly large rises have been recorded in South America (175%) and south-eastern Asia (122%).

Though there is no simple explanation for the widely varying rates in the use and over-use of imprisonment, reasons are likely to include social-economic situation, punitive criminal justice policies, excessive use of pre-trial detention and imprisonment, insufficient measures to promote social reintegration, inadequate prison infrastructure and capacity.

The overwhelming majority of people in prisons continue to come from poor, marginalized and disadvantaged backgrounds and are likely to have a history of abuse and neglect, often experienced as children.

Poor prison conditions, overcrowding, under-staffing and a lack of investment in prison reform programming all heavily undermine the capacity of prison administrations to effectively rehabilitate and reintegrate prisoners back into societies and contribute to the high recidivism rates. Many people are released from prison, only to return there shortly after.

When penitentiary systems are overstretched and poorly managed, prisons run the risk of degenerating into dangerous places for both prisoners and prison staff and can even turn into “crime schools” and fertile breeding grounds for radicalization.

The magnitude and threat of existing challenges in prisons stemming from over-imprisonment became even more evident in efforts to prevent and contain outbreaks of Covid-19 in prisons. It will require concerted actions at the global level and strong political will at the national level to solve existing challenges and address new ones brought forth by the pandemic.

UNODC in partnership with governments, other international partners and civil society organizations supported more than 60 countries in developing and implementing crime prevention and criminal justice policies and strategies.

UNODC’s portfolio of programmes and services related to prison reform and alternatives to imprisonment benefited countries on all continents and focused on three strategic objectives (i) reducing the scope of imprisonment, (ii) improving prison conditions and (iii) supporting social reintegration of offenders upon release.

Let me refer to the lessons learned from two Central Asia countries – Kazakhstan and Kyrgyzstan – that took concrete steps to reduce overreliance on imprisonment by shifting policies towards prevention and social reintegration.

The organizational culture of prison services dramatically influences how the overall principles governing prison management are translated into practice. The existence of a civilian prison system with professional staff is a pre-condition for creating safe, decent and rehabilitative processes and environments in prisons. The experience of the above-mentioned countries demonstrated that enhanced investment in the most critical resource of a prison system, namely its personnel, is crucial to allow them to fulfil their complex and multifaceted tasks.

Prison conditions relate to the overall quality of accommodation, sanitation, hygiene, the provision of basic services as well as rehabilitation opportunities. Prison conditions constitute a vital aspect of the overall quality of prison life and the dignity of prisoners.

While rehabilitation and security are often seen as opposites, the experience from Kazakhstan and Kyrgyzstan demonstrates that the contrary is true. A rehabilitative prison environment enhances safety and security inside prisons, as prisoners who are involved in purposeful activities are easier to manage and less prone to violence.

Dedicated programmes should be designed to address the root causes of offending and enhance the prospects for prisoners' social reintegration.

Prisoners need to have access to health services, including essential medicine, free of charge and of a standard at least similar to that applicable in the community. Health-care professionals in prisons must be guided by the same ethical and professional standards as those applicable to patients in the community. Good prison health also benefits public health outcomes and the prevention of recidivism, as many drivers of criminal behaviour are health-related (for example substance use or mental health disorders).

Particular attention should be given to prisoners with special needs, including children and young persons, women and elderly, prisoners with disabilities, those with chronic diseases or mental health care needs, foreign prisoners, prisoners belonging to ethnic minorities, LGBTI prisoners, those serving life sentences as well as prisoners under sentence of death.

Prisons do not make people better. On the contrary, imprisonment exacerbates many of the challenges faced by individuals who have come in conflict with the law. In addition, long and harsh prison sentences may result in so-called "institutionalization" affecting prisoners' personalities as well as social and life skills in a way that makes their social rehabilitation even more difficult.

Last but not least, the rehabilitation and reintegration of prisoners is a societal task that cannot be fulfilled by the prison service alone. The support of relevant government entities is critical and could benefit from the active involvement of civil society. This approach mitigates the isolation of prisons from the outside world and contributes to the "normalization" of prisons.

Numerous research projects in various countries proved no link between the prison population and levels of crime. And the experience of Kazakhstan is very relevant here. The country reduced its prison population by almost 35,000, from 63,445 in 2010 to 28,923 in 2021. This was achieved in part by reducing the length of prison terms (with the average sentence decreasing from nine and a half years to eight and a half), the increased use of non-custodial sanctions (increased from 658 sanctions to 1,086 sanctions) and parole conditions. Along with this fall in the prison population, measures to encourage the recording of crimes were strengthened in Kazakhstan – but the overall crime rates, despite the reduction of the prison population, continued to decline. The number of homicides in Kazakhstan reduced by 24 per cent from 2009 to 2019, and at the same time the prison population reduced by over 33,000, from 62,997 to 29,913.

In-depth assessments of national criminal justice systems, combined with a revision of relevant policies and legislation, enhancing the institutional capacity, improvement of prison management and infrastructure and strengthening of public oversight mechanisms, served as the basis for successful interventions within and beyond the prison systems.

The constructive partnership between the state institutions, international partners and civil society organizations generated political will that contributed to promoting a rehabilitative approach to prison management and advancing the rehabilitation and social reintegration of offenders.

As we look forward, we must ask ourselves about the reasons for the continued growth of the overall prison population and high recidivism rates, understand new challenges facing established prison systems (*which include the increase in prisoners who have radical political agendas, increase in foreign national prisoners, the increasing use of prisons as a way to manage socially stigmatized groups in society*) and keep on the struggle to get out of prison the people who should not be there – the sick, the addicted, the marginalized, and to endeavour to ensure that those in prison are treated according to the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) that Member States have all supported.

Thank you, and I wish you a productive and successful meeting.

# **APPLYING RISK-NEED-RESPONSIVITY-BASED REHABILITATION: THE NAMIBIAN EXPERIENCE**

*Mariana Martin\**

## **I. INTRODUCTION**

In Namibia, implementation of the Offender Risk Management Correctional Strategy, principally founded on the Risk-Need-Responsivity Model, has resulted in remarkable differences in offender behaviour during confinement, in turn positively impacting the delivery of programming and other correctional services to offenders. The primary goal of the strategy is to gear offenders towards successful reintegration following release, ultimately promoting public safety. However, the implementation of scientific and evidence-based approaches presents various challenges, particularly to resource-deficient nations like Namibia, where various social factors impinge on efforts to rehabilitate offenders. The paper shares the Namibian experience in introducing its correctional strategy in its correctional facilities, highlighting the contextual challenges experienced and the strategies implemented to mitigate them. The paper also highlights the benefits noted with implementing its risk-and-need-based correctional strategy.

## **II. BACKGROUND**

Recognizing that the provision of scientific and evidence-based rehabilitation of offenders is key to desistance and ensuring public safety, the Namibian Correctional Service, being the custodian of both institutionalized and community-based offenders in the country and having the responsibility to ensure their rehabilitation and successful reintegration, in 2012 officially inaugurated its Offender Risk Management Correctional Strategy.

The Offender Risk Management Correctional Strategy guides all operations relating to offender management, control, rehabilitation and reintegration, promoting a safe and conducive correctional environment and ensuring the reduction of recidivism. Essentially, it recognizes the individuality of each offender in terms of the factors that may have precipitated their offending, the risks they may present for future offending, the needs they may have to address their criminogenic factors, and in terms of their motivation to address their needs and work towards changing their lifestyles.

With that ideology, the Offender Risk Management Correctional Strategy aims to identify the individual risk factors of offenders in order to manage them more effectively according to their individual risk profiles.

The Offender Risk Management Correctional Strategy is brought to life by multiple components, which mutually interact towards effective offender rehabilitation and

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reintegration:

#### **A. Objective Risk/Needs Assessment and Security Classification of Offenders**

Risks/needs assessment is the foundation for implementing the Offender Risk Management Correctional Strategy.

Starting soon after admission, identifying the factors that were/are most involved in the criminal behaviour of an offender is embarked on through objective risk/needs assessment. The process necessitates assessment instruments that can identify the right factors leading to a comprehensive criminal profile of an offender that documents the precipitating factors to the offence (e.g., emotional state and attitudes at the time, influences from others, contribution of alcohol or drug use, problems with anger, low ability for problem-solving, impulsivity, etc.).

A properly completed criminal profile provides direction on repeated patterns of behaviour that the individual offender may have learned, and needs to unlearn. Together with a more general and systematic risk/needs assessment of the offender, a picture is painted of what the offender can work on in attempting to change their behaviour during their period in custody. Assessment is continued throughout the offender's period of incarceration and enables gradual changing of the offender's security status from one level of security to another.

#### **B. Correctional Treatment Planning**

The understanding generated of the offender's risks/needs informs a plan of action where the correctional service can assist the offender to address their needs. This plan of action is a detailed outline of the steps the offender can take, both in the shorter-term and in the longer-term to begin to address their areas of difficulty and improve their chances of successful reintegration. It is specific in outlining who will do what, with what aims, over what time frame, and with what other supports. Progress in pursuing the plan is monitored throughout the sentence, with attention paid to evidence of success in achieving the set objectives.

#### **C. Case Management**

Case Management is the process that takes place to help offenders execute their individualized correctional treatment plan.

Primary responsibility to help support and guide the offender in this respect rests with an individual correctional officer, assigned the role of Case Management Officer, though other correctional staff also assist with their observation and analysis of the offender's behaviour on an on-going basis.

Through regular interaction and the provision of supportive and directive counselling, the Case Management Officer gets to know the offender, and their style, habits and patterns of behaviour. More than just being someone who responds to complaints, the Case Management Officer plays the role of being a mentor to the offender, someone who consistently directs and redirects the offender towards ways of achieving their life goals, changing their attitudes and benefiting most from the experience of incarceration.

#### **D. Effective Programme Development and Delivery**

The efficacy of the Offender Risk Management Correctional Strategy hinges, in the end, on the availability and quality of programmes and services to assist offenders.

In line with the responsivity principle, the Namibian Correctional Service ensures that its programmes respond to the characteristics and needs of its offender population, taking the prevailing risk factors and the personal weaknesses and vulnerabilities of the offenders into account.

Programmes are tailor-made to, and respond to, the Namibian population, realities and environment. Where programmes that are developed elsewhere are used, they are subjected to a rigorous process of adaptation and domestication.

#### **E. Unit Management**

Unit Management is a generally accepted model in modern correctional practice that aims to cluster offenders into smaller, more manageable groupings within a larger correctional setting (usually groups of about 80 to 120 offenders) so that there can be more effective deployment of active, dynamic security as an alternative to only passive, static security.

The notion is that offender rehabilitation is better achieved through an environment that facilitates interaction between correctional officers and offenders wherein there is direct supervision on a human-to-human level rather than simply the guarding and disciplining of offenders.

The Unit Management model enables professional relationship-building between correctional staff members and offenders and works more effectively within an ideal architectural and physical structure designed to accommodate it and also works more effectively when there is an appropriate compliment of trained and qualified officers performing various roles.

### **III. APPLICATION OF THE RISK-NEED-RESPONSIVITY MODEL THROUGH THE OFFENDER RISK MANAGEMENT CORRECTIONAL STRATEGY**

Predominantly based on the risk-need-responsivity model, the Offender Risk Management Correctional Strategy is premised on the firm belief that offenders are capable of changing. However, it is believed that this change is more likely to happen when programming is based on scientific and evidence-based practices.

In line with the risk principle, programme interventions are provided based on individual offender needs since different factors underlie the offending of different individuals. Correspondingly, offenders undergo thorough assessments to reliably differentiate low-risk from high-risk offenders, and high-risk offenders are then prioritized in accessing the most intensive rehabilitation programmes.

Furthermore, in its appreciation of the reality that there are many factors that can be used to explain offending behaviour, the Offender Risk Management Correctional Strategy recognizes the need for a multitude of interventions covering a range of offender needs such as substance use management, education, vocational training, psycho-education, etc.

Thus, the Namibian Correctional Service essentially provides an assortment of rehabilitation programmes and activities to offenders on the basis of their needs, prioritizing the most intensive cognitive-behavioural-based programmes for offenders who are assessed as posing a significant risk of (violent) reoffending. This is in line with the risk principle that states that the intensity of services given to offenders must be calibrated to the amount of risk that they pose.

Where programmes are based on the cognitive-behavioural model, their aim is to help offenders detach from their antisocial tendencies by providing them with extensive opportunity to practice, rehearse and pattern more prosocial behaviour.

The Offender Risk Management Correctional Strategy responds to the inference drawn from the responsivity principle that treatment interventions are to consider personal strengths and weaknesses such as the motivation and individual learning styles of offenders, as well as various other barriers to meaningful programme participation.

Thus, offenders who may not be in a position to gainfully participate in intensive cognitive-behavioural-model-based rehabilitation programmes, due to factors such as low motivation, are encouraged to participate in less intensive support cognitive-behavioural-based rehabilitation activities prior to participation in the core cognitive-behavioural-based programmes. Furthermore, as expounded on further in this document, when grouping offenders into these programmes, due consideration is paid to their personalities, cognitive styles, language and literacy abilities and other personal characteristics. Programme Officer qualities are also attended to as a means to enhance responsivity to the programmes.

#### **IV. THE NAMIBIAN EXPERIENCE IN APPLYING THE RISK-NEED-RESPONSIVITY PARADIGM**

Since embarking on basing its rehabilitation strategy on modern correctional models (risk-need-responsivity) over a decade ago, the Namibian Correctional Service has learned that transforming to evidence-based correctional practice is a mammoth undertaking requiring substantial resources, both human and non-human, in order to attain set standards.

For example, most of Namibia's correctional facilities are old structures inherited from the colonial era, and the infrastructure was largely custody oriented and was established to serve the specific needs of the colonial and apartheid ideology. Although some of its correctional facilities were constructed after the country's independence, they did not conform to the design and structural requirements of the Unit Management principle.

It, therefore, follows that significant modifications to the infrastructure had to be undertaken to accommodate the Unit Management concept. However, getting all the targeted facilities to the required standard has been a taxing endeavour owing to resource constraints. Work still needs to be done on a number of facilities to get them to meet the correct specifications, whereas plans exist to replace some correctional facilities with newly constructed ones.

The partitioning of facilities into smaller functional segments in place of the large sections that previously accommodated an average of 500 offenders means that correctional facilities now have smaller units of different security classifications accommodating the



sentenced offenders. This has resulted in notable rehabilitative and security benefits as correctional officers are now better able to monitor and interact with offenders, which, in turn, allows them to more effectively address the needs of offenders and also easily detect and swiftly react to potential risks posed by offenders.

Furthermore, implementation of the Risk-Need-Responsivity-based approach brought to light the necessity of comprehensive and accurate documentation of offender behaviour and occurrences as well as quality information about their backgrounds and criminal histories, the nature and circumstances of their offending, their needs and problems, strengths and potential, etc., all of which feed into a proper analysis of risk.

The Namibian Correctional Service has learned that without comprehensive information on an offender's criminal and social history, or on the particulars of their offence, it becomes very challenging to conduct a proper analysis of risk. This has a bearing on the identification of the offender's needs for rehabilitation. Lack of quality data also has a bearing on the correct identification of offender requirements for successful reintegration as well the accurate analysis of outstanding risks at the time of release into society. Furthermore, lack of data makes it impossible to measure growth and successes of the rehabilitation efforts.

This has been resolved by the implementation of a comprehensive electronic offender information management system in 2015, which is used to record, monitor and evaluate offender data. The system is undergoing constant improvement, with a module to track security incidences committed by offenders having been added in 2016 and other modifications still ongoing. However, critical ICT equipment shortages are a major setback to the full utilization of the information system and the timely recording of offender data.

Additionally, the experience of the Namibian Correctional Service in implementing its risk-need-responsivity-based correctional strategy is that its efficacy is further impacted by the quality of its workforce. Implementation of the Offender Risk Management Correctional Strategy has made the Namibian Correctional Service aware that the quality of its risk assessment and related processes was being adversely affected by a lack of suitably qualified and skilled officers. It recognized that a proper Risk-Need-Responsivity Model requires professional staff with good interviewing skills, and the requisite critical analysis and judgment for managing offenders who deny criminal responsibility.

Over the years the Namibian Correctional Service has made significant progress in attaining the appropriately diversified and skilled workforce required to make its offender management strategy work. However, it still has fairly large ground to cover before it has the required levels of staff to make the desired impact, both quantitatively as well as qualitatively.

## **V. ADAPTATION OF THE RISK-NEED-RESPONSIVITY MODEL TO THE NAMIBIAN CONTEXT**

The socio-economic characteristics of the Namibian population present some challenges that necessitated the correctional service to become creative to ensure that when delivering rehabilitation programmes, the Risk-Need-Responsibility principles are applied in a manner that is sensitive to those complications.

Specifically concerning the delivery of its Cognitive-Behavioural-Therapy-based programme interventions, measures needed to be put in place to ensure they are delivered in a style and manner that best befits the characteristics of its offender population.

Although some challenges are experienced at some correctional facilities to identify sufficient numbers of offenders that meet the criteria for participation in programmes based on their risk factors, this is not a general concern. On the other hand, it is a constant challenge to find offenders who not only qualify for participation in certain rehabilitation programmes by virtue of possessing high risks/needs but are also able to optimally benefit from participation in those programmes based on their language and literacy capabilities.

Despite English being the official language in the country, Namibia is home to a wide diversity of languages, with the native languages being the most widely spoken and understood. While only 1.5 per cent of the country's population have never had formal education,<sup>1</sup> a grave picture is painted within the correctional setting. In November 2020 the country's most populous correctional facility, the Windhoek Correctional Facility, recorded a total of 100 offenders that never had any formal education out of a population of 639 offenders that were assessed. This represents 15.6 per cent of that population.

Expectedly, a considerable number of offenders are unable to gainfully participate in cognitive-behavioural based interventions, because they are unable to comprehend the primary language of delivery of those programmes (English) and are also not able to read or participate in any written group work. Literacy skills are particularly important to be able to benefit from the cognitive-behavioural-based interventions as written assignments are a critical aspect of those programmes.

To allow the programmes to be available to as many offenders as possible, the Namibian Correctional Service decided to include offenders presenting with only one of the barriers (language/illiteracy) in cognitive-behavioural-based programme participation although such offenders would require the Programme Officers to conjointly address the problem of literacy and language while attending to their risk factors.

As a way to promote responsiveness, the cognitive-behavioural-based programmes are delivered in a manner that is mindful of the above-mentioned challenges. For example, since programmes are delivered in English, key concepts are translated into local languages. This approach is supplemented by pairing Programme Officers in a manner that at least one of them is able to communicate in a different local language.

Where comprehension of English is a problem, offenders who speak the same vernacular language are also placed in the same group to make it easier for Programme Officers to translate programme content to them. Offenders who are unable to complete written tasks in English are further encouraged to do so in their vernaculars.

Where difficulties exist to serve an offender due to language barriers, even after the above efforts have been made, such offender can be transferred to another correctional facility that has Programme Officers that are able to communicate with the offender in their vernacular to enable programme participation.

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<sup>1</sup> Namibia Statistics Agency. (2011). *Namibia 2011 Population and Housing Census Main Report: Republic of Namibia*. <<https://cms.my.na/assets/documents/p19dmn58guram30ttun89rdrp1.pdf>>.

Thus, with thoughtful and attentive delivery, offenders with language or literacy barriers are still able to have their risks and needs addressed through cognitive-behavioural-based programme participation.<sup>2</sup>

Another aspect of programme delivery introduced in Namibia, which is quite resource intensive, but essential, is that every offender in the group is periodically seen individually by a Programme Officer for a review and support session. These one-to-one sessions have been reported by the Programme Officers to have been very useful and productive, especially for those offenders with English proficiency problems and those experiencing the content of the programmes as cognitively challenging.

As a durable solution to the literacy and language problem, the correctional service has over the last decade redoubled its efforts in revamping and strengthening its educational activities in appreciation of the full importance and relevance of offender education to the success of the delivery of its core rehabilitation programmes.

However, the concentration of efforts on addressing the basic educational needs of offenders is not only done to enable them to benefit from the cognitive-behavioural-based programmes, but also as a rehabilitation effort on its own to address education and employability as risk factors.

In the past, literacy and educational upgrading was provided to offenders mostly based on their expressed interest. However, offenders' literacy and educational levels are now recorded upon admission to correctional facilities, and educational services are now provided more based on need, not just on interest.

## **VI. EFFICACY OF INTRODUCING THE RISK-NEED-RESPONSIVITY-MODEL-BASED REHABILITATION STRATEGY IN NAMIBIA**

The management of offenders according to their risk profiles has significantly helped the correctional service mitigate the challenge of resource constraints by enabling it to concentrate its scarce resources where they would have the most impact.

As a case in point, the eight correctional facilities that have implemented the Offender Risk Management Correctional Strategy are classified according to the following security levels: Maximum, Medium, Low-Medium and Minimum. With the focus and intensity of security work (both static and dynamic) varying by level of security, the ratio of the number of offenders and the total number of correctional officers providing security duties in the different units reflect this difference.

For example, fewer officers are deployed in lower security living units, allowing for a larger concentration of staff in the units requiring stricter security. Where one correctional officer (security) is required for every six offenders in a maximum living unit, one correctional officer (security) is required for every ten offenders in a minimum living unit.

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<sup>2</sup> Offenders that present with both literacy and language barriers are not able to participate in cognitive-behavioural-based interventions as they pose double challenges, rendering their responsiveness to programming low. Such offenders are first referred to the literacy programme to develop literacy and English competencies, following which they can become eligible to participate in the cognitive-behavioural-based programmes.

Furthermore, fewer infrastructural requirements exist for lower than for higher security level living units. For example, one of the security features of a maximum security unit is that its courtyard needs to be roofed by diamond mesh. On the other hand, no roofed courtyard is required for a minimum security unit. This saves on infrastructure costs that can then be used to tighten up security at higher security units.

In terms of the outcomes of implementing the Offender Risk Management Correctional Strategy, it is still premature to properly gain appreciation of its efficacy, both in terms of its ability to reduce security incidents within correctional facilities as well as in terms of being an effective approach to reduce recidivism.

Although the implementation of the Offender Risk Management Correctional Strategy at the Windhoek, Elizabeth Nepemba and Evaristus Shikongo correctional facilities already took place in 2010, 2011 and 2014, respectively, rolling out the strategy to the Windhoek Female, Divundu, Walvis Bay, Hardap and Oluno correctional facilities only took place in 2019. Furthermore, this was done with scant resources, particularly relating to human resources, and with some facilities missing some crucial components of the strategy such as infrastructure conforming to the Unit Management philosophy.

The ability to gain proper perspective of the efficacy of Risk-Need-Responsivity-based rehabilitation in Namibia is compounded by the fact that it is a challenge to find proper data on offender behaviour before the implementation of the electronic offender information management system in 2015/2016. Preliminary data, however, shows some indication that adoption of the Risk-Need-Responsivity Model might be promising in so far as its ability to positively influence offender behaviour goes.

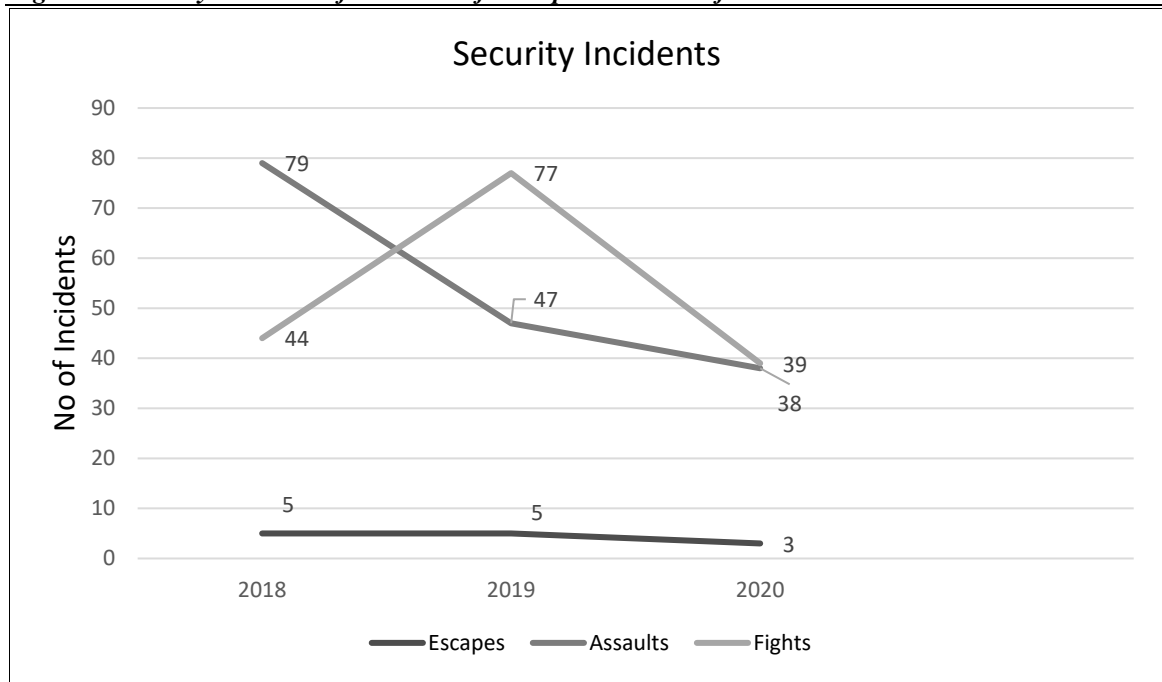
Analysis was conducted on the incident trends (escapes, assaults & fights) of the latest four facilities to have implemented the Offender Risk Management Correctional Strategy to determine if any changes in the frequency of security incidents occurred since their adoption of the strategy. As only a year had passed from the introduction of the strategy to the time of the analysis, comparison could only be made between incidents that had occurred during the year following introduction of the strategy and those that had transpired in the year immediately before as well as the year of implementation of the strategy.<sup>3</sup>

*Figure 1* shows a notable reduction in the occurrence of assaults committed by offenders at the four facilities to have last implemented the Offender Risk Management Correctional Strategy since its implementation. Although escapes were generally low at those facilities even before introduction of the strategy, a reduction was observed since its implementation. A sharp increase in the occurrence of fights was, however, observed during the year the strategy was implemented and a sharp decline again thereafter. As a result, a pattern between the occurrence of fights and the implementation of the strategy cannot as yet clearly be established at the four correctional facilities.

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<sup>3</sup> Only the Divundu, Hardap, Walvis Bay and Oluno Correctional Facilities are included in this analysis, because they are the most recent facilities to have implemented the strategy and the incident records of those facilities before their implementation of the strategy were available at the time of this report. In contrast, data on the incidents at the Windhoek, Evaristus Shikongo and Elizabeth Nepemba Correctional Facilities before their implementation of the strategy were not comprehensive, making comparative analyses of the incidents at those facilities before and after implementation of the strategy challenging. Furthermore, although the strategy has been rolled out to eight facilities in total, statistics for the Windhoek Female Correctional facility are usually recorded under those of the Windhoek Correctional Facility.

**Figure 1: Security Incidents of Facilities after Implementation of the ORMCS**



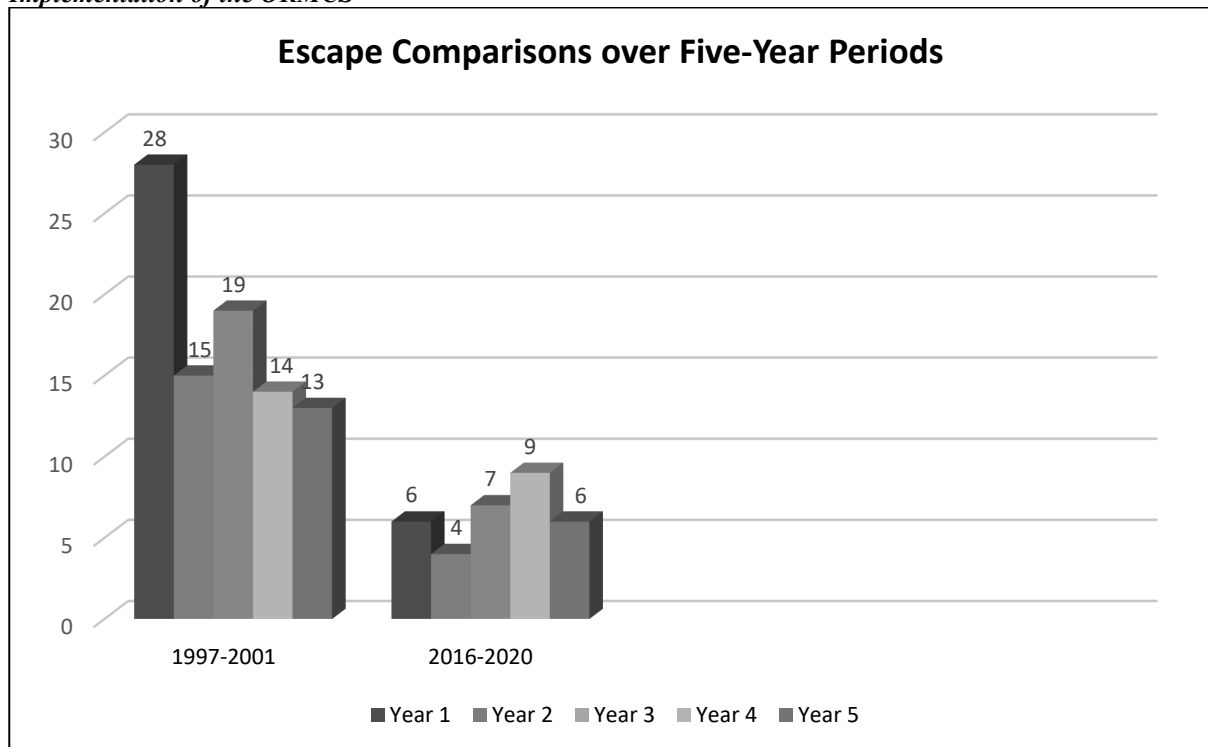
As per *Figure: 2*, offenders in Namibia across all correctional facilities, including those that have not implemented the Offender Risk Management Correctional Strategy, escaped significantly more before the adoption of the strategy.<sup>4</sup>

In total, 89 escapes occurred from 1997 to 2001,<sup>5</sup> whereas only about a third of that figure (32) were experienced from 2016 to 2020. Additionally, the highest frequency of escapes experienced in a year over the period 2016-2020 was 9. On the other hand, the highest number of escapes over the period 1997-2001 was 28, with 13 being the lowest number of escapes recorded in a year during that period.

<sup>4</sup> Separate data focusing only on the facilities that have implemented the strategy is not available. Including correctional facilities that have not implemented the Offender Risk Management Correctional Strategy in the analysis is possibly likely to undershoot the influence of the strategy on the frequency of escapes.

<sup>5</sup> The period 1997-2001 was randomly selected to compare with simply due to convenience as comprehensive escape records were available for that period, whereas the data accessible for other years was fragmented. Inconsistencies in reporting formats also made it difficult to compare data between certain periods.

**Figure 2: Escapes by Offenders under Custody of the Namibian Correctional Service before and after Implementation of the ORMCS**



In December 2016 the Namibian Correctional Service implemented a new Community Supervision framework for the supervision of offenders released conditionally on Full Parole or Remission of Sentence that is aligned to the Offender Risk Management Correctional Strategy. Since then (December 2016 to December 2020), 7,717 offenders, were released into Community Supervision, of which 223 ended up getting reconvicted of new offences, representing a mere 2.9 per cent of the population.

Although, this aspect relates to the management of offenders outside of confinement, the reality that all offenders released into Community Supervision in Namibia are now being supervised in terms of their individual risk profiles and corresponding needs across the country provides support for the usefulness of Risk-Need-Responsivity-based offender management in reducing reoffending.

Although more research needs to be conducted for conclusive deductions to be drawn regarding the impact of the introduction of the Offender Risk Management Correctional Strategy on the regulation of offender behaviour during incarceration and, ultimately, on reducing recidivism, the above findings suggest that there are some indications that implementing of the Risk-Need-Responsivity Model has shown itself to be effective in managing offender risk in Namibia.

It is recognized that there is still a lot of work to be done to ensure that all targeted correctional facilities fully implement all components of the Offender Risk Management Correctional Strategy and fully apply it as intended for its benefits of the to be fully realized.

## **VII. CONCLUSION**

Although this paper focused on the approach of the Namibian Correctional Service to manage offender behaviour and reduce recidivism through its application of a Risk-Need-Responsivity Model, the country's strategy to rehabilitate offenders is not limited to the addressing of criminogenic needs.

The Offender Risk Management Correctional Strategy implemented by the Namibian Correctional Service recognizes that offenders have various other needs and concerns that, if not attended to, can also interfere with their desistance from crime.

It, therefore, follows that a range of support programmes and services are also in place to attend to offenders' personal problems and reintegration concerns.

Furthermore, the benefits witnessed so far from implementing the Risk-Need-Responsivity-based model are attributable to the immense material, human resource and financial investments made by the Namibian Correctional Service to ensure the effective implementation of the model, in addition to the development of new policies and the continuous reviewing of old ones to ensure they are aligned to the effective implementation of the model. This is in recognition that all correctional practices, and the correctional climate as a whole, have a bearing on the effective implementation of its strategy, and on the ultimate reduction of recidivism.

Overall, albeit with lots of dedication and innovation, the Namibian experience demonstrates that the Risk-Need-Responsivity Model is an encouraging approach for reducing recidivism, and that it shows itself to be implementable in any context with the right mix of ingredients.





# **CREATING REHABILITATIVE PRISON ENVIRONMENTS: ANTI-CORRUPTION POLICIES**

*Dr. Emiliano Blanco\**

## **I. INTRODUCTION**

When I assumed the position of National Director in 2014, one of the first steps needed was to define the objectives of the prison administration. These objectives would be the reduction of reoffending and recidivism,<sup>1</sup> public protection and the promotion of desistance from crime. This may appear as a trivial question, but in our tradition, it is central, due to, on the one hand, that these objectives were not seen as the purposes of punishment (because of the influence of critical criminology in our region), and on the other hand, as an aid to orientate and organize the reform process of our system.

Having our objectives in mind, an action plan was implemented to ensure its realization, based primarily on the need of having an objective system. To this end, it was fundamental to generate a solid database to be used in the decision-making process.

Likewise, in order to achieve better standards with a positive impact on rehabilitation, the following actions were taken: the implementation of the initial risk assessment system; the categorization of prisons according to physical, electronic and dynamic security levels; and the adoption of simple and clear standard procedures. Additionally, we have promoted evidence-based criminological research as a basis for the decision-making process, we have conducted a thorough examination and monitoring procedure to assess the institution's management processes, and we have developed a policy to promote public integrity and to prevent corruption. All these measures have been introduced to minimize discretionary decisions, so that the system is more objective and a science-based theoretical foundation is built for our work.

## **II. FOSTERING REHABILITATIVE ENVIRONMENTS**

We would like to mention the importance of the “environment” of a prison, which has been the subject of several studies. What these studies have indicated is that the moral quality of a prison is closely related to its rehabilitative capacity. That is, the higher moral quality of the prison, the more rehabilitative capacity it has. We will later refer to these studies, which have been undertaken at our institution based on the research conducted by Professor Alison Liebling.

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<sup>1</sup> We will use the terms “reoffenders” and “recidivists” to refer to two different groups of inmates, we will use the term “reoffender” to refer to those inmates who have not been convicted but are admitted to an SPF prison for a second time, and we will use ‘recidivist’ for those who have been officially declared as such by a court.

On the basis of that statement, and the creation of rehabilitative environments being the topic of the panel, we would like to share two distinct actions that SPF carried out between 2014-2019 in order to attain this goal: the corruption prevention policy and staff management.

### **III. ANTI-CORRUPTION POLICIES**

Anti-corruption policies have the ultimate goal of creating an environment of integrity in any given institution. Given the question “why should prison administrations prevent corruption?”, the answer becomes evident as we accept that only a culture defined by transparency and commitment to ethical values allows the creation of healthy environments that, in turn, favour the reduction of reoffending and the rehabilitation of offenders.

Corruption has extremely negative consequences, and when corrupt practices become widespread, they become an obstacle to the attainment of the objectives of reoffending reduction, the promotion of desistance and public protection, and other standards such as the Mandela Rules.

In particular, corruption affects the legitimacy and trustworthiness of the system, generates inadequate working conditions, and creates inequities and grievances that affect the levels of violence of any prison establishment.

For these reasons and many others, it is necessary to guarantee healthy environments, and with that in mind, it should be noted that the mere sanction of corrupt practices is insufficient, as the damage of that particular corrupt act has been made. This punitive approach should be complemented with a preventive approach, one that promotes public integrity.

### **IV. CHARACTERISTICS OF CORRUPTION IN PRISON ENVIRONMENTS**

Prisons are closed environments, which conspires against the idea of transparency. Moreover, the relations between staff and inmates have been described as having a “negotiated nature”. According to Goldsmith, who has studied the phenomenon of corruption in prison environments, the transactional nature of the relationship between inmates and staff implies that some degree of corruption will always be present, which goes against the usual “zero tolerance” government policies on corruption.

At this point, it is important to notice that the environment has a direct impact on the individual’s behaviour. It has been proved that the pressure of authority and peer pressure are key conditioning factors of our behaviour (Milgram and Asch experiments). For example, on Asch’s experiment, it was proved that individuals conform or follow the group’s behaviour, even when the group appears to be wrong, either because they start to believe that the group is right, or out of fear of contradicting others.

This principle applies to the phenomenon of corruption in prisons, the environment of a prison and the behaviour of the individuals in it vary depending on whether our system is affected by marginal corruption or systemic corruption.

A marginal corruption scenario occurs when the system works in accordance with its regulations, and the control organisms detect and sanction corrupt practices when they do occur. Systemic corruption, on the other hand, occurs when the organizational culture is permissive of the breach of regulations, corrupt practices are seen as natural, the control organisms are not effective, impunity is the rule, and those who try to abide the law are set apart and fear reprisals if they decide to report wrongdoing.

## **V. CAUSES OF CORRUPTION**

It has already been indicated that the problem of corruption, and of corruption in the penitentiary setting, is extremely complex and must be approached from a multidisciplinary perspective. Strictly speaking, the efficient cause of corruption is always a decision made by the subject who performs the act of corruption. The fact that there is discretion in decision making by a public official is not in itself a determining factor of corruption, since the official can fulfil his duties and act with principles of ethics, honesty and probity. Along these lines, if we take as an example the factor that the public official has economic or financial problems, this situation does not in itself carry a risk of corruption, since the official can maintain its integrity and ethics in the exercise of the public function, especially to keep their job.

Therefore, the causes of corruption are not determining factors but factors whose presence facilitates the occurrence of an act of corruption. These factors can be studied with a view on ethical and moral, legal, cultural, sociological, criminological, psychological, anthropological, economic, political, personal, social, institutional, philosophical and historical perspective.

These facilitating elements may be related to personal or individual aspects (subject values, mood, etc.), organizational aspects of the institution (high level of bureaucracy, insufficient salaries to cover basic needs, etc.), or external aspects, such as pressure from third parties outside the institution.

In general, we can mention the following:

- Absence of rules, regulations, policies and laws.
- Weak enforcement systems.
- Weak control and supervision systems.
- Lack of accountability to the public.
- No transparency.
- Lack of mechanisms of balance between the powers of the State.
- Lack of integrity.
- Monopoly of power.
- High sense of discretion.
- Low salaries.
- High profits compared to risks.
- Low detection and sanction rate.
- Favourable context for corruption.
- Problematic and cumbersome regulatory systems.

Ultimately, it is the official who chooses to act in a corrupt way or to abide by the law. All these factors that favour corruption have a particular expression in relation to the prison setting. When taking into account the particular forms of relationship created in these settings, there are certain risks – situations that favour or make prison staff be corrupt or corrupted – that, in addition to the causes described above, are typical of this environment.

According to international experience and John Podmore's Handbook on Anti-Corruption Measures in Prisons, such risks are:

- Financial problems and family pressures.
- Envy and resentment about the conditions of inmates or other staff, especially senior staff.
- Greed or desire for personal enrichment.
- Doing an "altruistic" or good action by means of a corrupt action
- Pressure from the close group or from the "culture" in which they are immersed.
- The need to commit an act of corruption for survival, whether in terms of psycho-physical integrity or career.
- Ideological issues.
- Lack of clear rules or non-compliance. This is especially true in systems where there are no written protocols or objective rules, leaving it all to the discretion of officials
- Poor training.
- No leading by example by senior staff.
- Lack of commitment to the strategic direction set by the authorities of prison administrations.

The factors that are most influential and difficult to address due to their complexity are those related to the culture that takes place in the prison world and the way of interaction between the actors in that environment. In fact, the cultural pressure of the environment can cause large-scale bureaucratic institutions – of any nature – to be at risk of high levels of corruption caused by the very dynamics of the system. The factor that has the most influence on this point would be the pressure of the environment on staff and inmates to undertake these practices and not report them. This situation creates ideal conditions for the reproduction and expansion of corruption within the system. Within this framework, the situation can only be tackled through a progressive cultural change, based on the development of a new conscience and ethical work culture of the staff, with special attention to future public officials.

## VI. CONSEQUENCES OF CORRUPTION IN PRISONS

The harm generated by corruption is not always detected immediately, which reinforces the need to act before it occurs, i.e. at the time of prevention. In order to account for the magnitude of the damage, a relationship with the degree of corruption can be established.

As regards specifically the public service that must be provided by prison administrations, the damages directly caused by corruption are the following:

- **Impact on Human Rights:** for example, if money intended for the construction or maintenance of new accommodation spaces is diverted to the benefit of a public official, as unfair conditions of detention occur for persons deprived of liberty.

- **Impact on the public security function of the penitentiary administration:** in contexts with a high index of corruption, persons deprived of their liberty could obtain, in exchange for money, places of accommodation with less security than that required because of the risks they pose, which would allow their escape or even continue to handle illicit activity from prison.
- **Increased levels of violence:** the extension of corruption – accommodation, sale of accommodation, gifts, sale of narcotics, etc. – can create a loss of control by the prison administration of the spaces where people deprived of their freedom lie. This loss of control will almost certainly result in arbitrariness and unequal treatment, which in turn will encourage conflict and high levels of violence. An institution that works on the basis of arbitrariness, bribes or gifts, cannot provide security about the future of the people who are part of it, which results in increased anxiety and tension in the environment.
- **Impact on public trust in the correctional institution:** people who engage in acts of corruption hide their actions. When the activity is generalized, the affected organization becomes isolated and becomes less and less transparent. The lack of transparency results in the loss of public trust in their actions.
- **Damage to the rehabilitative purpose of the penitentiary administration:** the impact on this function occurs in various ways: on the one hand, because of an undue allocation of resources, which will no longer be used to address criminogenic needs; on the other hand, because the central axis of the rehabilitation function is the intervention in the conduct of the persons deprived of their freedom, and a morally unhealthy institution will not have that capacity due to the propagation of corrupt acts, or crime replicating practices.
- **Impairment of staff attachment to conduct based on professional standards:** if the principle on which rewards – promotions, salary increases, etc., sanctions, transfers, dismissals – are assigned focuses on corruption, staff will not feel inclined to develop their careers, but to meet the demands of the system.
- **Creating conditions for increased corruption:** the existence of high levels of corruption is the breeding ground that increases it, due to the naturalization of these practices and, in the absence of legitimate objective parameters, actors are tempted or forced to meet their needs or desires through acts of corruption to survive in the system. In this sense, the very dynamics of corruption tend to increase both qualitatively and quantitatively and end up affecting the entire functioning of organizations if not properly managed.
- **Loss of legitimacy of the prison system:** if prison organization is corrupt, it loses the trust of users and operators in the public authority and, consequently, its moral authority to demand changes in behaviour.
- **Generation of individual criminal, administrative and civil responsibility of staff and the institution, both nationally and internationally:** acts of corruption are prohibited by law and, those who commit such acts, are subject to a sanction, including a conviction. In addition to criminal liability, acts of corruption may result in the civil liability of officials – with an obligation to compensate victims for

money – and also administrative responsibility, which may result in the dismissal or exoneration of the person responsible, as well as loss of retirement benefits. It may also affect the State's responsibility before the international community for violations of conventions and as civil liability.

- **Damage to staff:** high levels of corruption change the rules of the game, affecting the welfare and the rights of the personnel. In addition, the incidence of corruption in the levels of conflict creates stressful working conditions that also affect the well-being of the staff.
- **Alteration of legitimate rules established by applicable regulations:** high levels of corruption make the benefits, sanctions or rules set by applicable regulation not properly enforced. For example, if a person deprived of his or her liberty does not meet the legal requirements for access to a benefit such as house arrest, he/she may do so by paying a sum of money.
- **Risk of facilitating organized crime and self-government in prisons:** high prevalence of corruption in prison creates a risk of self-government. It occurs as a consequence of the existence of an informal system created by the generalization of corrupt actions regulating life in prison contrary to what the rules establish. This creates a number of imbalances in the dynamics of prisons. The risk grows in the case of organized crime. The following is an example of this: through informal rules, penitentiary staff, in exchange for money, allow a group of inmates to freely manage the spaces, and even grant them protection. This could create a situation of constant abuse and the setting of new rules of coexistence contrary to legal norms; for example, if the rest of the people deprived of their freedom had to pay the dominant group a certain amount of money in exchange for this group not attacking or killing them.

## VII. ANTI-CORRUPTION POLICIES WITHIN SPF

Corruption has been perceived as a critical issue by most countries, and as such it has become an important part of the international agenda. In this sense, a universal instrument against corruption, that is the UN Convention against Corruption, has been subscribed by several countries.

The UN Convention against Corruption encourages the adoption of certain measures against corruption, such as international cooperation, asset recovery and the engagement of the private sector in the prevention of corruption.

In line with this instrument and others that Argentina has subscribed, the anti-corruption policy within SPF started in 2014 with a comprehensive diagnosis of the situation of the institution in terms of corruption, and it turned out that the main problem was that corruption had always been present but it had been systematically denied, the risks of corruption were higher in some areas than in others, corrupt practices in general were perceived as natural and there was no specific training on this topic for staff.

The following are concrete policies that were adopted between 2014–2019 to reduce corruption risks, promoting a culture based on values and principles of law enforcement, proper management of public affairs and goods, integrity, transparency and accountability:

- **Creation of the Corruption Prevention Service:** with the objective of designing, formulating and implementing policies, plans, programmes and actions to prevent corruption. The main axes of action are: the analysis and measurement of risks and vulnerabilities, the definition of appropriate strategies to address those risks, and the coordination of activities that everyone involved in the system must carry out to prevent corruption. Within SPF there are other organisms related to the fight against corruption besides the Corruption Prevention Service, they are:
  - o The Department of Internal Affairs.
  - o The Directorate of Information Analysis.
  - o The Service of Monitoring and Inspection of Prison Establishments and Compliance.
- **Action Plan of the Corruption Prevention Service:** The Action Plan is based on five strategic axes: “Declaration of Institutional Ethical Principles”, “Institutional Assessment”, “Staff Training and Awareness in Ethics, Transparency and Prevention of Corruption”, “Regulatory Changes and Improvements in Procedures” and “Joint Detection, Monitoring and Evaluation Actions”.
- **Code of Ethics for the staff of the Federal Prison Service:** It embodies the values, principles and duties of the personnel, taking into account the specificity of confinement settings, with the aim of fostering an institutional culture in which the principles of integrity, legality, honesty, efficiency and transparency are strengthened. The Code guides prison staff in the performance of their duties in the face of specific situations that may arise.
- **Creation of a hotline for complaints:** to detect and report irregularities or cases of corruption by officers in the institution. The hotline is staffed by Internal Affairs, being the punitive approach divided from the preventive approach. Anonymous complaints may be received.
- **Protocol for processing complaints:** This instrument establishes, in an exhaustive way, the procedure to be followed once a complaint is filed. One of its main purposes is to ensure at all times the confidentiality of complaints. On the other hand, the protocol sets categories for the classification of complaints, which ensures objectivity and transparency. These categories are: 1. Highly probable 2. Probable: 3. Inadmissible.
- **Rules for the protection of whistle-blowers:** this resolution provides protection of the job of officials who, in good faith and with well-founded reasons, report irregularities or crimes by other prison officials.
- **Map of corruption risks:** implemented as a pilot programme at the Judicial Detention Centre (Unit 28), in order to identify sectors that are risky or vulnerable to abuse or corruption. Another objective was to foster the participation of staff who provide services in Unit 28 on a daily basis, trying to break the taboo around the issue of corruption, and to create a consensual document that integrates the staff of the institution in the process of change.

- **Working together with other organizations:** for instance, with the Anti-Corruption Office, the Judiciary, and other security forces and corruption experts.

## VIII. STAFF TRAINING

Ethical prison environments cannot exist without an extensive training of staff. Through the implementation of a public ethics course, awareness of the importance of the prevention of corruption and the insidious consequences of corruption can be raised. The organizational culture as a whole can be modified and a culture of integrity achieved. Staff have to be provided with sufficient resources to generate and maintain positive appropriate relations with inmates, independently of peer pressure and the transactional nature of staff-prisoner relations.

It was noted that there was no specific bibliography on the topic of corruption in prison environments in Spanish and accessible for our staff, other than some publications of the United Nations for the reform process of Panama, and therefore the Corruption Prevention Service published SPF's Anti-corruption Handbook. This handbook has become the basic bibliography for the mandatory courses of ascension, and it addresses topics such as the issue of corruption in prison contexts and measures to prevent it. Previously, our policies were based on John Podmore's Handbook on Anti-Corruption Measures in Prisons, which at the time was a preliminary draft that would then be published by UNODC.

SPF's handbook is the result of academic and applied research and was adapted to the Latin American reality and particularly that of Argentina, and to be accessible to our staff.

## IX. IRIC

One of the most important preventive measures was the creation of the System of Intervention for the Reduction of the Corruptibility Index (IRIC) in 2016. The main reason behind the creation of this system was a shift in the prison population composition. Through the course of the last years, our prison system has received inmates with certain characteristics, risks and needs that differ greatly from the usual profile. This new profile comprises inmates that committed offences linked to the action of criminal organizations, such as drug trafficking, and those who committed offences linked to corruption or economic crimes.

Before this trend, the prison administration was used to working with low socio-economic status inmates, who came from dysfunctional families, with impulse control disorders, involved in substance and alcohol abuse, with poor symbolic resources and no external support. Their associated risks in prisons were mostly related to risks of conflict and violence.

On the contrary, the new profile of inmates has a low risk of conflict but has a high risk of escape and of continuing their criminal activity from prison and high risk of manipulation, due to their military power, their economic capacity and their links to power, with the objective of obtaining undue benefits and gaining power over the rest of the inmates and, ultimately, the prison as a whole. Further, their deficits and needs are completely different.



For that purpose, the concept of corruptibility was created. The concept of corruptibility indicates, on the one hand, the ability of some people deprived of their liberty to violate, through acts of corruption, the proper functioning of the prison system and, on the other hand, the risks of these prisoners to be the victims of acts of corruption during their prison term. This risk can materialize itself through acts of violence, manipulation or infiltration. Thus, the ultimate goal of the IRIC system is to detect and manage the corruptibility risks, to achieve a transparent management of inmates, prevent them from using their resources to obtain dysfunctional decisions from the administration and guarantee the satisfaction of their specific needs, under the logic of the principle of normality. From this perspective, actions are being developed to allow greater closeness and interaction between the staff and prisoners, and information management. In this way, it is possible to prevent any kind of act that contravenes the normal operation of the system, among them, acts of corruption.

## **X. MEASURING THE QUALITY OF LIFE**

The concept of moral performance has been developed by Professor Alison Liebling as a result of a set of research studies carried out at the Prisons Research Centre at the University of Cambridge (United Kingdom). Her work on this area was meant to understand the complexities of the prison world by analysing the role of values and the quality of life in the prison environment. The study consists in administering a structured questionnaire to each prisons' inmates in order to gain knowledge and compare how certain values of prison life are experienced. Among these values, we may mention "respect", "trust", "safety" and "well-being" in prisons. The study is based on the following guiding principle: what defines the quality of prison life does not only include the material/objective conditions and access to rights, but also and particularly the way in which those rights are delivered by the institution; that is to say, the way in which staff-prisoner relationships are built and developed. Another aspect that may be analysed within the scope of this study is how prisons are operated, by exploring the role of values, emotions and staff-prisoner relationships inside prisons.

The data obtained from this empirical study is chiefly important as it could be used to formulate policies to promote desistance and to reduce recidivism. In addition, the results are similar to those obtained from research studies conducted in other countries. This work on moral performance also proves interesting and useful to obtain more information on violence and conflict issues, humanity and relational dimensions in our prisons, compliance with management goals and, ultimately, the formulation of public policies that work effectively in prison, as well as the implementation of reforms that can correct the moral standard at our prisons and promote any positive aspects detected.

The above-mentioned study on moral performance was also carried out in Module VI of the Federal Prison Complex, where the Intervention Program to Reduce the Degrees of Corruptibility (IRIC Program) is run, in order to identify the levels of quality of life inside each prison. Inmates' perceptions were taken into account to get to know their strengths and weaknesses. Surveys were conducted between July and October 2018. Taking this finding into account, specific actions were taken in order to address this issue and provide a greater amount of activities.

As a result of this study, we can conclude that:

- 85.7 per cent of inmates have claimed that they are treated with respect.
- 75.7 per cent of inmates stated that staff–prisoner relationships are good.
- 91.2 per cent of inmates assert that they are not bothered or threatened by the rest of the inmates at the facility.
- 57 per cent of inmates rated the quality of life inside Module VI positively (between 7 and 10 points).
- Negative aspects should be considered and improved in Module VI.

These values are considerably different from the other settings we measured, so we can suggest that in a place where risk of corruption is controlled, there are better perceptions of other dimensions in daily life.

## **XI. MEASURING CORRUPTION**

As I said before, corruption is a risk from which no organization seems to escape. In order to be prevented and punished wherever it occurs, the phenomenon must be understood in its own manifestations within the specific organization in order to provide an adequate response.

Consequently, since 2014 an action plan has been implemented to promote public integrity, to prevent and to fight corruption. Measures such as the creation of its own code of ethics, the implementation of a system for reporting corruption cases, and the corresponding protection for the agents who report it have been developed. In addition, there has been constant training of personnel in matters associated with ethics, transparency and the prevention of corruption, among others. The truth is that the taboo that always existed in relation to the issue of corruption has been broken.

Anti-corruption policies must be evaluated to determine their effectiveness and allow their correction and expansion where necessary; it is a constant and cyclical work. Bearing this in mind, it was decided to carry out a study on the perception of the staff about it within the Institution. We need to highlight that we had run some surveys before (Public opinion in 2014, Models of Management and Working Environment in 2015), where when we asked about corruption it appeared as a serious issue, but at the same time nothing was said or done.

So, through this study, it was sought to know the perceptions, expectations and representations about corruption in general and within the Federal Penitentiary Service. In addition, an attempt was made to gain knowledge about the public policies developed within the institution to prevent it and the appreciation that prison staff have on the causes and damages that it generates. The results contribute to detecting the real perception of the personnel related to this topic, as well as the knowledge of the actions carried out and the reporting channels. At the same time, it warns about the level of awareness present among prison agents on issues of public ethics and transparency, allowing a more adequate understanding of the problems that exist with respect to the design of institutional policies aimed at addressing this conflict.

Having this in mind, and noting that the reality of Latin American countries is mostly described by systemic corruption scenarios, it was decided that corruption within SPF should be measured by the use of some reliable method. To that end, we turned to the

methodologies that some of the most important international organizations that work with the prevention of corruption have used, Transparency International being the most renowned. Their method relies on the perceptions of corruption rather than on reports and legal cases.

On the Corruption Perceptions Index developed by Transparency International, in 2018 Argentina ranked in the 85th position on a list of 180 countries, with a total score of 40 over 100 (being 100 very clean and 0 highly corrupt). In short, there is a clear perception of high levels of corruption in our country, which means that the policies implemented have to consider that their starting point will be that of a systemic corruption scenario, which probably does not reflect the reality of Europe or Japan.

In order to measure the perceptions of our staff on the levels of corruption of Argentina in general and our institution in particular, we developed our Corruption Perceptions Survey, and some of its key findings were:

- 22 per cent of our staff said that SPF is affected by high levels of corruption.
- 51 per cent of our staff believes that the anti-corruption policy is being effective.
- 32 per cent of our staff thinks that there is less corruption in our institution today than 3 years ago.
- The most vulnerable areas to corruption, according to our staff, are: cell phone smuggling, drug smuggling and the management of public funds.
- 62 per cent of our staff said that corrupt practices are not reported, and that the reason behind that number is the fear of reprisals.

After analysing the results, we have made some necessary adjustments, such as disseminating the reporting channels and implementing a whistle-blower protection programme. The survey also proved that corrupt practices are no longer perceived as natural, which reflects the importance of staff training on ethics and corruption prevention topics.

The agents were also asked if they knew to whom this type of incident should be reported, and it turned out that:

- 40 per cent indicated they knew to whom to report acts of corruption.
- The complaint channels best known by agents are: the anti-corruption office, internal affairs, the hotline for complaints of acts of corruption (0800-222-7738), courts and prosecutors.

Likewise, 46 per cent believe that complaints made for acts of corruption end with the sanctioning of those responsible.

To find out the level of dissemination that the policies carried out by the Federal Penitentiary Service to combat corruption have had, the agents were asked to indicate what actions they were aware of. From this it emerged that the five best known measures to combat corruption, implemented in the Federal Penitentiary Service are:

1. Code of Ethics for SPF Personnel.
2. Staff wellness programmes.
3. Training on ethics, transparency and prevention of corruption.

4. Creation of the Corruption Prevention Service.
5. Monitoring and inspection of procedures in penitentiary establishments.

However, much remains to be done regarding dissemination. Although notoriously 60 per cent reported having received one or more trainings on ethics and corruption prevention issues; and just over 73 per cent knowledge of the Code of Ethics for Prison Service Personnel.

Furthermore, 54 per cent of the agents indicated that the implemented measures have been efficient in their objectives. 32 per cent stated that the level of corruption in the SPF, at that time, was lower than in the previous 3 years, and 46.3 per cent said the same with respect to the last 5 years.

On the other hand, the agents were asked to select three questions that they consider should be resolved within the institution as a priority. As a result, it was obtained:

1. Carry out an efficient selection of personnel entering the SPF.
2. Foster an ethical culture to combat corruption.
3. Provide more material resources to the units.

64 per cent of the agents consider that corrupt personnel should be separated from the institution.

With regard to the consequences of corruption, they were offered a list of possible consequences for the institution so that they could indicate which ones they believe have materialized. The agents considered that corruption has hindered the proper functioning of the institution, the security of the prisons, the quality of the work environment, and, to a lesser extent, the reintegration of the inmates.

Within the specific risk factors of the prison environment, it was observed that inmates with high purchasing power can influence decisions that directly affect them, being highly disruptive for the system and that there are extortionary practices among inmates that allow the creation of areas of violence.

Finally, a large number of the agents surveyed affirm that the greatest acts of corruption have to do with purchases and contracting by the State and the entry of drugs and cell phones into prisons.

## **XII. CONCLUSIONS**

We can finally suggest, that:

- 1) There is a direct link between anti-corruption and rehabilitation efforts: a corrupt prison cannot perform its rehabilitation function correctly.
- 2) Prisons should promote a “culture of integrity”.
- 3) All staff should receive training on anti-corruption.

- 4) There is a case for housing high-risk-of-corruption prisoners in a separate unit with specially trained staff (Case Study: IRIC Programme).
- 5) Surveys and specific studies must be carried inside prison services, measuring the impact of policies and measures.
- 6) When there is a serious effort to fight corruption in an institution, society cares more about what the service is really doing for public protection and reducing reoffending, and we believe that this can affect reintegration in a good way.



# **THE PRINCIPLE OF NORMALITY – IN REGULAR AND EXTRAORDINARY TIMES**

*Heidi Bottolfs\**

## **I. INTRODUCTION**

The principle of normality is a guiding principle in the Norwegian Correctional Service. The purpose of this presentation is to explain the basic components of the principle and its bearing on two aspects of the Norwegian Correctional Service, namely the import model and staff recruitment and training. Whereas the pandemic has caused constraints on the application of the principle of normality in prison life in most aspects, it has also promoted it other ways.

The Norwegian Correctional Service is in charge of both the prison and the probation services. Some of the key characteristics of the Norwegian system are the large number of small-sized units located all over the country, low number of inmates and a high staff–inmate ratio. There are 33 prisons on 58 locations with a total capacity of 3,850 cells (average occupancy rate of 86%) and 60 prisoners per 100,000 inhabitants in Norway. 22 per cent of these are on remand, whereas 6 per cent are female prisoners. The average length of sentenced new admissions is 1.1 years. High-security prisons constitute 71 per cent of the total capacity, lower-security prisons, 26 per cent and halfway houses, 3 per cent. There are approximately 3,000 staff.

There are 15 probation offices, with 470 probation officers responsible for 7,000 community sanctions annually. Out of these, electronic monitoring constitutes 3,500 sanctions. In addition, there are sanctions as a response to drunk-and-drive behaviour and special sanctions directed towards heavy drug abusers under the supervision of the court.

A recent study on recidivism among persons released from prison in Norway 2015 – 2018 show positive results. The results show a summed-up recidivism for all who have been released up to 8 September 2020 of 13.4 per cent for female offenders and 22.9 per cent for male offenders.

## **II. THE PRINCIPLE OF NORMALITY**

Punishment is the restriction of liberty and no other rights have been removed by the sentencing court. Therefore, the sentenced offender has all the same rights as all others who live in Norway. No one shall serve their sentence under stricter circumstances than necessary for the security in the community, and offenders shall be placed in the lowest possible security regime. During the serving of a sentence, life inside should resemble life outside as much as possible.

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The possibility to implement the principle of normality is of course limited by security reasons and the framework of the correctional management, the differences in the prisons and personnel, infrastructural and financial resources.

### III. THE IMPORT MODEL

The import model is a key element in normalizing life in prison and bridging the gap upon release. The import model means that crucial services for reintegration are delivered to the prison by local and municipal service providers. Prisons do not have their own staff delivering medical, educational or library services. These are imported from the community. Also, different faith and clergy services are provided through the import model.

#### A. The Import Model – Legislative Basis and in Numbers

The Act on the Execution of Sentences ensures the legislative basis of the import model:

##### *§4. Administrative cooperation*

*The Correctional Services shall be engaging in cooperation with other public services arrange for the convicted persons and persons in custody on remand to receive the services to which they are statutorily entitled. Such co-operation shall lead to a coordinated effort to supply the needs of convicted persons and persons in custody on remand and to assist them to adjust to society.*

There are currently a little less than 500 staff working in Norwegian prisons who do not report to the governor of the prison, but to welfare service suppliers outside the prison:

Full-time employed teachers, county	276
Librarians	47
Priests	33
Nurses	106
Doctors	14
Social services agents	21

#### B. Education in Prison – An Example of the Import Model in Practice

The principle of normality means that prisoners have the same right to education as any other citizens. In practice that means the right to complete primary and lower secondary education. This also includes adults: Anyone over the age of 25, who has completed lower-secondary school – but who has not completed upper-secondary education – has a right to upper-secondary schooling.

An ordinary upper secondary school takes the overall responsibility for the education offered in each prison. The prison school operates as a branch of that main school. Formally, the teachers are in the employment of the main school, which also issues testimonials and certificates for the prison school students. Prison education is an earmarked state measure – the county administration who is responsible for the education in prison, receives extra funding directly from the state to cover the cost of operating a “prison branch” of the school. This means that the local school which hosts the “prison branch”, cannot defund this part of their responsibility.



There is a school department in every prison. At any given time, about 1,400 of the on average 3,600 prisoners are in one way or another doing some form of education while they are serving time. Because prisoners have equal rights to education as the rest of the population, teaching competence should also be equivalent to ordinary education.

As of 2016, about half of the population in prison had comprehensive school as their highest level of completed education, whereas this applies to only a quarter of the population in society at large. Approximately 66 per cent of the “prison population” has a right to education after the Norwegian Education Act, but more than half of those again refrain from using that right – meaning, they do not participate in education. According to a 2014 survey, 30 per cent of prisoners reported that they had reading and writing difficulties.

The rehabilitative impact of the import model on educational practices in prison is that it in reality ensures these needs of the prison population. By importing the services there is also a guarantee that prisoners have the same education as regular citizens in the community and that they can continue that education following their release.

### **C. Advantages and Criticism of the Import Model**

The main advantage of the import model is that it ensures a better continuity in the deliverance of services throughout the sentences and the time after. The offender will already have established contact during his time in prison. In addition, it ensures involvement from the community with the prison system – more and better cross-connections. It also provides practical advantages in that other bodies finance it as they are part of the rights of any inhabitant of Norway.

However, the import model also has some limitations and may at times challenge local cooperation. Some critics have argued that it limits the role of the prison officers to security matters. At times there is lack of clarity as to which institution is really in charge of the services and prisoner needs may remain unaddressed. Often security concerns of the correctional services may at time be in conflict with the purpose of the imported services, and confidentiality issues keep relevant information from the prison management. Over the last decade or so, we have also noticed that digitalization at different paces makes interaction at times more challenging.

In sum though, the import model ensures a higher quality of services inside the prison, keeping pace with the development outside of prisons. It is also a constant reminder that prisoners will one day be released, and it is a common responsibility of the correctional and imported services to prepare them for that day.

## **IV. THE STAFF IMPLEMENTING THE PRINCIPLE OF NORMALITY: PRISON OFFICER TRAINING**

The University College of the Norwegian Correctional Service provides a two-year paid and accredited education required to become a prison officer. The training is a combination of campus training and work in carefully selected training prisons. The main theoretical topics range from psychology, sociology, criminology, law, social work, conflict management, ethics and human rights. Every year some 175 students are admitted

from between 1,200 and 2,500 applicants. It is now possible to expand with another year to bachelor level which is not compulsory yet.

Some of the key features of the staff recruitment and training promote the focus on normality. First, recruitment over several years has ensured a high number of female uniformed officers. Second, there is no specialization between officers working on security and those focusing on rehabilitation. This ensures the high focus on rehabilitation among all prison officers. Moreover, a lot of attention is paid to ensure good communication skills on the side of the prison staff. All staff have for example been training in motivational interviewing. This is to motivate inmates to deal with their way of life, but also an important element in dynamic security approaches keeping a calm environment in the prison. This, together with the high inmate – staff ratio ensures a low number of negative incidents.

## **V. COVID-19 CHALLENGING THE PRINCIPLE OF NORMALITY – AND PROMOTING IT**

As most countries, Norway imposed a number of limitations on prison life following the outbreak of Covid-19. It has limited the contact with the outside world including refusal of visits and day-leave in individual cases or in areas with high risk of infection. Occasionally committals to prison and intake of inmates have been suspended. This measure will only take effect if it is regarded as safe, although pre-trial confinements have continued as before. Life in prison has also become more constrained in terms of the higher degree of isolation and limited activity, including the absence of teachers at times.

Early in the pandemic it became clear that contact with the outside world should be ensured in spite of the limited possibility to receive visitors and undertake leave. For that reason visits could be undertaken digitally through safe iPad solutions. A number of prisoners reported that this improved contact with their families in comparison to pre-Covid regulations. The prisons were also instructed to allow a greater degree of flexibility when it came to phone calls (allowing some amount of free calls). The correctional service set up a hotline for family members and relatives. In order to compensate for the lack of activity, inmates could work in their cells, as well as giving them extended time in fresh air and outdoor physical exercise. For minors it was also possible to continue their education schemes digitally. Finally, it has also been possible to transfer inmates from prison to execution of sentence by means of electronic monitoring for a larger group of inmates than what the ordinary regulations allow for.

In sum, Covid-19 measures have placed an additional burden on inmates and staff, which the correctional service has not been able to fully compensate for. That being said, the given circumstances also triggered changes in the practice of the correctional service which may not have otherwise happened especially when it comes to using digital means to stay in touch with the outside world, being that of family and friends or the imported services.

## **VI. CONCLUDING REMARKS**

Principles and values matter. The principle of normality is a good guiding principle when we deal with our dilemmas. It is not always possible to ensure normal life in prison, but it sets a standard that we should strive for.

Importing regular services may increase quality of life inside of prisons and will improve transition to the community after prison. Service providers ensure not only services at the highest level possible but constitute constant supervision and a need for transparency – challenging the correctional services' understanding of normality.

It is not possible to apply the principle of normality without careful recruitment and extensive training of staff.



## **PANEL II**

### **KEYNOTE ADDRESS**

Dr. Matti Joutsen (Chair of Committee II)

### **PRESENTATIONS**

Ms. Jennifer Oades (Canada)

\* \* \*

Ms. Jana Špero (Croatia)

\* \* \*

Hon. Teresia Matheka (Kenya)

\* \* \*

Dr. Manuel Goloso Co (Philippines)



# **COMMUNITY-BASED APPROACHES THAT SUPPORT DESISTANCE: A REASSESSMENT IN THE CONTEXT OF THE SUSTAINABLE DEVELOPMENT GOALS**

*Dr. Matti Joutsen\**

## **I. APPLICATION OF COMMUNITY-BASED SENTENCES AROUND THE WORLD**

Thirty years ago, the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)<sup>1</sup> were adopted by the General Assembly. Ten years ago, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)<sup>2</sup> were similarly adopted.

So far, no reliable overview has been prepared of how community-based sentences<sup>3</sup> are being used in practice in the different jurisdictions around the world.<sup>4</sup> No readily available source is available. As noted by the Secretary-General in his report to the Thirteenth United Nations Congress in 2015,

Sentencing policies refer to the responses of the criminal justice system to the various offences as regards the types of sentences, including non-custodial measures. A comparative assessment of sentencing policies of criminal justice systems would require the analysis of the type of sentences, including the length of custodial sentences handed out to convicted persons, while taking account of the seriousness of the criminal offences committed. At the international level, there are no available data on the length and type of sentences that allow this type of comparative analysis.<sup>5</sup>

The situation is slowly changing. In one region of the world, Europe, comparative statistical data on community-based sentences are being collected. This is only partially good news, since not does it cover only one region, but also the process of collection was

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<sup>1</sup> General Assembly resolution 45/110, annex.

<sup>2</sup> General Assembly resolution 65/229 annex.

<sup>3</sup> Although the Tokyo Rules and the Bangkok Rules use the wider concept “non-custodial measures,” the main focus in this paper is on sentences, which can be defined broadly as punishment imposed by a court (or other duly constituted authority) on an offender, following a formal procedure. The concept includes decisions made in restorative justice and mediation proceedings.

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

<sup>4</sup> The present paper updates and supplements data contained in an unpublished paper, Joutsen 2015. This earlier paper also included data, not repeated here, on the use of restorative justice measures and monetary sanctions.

<sup>5</sup> A/CONF.222/4, para. 37.

begun fairly recently, and it is too early to use this data set to assess patterns on other than a very general level. However, it does provide a point of departure for at that one region.<sup>6</sup>

In time, some data may become available also on a global basis. The American Probation and Parole Association, together with Community Supervision Solutions, has launched the “Supervision Around the World” (SAW) Project, which seeks to collect information on community supervision practices in every country around the world.<sup>7</sup> The SAW Project will identify countries offering supervision services, document current practices, and create an interactive internet repository for the information that it obtains on supervision programmes.

A second initiative launched recently, the Global Community Corrections Initiative, is similarly seeking to collect global data on the use of community corrections.<sup>8</sup> During the initial stage, the initiative is seeking to identify experts in each of the fifty countries with the highest prison populations and obtain through them information on the use of community corrections, both as sentencing options and as post-release measures.

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

- community-based sentences are used primarily at the lower end of offence seriousness, and it is at this end that the scope of criminalized conduct (i.e., conduct that may lead to a response by the criminal justice system) varies considerably from one jurisdiction to the next;
- community-based sentences as a response to criminalized conduct may be imposed not only by the courts, but also by the police, the prosecutor and even other administrative authorities, and decisions may also be taken by community-based bodies (as with the case of mediation and restorative justice measures);
- community-based sentences, even if imposed by a court, are not necessarily entered into a centralized register nor recorded in the statistics; and
- the terminology varies from one jurisdiction to another, and thus even community-based sentences referred to by the same term (for example “probation”) may not be comparable.

More generally, there are the considerable difficulties in making comparisons between how the criminal justice system operates in different countries.<sup>9</sup> Nonetheless, thirty years after the adoption of the Tokyo Rules and ten years after the adoption of the Bangkok Rules, it is of interest to try to examine how community-based sentences are being used in different jurisdictions around the world. This paper is based on the available literature and statistical data, and seeks to bring together a number of different observations about patterns.

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<sup>6</sup> Council of Europe Annual Penal Statistics (SPACE II), Aebi and Hashimoto 2018, and Aebi et al. 2019. The Council of Europe project uses the term “alternatives to imprisonment”. The working definition does not include for example measures imposed on the basis of juvenile criminal law, nor persons under the aftercare of probation agencies. Heiskanen et al 2014, p. 27.

<sup>7</sup> <<http://communitysupervisionsolutions.com/saw-project/>>.

<sup>8</sup> GLOBCCI.ORG

<sup>9</sup> See, for example, Nelken 2007.



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

*The patterns in brief:*

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

The best current source of data on prison populations around the world has been developed by Roy Walmsley: the World Prison Population List. The most recent version of this list, the twelfth edition, provides data as of September 2018.<sup>10</sup> The list provides information on the total prison population and the prisoner rate (the number of prisoners per 100,000 in population) in almost all countries in the world. The map below is based on this data.

One point of caution. Sentences, including sentences of imprisonment, are used in different ways by different countries. The use of only one indicator, such as the number of prisoners per 100,000 in population, can be misleading. The data on prisoner rates reflect only one dimension of the use of prisons: how many prisoners are being held at a certain time, as a proportion of the total population. Dünkel notes that prisoner rates are a function of the number of persons entering prison, and the length of stay. Consequently, similar prisoner rates may hide considerable differences in these two factors.<sup>11</sup>

Furthermore, overall prisoner rates do not show possible demographic differences within the population. Research has shown that the burden of imprisonment falls unequally on different population groups, with the greatest burden tending to fall on vulnerable population groups, such as racial and ethnic minorities, and migrants.<sup>12</sup>

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<sup>10</sup> Walmsley 2019.

<sup>11</sup> Dünkel 2015 provides data showing that Sweden, with a prison population rate of 57 per 100,000, and Germany, with a prison population rate of 76 per 100,000, have roughly the same rates. Even so, the average length in Sweden is only two months, while the average length in Germany is four times longer, eight months. Both are highly developed countries, with roughly the same level and structure of crime, and with roughly the same criminal justice processes and efficiency – and yet they use sentences of imprisonment in quite different ways.

<sup>12</sup> See, for example, Garland 2014, and in respect of the situation in the United States, Travis and Western (eds.) 2014.

The 2018 edition of the World Prison Population List shows that the global prison population has continued to grow, exceeding 11 million in 2018. It also draws attention to regional trends, including an almost tripling in the total prison population of South America since the year 2000 (an increase of 175%), a more than doubling of the total prison population of south-eastern Asia (an increase of 122%), and an almost doubling in Oceania (an increase of 86%).<sup>13</sup>

In just the three years since the previous edition of the World Prison Population List had been published, the total prison population had increased by around one half in such countries as Indonesia (45% increase in prisoners per 100,000 of general population), the Philippines (48%), Egypt (53%), Nicaragua (61%) and Cambodia (68%).<sup>14</sup>

As can be seen from the map, on the regional level, prisoner rates are highest in North and South America, and lowest in Africa and South-Central Asia.<sup>15</sup>

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

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

Although the sub-regional differences in Europe are relatively stable and have existed for a long time, there have been considerable shifts within countries. Dünkel 2015 notes that from 1984 to 2014, there has been a clear increase in the prisoner rate in for example England and Wales (from 84 per 100,000 to 149 per 100,000), France (31 to 98), Portugal (70 to 136) and Spain (38 to 140). In some other countries, there has been a decrease; for example, in Finland from 97 to 55. In the Russian Federation, there has been a significant decrease in just a fifteen-year period, from 730 per 100,000 in 1999, to 467 per 100,000 in 2014.<sup>16</sup>

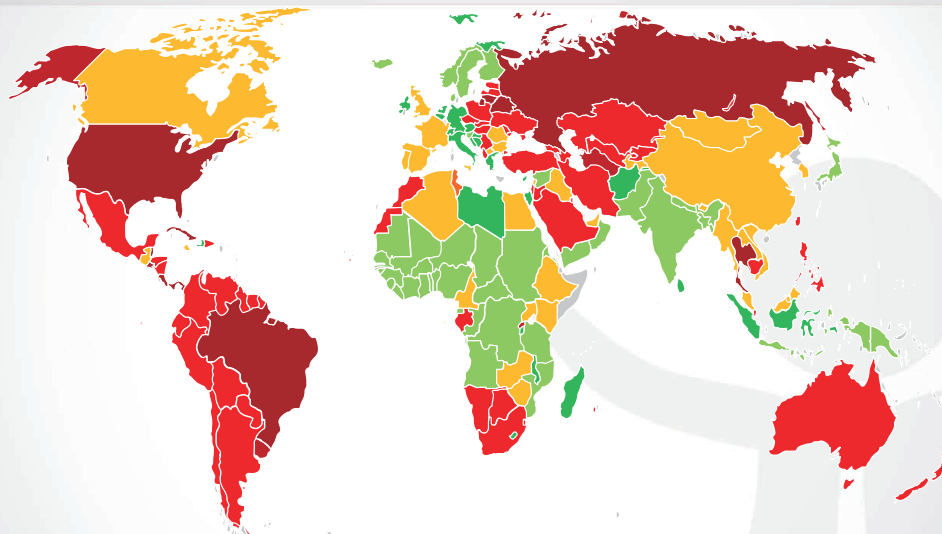
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<sup>13</sup> Walmsley 2019.

<sup>14</sup> Walmsley 2019. The same source notes that during this same relatively brief three-year period, there has been a significant decrease in the Russian Federation (10%), Viet Nam (11%), Japan (15%), Ukraine (19%), Kazakhstan (21%), Romania (22%) and Mexico (23%).

<sup>15</sup> The seminal and in my view most perceptive analysis of national differences in prisoner rates is to be found in the third chapter of Christie 2000. He focuses on the European region. Lappi-Seppälä 2003 contains a global analysis.

<sup>16</sup> According to Walmsley 2019, this decrease in the Russian Federation has continued, as the prisoner rate on 1 December 2020 was reported to be 336 per 100,000 (<https://www.prisonstudies.org/country/russian-federation>).



**Prisoners per 100,000 in population, 2018**

Colour code: dark red: over 300; red: 150 – 299; yellow: 100 – 149; dark green: 70 – 99; light green: under 70

Source: Roy Walmsley, World Prison Population List, twelfth edition (data as of 30 September 2018)

THAILAND INSTITUTE OF JUSTICE

To turn to Asia, Thailand had a prison population of 250,000 in 2002 (400 per 100,000 in population), but through greater use of pre-trial diversion and early release for drug addicts, the amount had been reduced to 160,000 by August 2005 (250 per 100,000). More recently, however, the trend has reversed, with an increase to 210,000 prisoners in 2010 and 364,000 in 2018 (320 and 526 per 100,000, respectively). Japan, in turn, has had a relatively stable rate, with gradual growth to a peak of 81,000 in 2006 (64 per 100,000), and a subsequent steady decrease to 52,000 in 2018 (41 per 100,000).<sup>17</sup>

### B. International Patterns in the Use of Probation

*The patterns in brief:*

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

<sup>17</sup> International Centre for Prison Studies website.

Probation is generally understood as a sentence in which the offender continues to live in the community, but under the supervision of a judicial authority, probation service or other similar body.<sup>18</sup> The element of “under supervision” is important, and distinguishes this sentence from, for example, simple conditional sentences where the offender is under no obligation to report to anyone. However, it should be noted that the extent to which probation actually involves supervision varies considerably from jurisdiction to jurisdiction.

Probation agencies can be found throughout the world. For example, in Europe they can be found in almost every country, although with a wide variety in structure and in functions. Most of the original probation agencies were state-run, but some were non-governmental, and today some are privately-run businesses. The work of many probation agencies covers the entire country, but some are regional or even local. In respect of functions, before the trial stage some probation agencies prepare social inquiry reports for the prosecutor, and may provide information also to other decision-makers in the criminal justice system. Some probation agencies provide assistance to victims of crime, and organize restorative justice interventions. In respect of sentences, probation agencies may organize not only probation, but also community service orders. And in respect of prisoners, some probation agencies provide social support for relatives of inmates, and guidance and support to prisoners themselves (including debt regulation) in order to prepare for their release and assist with aftercare residential homes.<sup>19</sup>

Because of the considerable differences in organization and functions of probation around the world, there is little statistical data that can be compared. Even in the one region with a long tradition of compiling comparative statistics, Europe, a research team that has taken a close look at this regional data warns that cross-national comparisons of the numbers and rates of persons under the supervision of probation agencies may be misleading.<sup>20</sup>

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

One source that provides some data on the use of “community corrections” in different countries around the world is the Global Community Corrections Initiative referred to at the beginning of this paper. On the website of the initiative, information is provided on the total number of prisoners and the total number of persons in “community corrections” in 2016.<sup>21</sup> This is provided below in Table 1. As a source, it must be treated with caution, in particular as it does not give country-specific data on how “community corrections” is

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<sup>18</sup> Handbook for Prison Leaders 2010, p. 120.

<sup>19</sup> Dünkel 2015. See also Heiskanen et al 2014, pp. 15 – 16, and tables 1 and 2, on pp. 40 – 41 and 43 – 44.

<sup>20</sup> Aebi et al. 2014, p. 300.

<sup>21</sup> See <<http://www.globcci.org/prisonPopulationMap/prisonPop2Map.html>>. The project seeks to collect data from the fifty countries in the world that have the highest prison population (presumably on the assumption that these countries would also use make extensive use on probation). However, data on probation is apparently available only from 38 of these 50 countries.

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

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

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

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

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

Source: <http://www.globcci.org/prisonPopulationMap/prisonPop2Map.html>

Note: the 2016 prisoner data provided here differ from that provided in the 2016 edition of the World Prisoner Population List compiled by Roy Walmsley. The calculation of prisoners and community corrections offenders per 100,000 are by the author.

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

Pakistan	83,718	45	23,396 (2015)	13	28 (note different years)
Peru	82,023	263	16,110	53	20
Philippines	188,278	190	43,194 (2017)	44	23
Poland	73,524	193	290,000	760	394
Russian Federation	582,889	404	423,092	295	73
South Africa	158,111	292	70,356	128	44
Spain	59,087	128	55,342	120	94
Thailand	364,288	540	216,616 (2013)	319	59 (note different years)
Turkey	232,886	297	292,406	374	126
Ukraine	56,246	154	63,944	176	114
United Kingdom	83,014	146	190,439	202	139
United States	2,121,600	699	4,650,900	1531	219
Uzbekistan	43,900	150	probation est. 2018	-	-
Viet Nam	130,002	140	47,000	50	36

\*Data provided by Mika Kitagawa, UNAFEI

Finally, there are vast differences in the number of persons in community corrections (presumably referring by and large to the number of persons under supervision) per 100,000 in population. At one end, there were apparently only eight persons in community corrections per 100,000 in Argentina, twelve persons per 100,000 in Japan, and thirteen persons per 100,000 in Pakistan in community corrections. At the other end of the range there were 760 persons in community corrections per 100,000 in Poland, and over twice that number, 1,531 persons per 100,000, in the United States.<sup>22</sup>

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

To look at the *qualitative* data on probation, which are available only for the European region, one pattern that has been noted is the growth in the number of new probation agencies. According to the coordinator for the Council of Europe SPACE II project, these new probation agencies have often been detached from the national prison administration, or have expanded on the basis of local offices. A second pattern is the growth in probation workload, much as a result of the diversification of probation functions at different stages of intervention (e.g., pre-trial, enforcement, management of postponed sentences, conversion of sentences, or post-release stages).<sup>23</sup> In commenting on the observation that the number of prisoners in Europe has not decreased despite the growth in probation, Delgrande notes:

The paradox of increasing patterns for prison and probation is a very complex phenomenon and many researchers try to explain this evolution from judicial, political, security or criminal policy perspectives. It can be concluded that for the period lasting from the early 2000s until now, the part of prisoners sentenced to short custodial terms (less than one-year custody) did not decrease at all. In fact it

<sup>22</sup> Noting that there were 699 prisoners per 100,000 in population in the United States, it would seem that in 2016, over 2 per cent of the total population of the United States was under the control of the criminal justice system.

<sup>23</sup> Delgrande 2015.

seemed that there was an overuse of CSM [community sanctions and measures] for the persons who were not supposed to go to prison.<sup>24</sup>

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

### C. International Patterns in the Use of Community Service Orders

*The patterns in brief:*

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

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

The community service order was first introduced in England and Wales during the early 1970s. Following a 1976 Council of Europe resolution<sup>25</sup> calling for member states to consider adopting community service orders, its use spread to a number of other European countries. In Asia and in the Pacific region, CSOs have been introduced in at least Australia, Fiji, Hong Kong, Malaysia, New Zealand, Singapore, Sri Lanka and Thailand, and in the Republic of Korea as a supplement to other sentences.<sup>26</sup> In Latin America and the Caribbean, community service exists in at least Brazil, Colombia, Costa Rica and Mexico.<sup>27</sup> In Africa, it exists in at least Burkina Faso, Central African Republic, Kenya, Malawi, Mozambique, Namibia, Senegal, South Africa, Tanzania, Uganda, Zambia and Zimbabwe.<sup>28</sup>

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

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

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<sup>24</sup> Ibid.

<sup>25</sup> Resolution (76)10 (1976), available at <<https://rm.coe.int/16804feb80>>.

<sup>26</sup> Sugihara et al 1994, pp. 100, 104, 184 and 201; Challinger 1994, p. 263; Singh 2005, p. 90; Rujjanavet 2005, p. 108; Reddy, p. 224.

<sup>27</sup> Carranza et al. 1994, p. 407.

<sup>28</sup> Penal Reform International 2012, and Saleh-Hanna 2008 p. 387.

Examining the available data on the qualitative use of community service orders, McIvor et al. note that the stated and actual functions of CSOs “have always been very unclear and conflicting”. According to them, while the various stated functions of a more humane alternative to prison, rehabilitation and reparation “are largely shared across jurisdictions, within different jurisdictions they are assigned varying degrees of importance. Furthermore, the relative importance attached to different aims has changed over time in each jurisdiction.”<sup>29</sup> Melvor et al. also say that rehabilitation continues to remain a stated function of CSOs, but it is becoming more narrowly defined as reduction of the risk of reoffending, and conversely the retributive aspects of CSOs “are being stressed in an effort to garner public and judicial support”.<sup>30</sup>

Düinkel, in turn, notes that the general experience with CSOs has been positive. By and large CSOs do appear to be replacing short-term imprisonment, and thus the “net-widening effect” may not be particularly strong.<sup>31</sup>

#### **D. International Patterns in the Use of Electronic Monitoring**

*The patterns in brief:*

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

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

Electronic monitoring was first used in the United States in 1983.<sup>32</sup> Its purpose is to ensure that the offender remains where he or she is supposed to be, or alternatively that the offender does not enter proscribed areas or approach specific persons, such as potential victims. It can be used as a sentence in its own right, or as a condition of probation (or another community-based sentence). Before conviction, it can be used as an alternative to pre-trial detention (as for example in Belgium, France, the Netherlands, Northern Ireland and Portugal), and at a later stage, as a condition of a prison furlough or of parole from prison (as in Finland and Sweden).

Although electronic monitoring is a very recent innovation in corrections, it has spread relatively rapidly from the United States, first to the United Kingdom, and then to Canada, New Zealand, Australia and South Korea, and to a large number of countries in Europe. Table 4 in Appendix 1 provides data showing the rapid spread in Europe. While only five countries in Europe appeared to be using electronic monitoring in 1999, in 2007 it was in

<sup>29</sup> McIvor et al. 2010, p. 87.

<sup>30</sup> Ibid.

<sup>31</sup> Düinkel 2015.

<sup>32</sup> Burrell and Gable 2008; Albrecht 2005.



use in at least 10 European countries, in 2013 in at least 15, and in 2017 in at least 21. According to Mombelli 2019, electronic monitoring is being used or is being experimented with in some 40 countries around the world.<sup>33</sup>

Equally impressive is the growth in the use of electronic monitoring in individual countries. Poland, which did not have the sentence as recently as 2007, had almost 17,000 offenders starting to serve an electronic monitoring order in 2013 (Poland did not provide data for 2017). In France, almost 30,000 offenders began to serve such an order in 2017. For at least these two countries, electronic monitoring is not just a technological novelty, but something that is in very wide use.

The differences between countries in the use of electronic monitoring are also evident in comparison to population. Aebi et al. have calculated that the average total number of persons in Europe under electronic monitoring in 2010 was quite low (8 per 100,000 population), with the highest rate for England and Wales (42), and the lowest rate in Serbia (close to zero).<sup>34</sup>

From the qualitative point of view, Dünkel notes the controversial nature of electronic monitoring, and the evident danger of net widening. The contribution of electronic monitoring to the easing of prison overcrowding appears to have been very limited, although positive results have been reported at least in Finland, the Netherlands and Sweden.<sup>35</sup>

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

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

What we deem a petty offence and, respectively, a medium-level and serious offence, varies from one jurisdiction to the next, and from one time to another.<sup>36</sup> For example, as noted by Yukhnenko et al (2019), more or less the same drug trafficking offence can lead to a community-based sentence in one jurisdiction, and to a sentence of five to ten years of imprisonment in another.

Furthermore, the *range* of offences covered by, respectively, community-based sentences and imprisonment varies from one jurisdiction to the next, and from one time to another. In some jurisdictions, community-based sentences are used more than

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<sup>33</sup> Mombelli 2019.

<sup>34</sup> Aebi et al. 2014, p. 300.

<sup>35</sup> Dünkel 2015. Also Graham and McIvor 2015 conclude that electronic monitoring alone does not decrease the risk of reoffending, but should be combined with support and supervision.

<sup>36</sup> Christie 1968 has explained the variation with the concept of the “penal value” of a certain sentence. He argues that in any given society, the “penal value” of, for example, a sentence of ten years of imprisonment can vary considerably over time, depending for example of the amount of conflict in society and the standard of living.

imprisonment. In other jurisdictions, in turn, very few community-based sentences are used at all.

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

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

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

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

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

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

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

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

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

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

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

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

Studies that can shed a light on this have been carried out in a number of countries. One example is Wermink et al. (2010), which used the matched samples approach<sup>37</sup> in a comparison of reoffending after short sentences of imprisonment (up to six months) with reoffending after sentences of community service. The study concluded that the reoffending rate for those sentenced to community service was roughly one half of that of offenders sentenced to short-term imprisonment, a result which is in line with earlier studies carried out in the Netherlands.

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

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<sup>37</sup> The matched samples methodology seeks to make any two samples being compared as similar to one another as possible (such as in respect of the age and gender of the offender and the length of the sentence).

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

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

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

Extensive research has been conducted on the rehabilitative effect of custodial corrections.<sup>38</sup> Among the classics in the field is Robert Martinson's 1974 article, "What works? – Questions and answers about prison reform." Martinson summarized a number of studies and concluded that "with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism".<sup>39</sup> David Farabee, in his 2005 book *Rethinking Rehabilitation: Why Can't We Reform Our Criminals?* also concluded that on a general level, correctional treatment is not working.

Many reasons have been identified for this failure in corrections. If the penal philosophy is based on a belief that offenders can be "forced" to change their lifestyle (an approach that critics refer to as "coercive treatment" or "mandatory treatment"), the offenders may respond by seeming to adapt to the regime and change their behavioural patterns in a favourable manner, but on release immediately return to a criminal lifestyle. It has also been pointed out that custodial treatment in itself can do little about the situation in which the offender will find himself or herself on release. Indeed, as has often been noted, being sent to prison may in a variety of ways worsen the offender's ability to function as a member of society.

Custodial corrections in most jurisdictions are underresourced and overburdened. The availability and quality of counselling, treatment, education and vocational training (as well as other forms of support and assistance) may be severely limited. With too many prisoners and too little resources, the staff is unable to conduct a proper risk and needs assessment, much less provide an individualized treatment plan that addresses the needs of each and every prisoner. Treatment that is specifically tailored to individual offenders (or small groups of offenders with similar characteristics) in individual cultural contexts has been shown to work, but matching offenders and treatment programmes, and successfully implementing such programmes, is very resource intensive.

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<sup>38</sup> It should again be emphasized that the research has been conducted primarily in a few industrialized countries, and it is doubtful that the results can be generalized to all jurisdictions. Indeed, some jurisdictions report very low rates of reoffending for entire prison populations after offenders have been released from custodial treatment. However, generally the empirical research to verify these reports is missing.

<sup>39</sup> Martinson's conclusions have been summarized in the short phrase, "nothing works", but Martinson himself has disavowed this. He notes that there are successful forms of treatment, but these are tailored to specific groups, and must be well resourced and managed.

Without the supervision of the staff, many prisoners will be spending much of their time in a very criminogenic environment, one in which criminal values can be instilled, new and better ways to commit offences can be learned, new criminal partnerships can be formed, and in general the offenders can become more deeply committed to a criminal lifestyle.

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

Throughout 2020 and into 2021, the Covid-19 pandemic has brought renewed attention to the need to reduce prison populations. The UNODC has noted

Reassessing the resort to imprisonment in general and identifying categories of prisoners which are at particular risk of being affected by the Covid-19 disease will be essential to curb the continuing inflow of prisoners and to accelerate the release of suitable categories of prisoners. For many countries, reducing the prison population may even constitute a precondition for introducing meaningful prevention and control measures. Judges and magistrates play a key role in this regard and will need to make decisions to remand or sentence an individual subject to enhanced scrutiny in light of the virus. ... Alternatives to pretrial detention and the commutation or temporary suspension of certain sentences will be valuable instruments to reduce new admissions to prisons.<sup>40</sup>

The criminogenic prison environment can be compared to community-based sentences, which allow the offender to remain in the community. He or she can continue with family responsibilities, education, vocational training and employment. In most jurisdictions, the quality of community-based health, social services and other services may be rather basic (the constraint on resources is certainly not limited to prisons), but they would tend to be better than what is available in a custodial environment. Community-based sentences may also reduce the social stigma of being an “ex-convict”. Consequently, if *rehabilitation* is the goal, providing it in a community setting is more effective. As noted in a recent and rigorous meta-analysis of the available research, “Strong meta-analytic evidence indicates that community-based treatment programmes for at-risk or adjudicated individuals, especially juveniles, are more effective than those offered in secure settings.”<sup>41</sup>

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

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<sup>40</sup> UNODC 2020, p. 4. See also Council of Europe (2020a) and Council of Europe (2020b).

<sup>41</sup> Weisburd et al. 2016, p. 77. See also pp. 94-95.

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

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

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

The research results on the incapacitating impact of imprisonment appears to be mixed, largely due to the methodological difficulties. Two of the main difficulties lie in predicting how many offences a prisoner would have committed (based on his or her criminal history) if he or she had *not* been sentenced to imprisonment, and the extent to which this individual would, in time, have desisted from crime.<sup>42</sup>

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

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

A third reason is that most persons sentenced to imprisonment will in time be released. Although it may seem counterintuitive to say that greater use of *community-based* sentences increases the safety of the community, what is noted above of the inability of most prisons in general to rehabilitate offenders suggests that sending a person to prison may, in the long run, *decrease* community safety. While in prison, offenders in prison may learn new ways of committing crime and may form new criminal attachments. This leads to a cycle of release and imprisonment, which does little to build safer communities.

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

Some recent studies that have examined data on how imprisonment increases the rate of reoffending have concluded that using community-based sentences instead of short-term sentences of imprisonment can indeed *reduce* the number of future offences, and in this

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<sup>42</sup> See Travis and Western (eds.) 2014, pp. 140-145.

way increase public safety.<sup>43</sup> It is clear that this effect depends on a number of variables, in particular the sentencing practice in the jurisdiction in question. In jurisdictions which already make extensive and effective use of community-based sentences, the effect of such a shift would presumably be less than in a jurisdiction which makes heavy use of imprisonment. However, the results of the study do at least draw attention to the periodic need to reassess our approach to sentencing.

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

Asides from the *special preventive* argument that imprisonment can deter, rehabilitate and incapacitate the individual offender, imprisonment has also been argued to have a *general preventive* impact, by dissuading other members of the community from crime by example. This general preventive impact is seen to have three components, the severity, the certainty, and the celerity (speed after commission of the offence) of the sentence.

Extensive research has been conducted on the correlation (and possible causal connection) between the use of imprisonment and the crime rate. Of the three components (severity, certainty and celerity), the severity of the sentence has been the easiest to change. *If* imprisonment had a clear general preventive impact, then an increase in the use of imprisonment – stipulating imprisonment as the mandatory sentence for a greater range of offences, and using longer sentences (for example through “three strikes” laws) – should result in a decrease in crime. The preponderance of evidence suggests that there may be slight decrease, but in general this decrease is so modest that it is offset by the social, human and financial costs of the increase in imprisonment.<sup>44</sup> It could also be argued on the basis of the statistical evidence that increasing the severity of sentences has the opposite effect from what was intended: placing more people into imprisonment tends to be correlated with an increase in the crime rate.<sup>45</sup> There are, furthermore, examples of countries, such as Finland, where a deliberate and considerable decrease in the use of imprisonment did not increase crime rates (as one would have assumed on the basis of a purported general preventive impact).

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

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<sup>43</sup> For example, a major study in the United Kingdom published in 2019 concluded that replacing short sentences of imprisonment (less than six months) with community-based sanctions reduced reoffending by 13 per cent. See <<https://www.gov.uk/government/news/justice-secretary-urges-evidence-led-approach-to-cut-crime>>.

Cowan et al. (2019) examined the use of police and court diversion in Victoria, Australia. The authors calculate, on the basis of an examination of over one million cases, that for each 100 offenders diverted, eight crimes could be prevented per year. Thus, the authors estimate that greater use of police diversion in Victoria could have prevented tens of thousands of offences.

<sup>44</sup> See, for example, Travis and Western (ed.) 2014, pp. 134 – 140.

<sup>45</sup> This conclusion has been contested. Much depends on what time period is considered; for example, in the case of the United States, it has been observed that the increase in the use of imprisonment from the 1970s to the 1990s ultimately was followed by a fall in reported crime (beginning during the 1990s) (see, e.g., Travis and Western (ed.) 2014, pp. 33 – 69). However, if imprisonment does have a general preventive effect, this effect should arguably have been seen in a much shorter time span.

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

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

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

It is true that simplistic opinion polls (asking loaded questions along the line of “do you support harsher punishment for rapists and murderers?”) tend to produce predictable responses (“yes, the public does demand longer sentences”). Research, however, has repeatedly shown that there is considerable variety in the attitudes of different members of the public, and not one general “sense of justice”. More importantly, when respondents are provided with more detailed information regarding the background of individual defendants (criminal record, ethnic background, gender, substance abuse, social history) and the circumstances of the case, the responses tend to fall more in line with current sentencing practice by the courts, including application of such fundamental principles as proportionality and equity.<sup>46</sup>

Along the same lines, Jan van Dijk has used the international data produced from victimization surveys to examine possible correlations between general public opinion (punitiveness) and the rate of imprisonment. He concludes that, worldwide, there is no relationship between public attitudes towards sentencing and actual imprisonment rates.<sup>47</sup>

Indeed, van Dijk has noted that

Public opinion survey research supports the broad proposition that the public, when considering whether hypothetical cases should result in a sentence to prison, is more likely to favor a noncustodial sentence when that option is fully developed. Information at the country level has shown that public attitudes are influenced by available sentencing options. If alternative, noncustodial sentences are introduced in a country, the proportion of respondents favoring this option usually goes up sharply in the aftermath. ... In this regard, it is worth pointing out that noncustodial sentences are not widely available in developing countries. Reliance on prison sentences in developing countries seems partly determined by the lack of viable alternatives for which new institutional arrangements would have to be put in place.<sup>48</sup>

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

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<sup>46</sup> See, for example, Kääriäinen 2018 and the literature cited.

<sup>47</sup> van Dijk 2008, p. 264.

<sup>48</sup> van Dijk 2008, p. 265.



## **F. The Cost-Effectiveness of Community-Based Sentences**

The implementation of any sentence brings with it a variety of costs: human, social and financial. These costs are generally factored into public policy decisions on the administration of justice and are deemed to be offset by the benefits that are seen to result from bringing an offender to justice. This raises the question of whether the benefits believed to come from sentences of imprisonment can be achieved through community-based sentences, but at a lower overall cost.

The *human* costs of serving a sentence extend primarily to the offender, but they also affect his or her family. In the case of imprisonment, the human costs to the offender include of course the loss of liberty, but separate reference could be made to the disruption of contacts with family members,<sup>49</sup> interruption of education, vocational training or employment, the resulting poorer likelihood of being able to return to the job market at the same level of income and financial stability,<sup>50</sup> and the possible worsening of health and mental health.

The impact of imprisonment on family members can take many forms. Offenders who have served time in prison may have difficulties in forming relationships, and thus partnerships would tend to be unstable, leading perhaps to broken families even after the offender has been released from prison. The offender may be the main caretaker of the family, and placing him or her in prison may deprive the family of necessary parental and financial support. Imprisonment tends to weaken family bonds, and affect the well-being of children, to the extent that the children have behavioural problems, such as aggression and delinquency, as well as their dropping out from school. These same human costs are less likely as a consequence of community-based sentences, since the offender is able to remain at home, at school and at work.

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

That said, the fact that the prisons in many countries have an overrepresentation of vulnerable groups such as racial and ethnic minorities strongly suggests that imprisonment increases social, economic and political inequality in society. Those in prison tend to be poor, undereducated, unemployed, in poor health and (in some jurisdictions) disenfranchised. The experience is that the impact of imprisonment will not improve, but in practice worsen their prospects for full integration into society as law-abiding members.

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<sup>49</sup> It should be noted that especially in the case of violent offenders, members of his or her family may welcome the offender being taken out of the home and being placed in prison. However, in most cases the offender will be released within a few months or years.

<sup>50</sup> Research and experience in many countries indicate that potential employers are reluctant to hire persons with a criminal record, and in particular persons who have been in prison.

Although they have been guilty of offences, and should be brought to justice, the question is whether a sentence of imprisonment is the most appropriate, proportional and effective response to their offences.<sup>51</sup>

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

Reference should also be made to the financial benefits of correctional administration, including the economic benefit of providing employment for correctional (and affiliated) personnel, and the income from prison industries. When looking at the bottom line, however, the financial cost per offender of implementing imprisonment as opposed to implementing a community-based sentence is many times higher. The conclusion is that, from a costs-benefits perspective, community-based sentences can be implemented at lower costs-per-sentence than imprisonment.

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

The general conclusion that can be drawn from the previous sections is that the position of imprisonment as the punishment of choice for medium-level, and even for more serious, offences is not and should not be self-evident. In many cases community-based sentences would seem to fulfil the different functions of punishment in society. Imprisonment should be reserved for the most serious offences and the most dangerous offenders.

A separate issue is what types of community-based sentences “work”, and why: do they deter, do they rehabilitate, do they serve as a warning to others in the community, do they protect the victim and the other members of the community, does the public regard them as appropriate, and are they cost-effective?

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

When speaking about community-based sentences, however, this discussion on *relative effectiveness* can and should be largely limited to those sentences that are intended to have a *special preventive* impact on the offender.<sup>52</sup> We can leave aside for example monetary

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<sup>51</sup> Travis and Western (eds.) 2014.

<sup>52</sup> It should be recalled that some sentences or measures, such as restorative justice processes, are designed to have an impact also on other persons affected by the offence.

fines, which are primarily intended to have a *general preventive* effect.<sup>53</sup> (In many jurisdictions, this means that in practice most community-based sentences would be left outside the scope of our examination.)

It should first be noted that most offenders will not necessarily commit new offences. The criminological literature on the prediction of reoffending refers to the concepts of “false positives” and “false negatives”. In this context, a “false positive” refers to an individual who, according to risk assessment, is presumed to be likely to reoffend, but in fact would not commit a new offence. A “false negative” in turn, is an individual who is presumed to become law-abiding, but would in fact commit a new offence (an occurrence which may largely be due to situational circumstances). Although in general, risk assessment tools have had poor success in predicting future behaviour, what we do know is that it is easiest to predict correctly who would *not* reoffend than it is to predict who *would* commit a new offence. Out of a cohort of, for example, one thousand persons who have committed an offence, it is easier for us to predict with relative assurance the several hundred who will not commit a new offence, than it is for us to predict the perhaps one hundred who will commit a new offence.<sup>54</sup>

Many offenders come from a community that is beset with multiple social problems: poverty, unemployment, lack of economic opportunities, lack of basic services, family breakdown, marginalized populations and poor social cohesion. If the goal is the prevention of reoffending and thus also the protection of the community, also community-based sentences should seek to come to grips with these problems.<sup>55</sup>

A recent meta-analysis of the available research on “what works” in community-based sentences can be summarized for the present purposes as follows. Those sentences that seek to strengthen informal and supportive social controls and reintegration, and to maintain or repair social bonds (such as restorative justice programmes) have a favourable and statistically significant effect. The authors suggest that this is because such sentences are highly specific and targeted, and they involve one-on-one interactions and the building of personal relationships. On the other hand, sentences that simply place the offender in the community without seeking to provide him or her with a way to internalize or restore conventional values and relationships do not have an appreciable special preventive impact on the offender. The authors conclude by saying that this suggests “that interventions should be implemented at a high level of focus – whether at small places or with high-risk individuals – and incorporate specific risk factors.”<sup>56</sup>

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<sup>53</sup> Fines, however, cannot be totally ignored when discussing the appropriateness of different sanctions. If an offender is unable to pay the fine, he or she may be sentenced to prison for non-payment.

<sup>54</sup> Longitudinal studies have generally suggested that a small percentage of a population cohort are “hard-core offenders”, who commit the majority of offences, both petty and serious.

<sup>55</sup> Paragraph 29 of the background document to Workshop 2 (A/CONF.234/9) notes that “When prisoners are released into the community, they frequently encounter a wide range of social barriers to re-entry, such as challenges in access to employment, housing, treatment for drug use disorders and prosocial support. The continuum of care from prison to the community through robust coordination, in particular between institutional and community corrections services, is crucial. Ensuring an adequate period of support facilitates a smooth transition to society. This can take the form of a support staff assigned to work with the offender in prison and in the community during an initial transition period, to assist the offender in finding housing and employment, and generally helping the offender to navigate through the initial stages of re-entry.”

<sup>56</sup> Weisburd et al. 2016, pp. 97-98. The approach used by Weisburd et al. is based on a rigorous assessment of the available research, and, using the same method developed in Sherman et al. 1997, divides measures into “what works”, “what doesn’t work”, “what is promising”, and “what requires more research”.

Along the same lines, the authors conclude that diversion with services is distinctly more effective than simple diversion.<sup>57</sup> The authors further conclude that electronic monitoring, when compared with traditional or intensive probation, or even with incarceration, was *ineffective* in preventing reoffending. They argue that this is due to the fact that electronic monitoring is based on formal social control and surveillance.<sup>58</sup> This is echoed by Graham and McIvor, who review international experiences with electronic monitoring, and conclude that

Overall, the electronic monitoring programmes and approaches which are shown to reduce reoffending during and/or after the monitored period are mostly those which include other supervision and supportive factors (e.g., employment and education, social capital) associated with desistance. The effective approaches discussed here have developed on the basis of high levels of integration with supervision and support from Probation Officers and other staff and services. In other words, the more effective programmes and approaches, in Europe in particular, are those where EM is not a stand-alone measure.<sup>59</sup>

Overall, Weisburd et al. conclude,

... the potential crime-suppressing elements of the community, such as positive social controls, are not necessarily leveraged by simply placing an offender in the community and assuming that the desire to remain there will act as a sufficient deterrent to recidivism. The more successful community programs suggest that a targeted and focused approach may be required.<sup>60</sup>

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

### III. PROMOTING WIDER USE OF COMMUNITY-BASED SENTENCES<sup>61</sup>

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

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<sup>57</sup> Weisburd et al. 2016, p. 99.

<sup>58</sup> Weisburd et al. 2016, p. 100. Also, Dünkel 2015 concludes that the research results on the contribution of electronic monitoring to the prevention of reoffending is not evident, and that electronic monitoring seems to be promising only in combination with social support by the probation and aftercare services.

<sup>59</sup> Graham and McIvor 2018.

<sup>60</sup> Weisburd et al. 2016, p. 100.

<sup>61</sup> This section of the paper is an updated and abridged version of Joutsen 1990.

The available data presented in this paper on the use of community-based sentences around the world suggests that even today, thirty years on, Member States continue to meet with these same challenges.

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

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

In most jurisdictions, the courts can impose only those sentences that are expressly provided in statutory law. In these systems, the first step must be to ensure that statutory law provides for an adequate range of community-based sentences and outlines the procedures and conditions for their imposition and implementation. The legislation should specify the purposes of the sentence and the expectations of the legislator as to the range of offences for which the sentence may or should be used. This would help judges in determining the proper place of the measure within the penal system, in line with such fundamental principles of sentencing as proportionality and equity.<sup>62</sup>

Another statutory measure would be a requirement that the court justify why it imposes a sentence of imprisonment rather than a community-based sentence. Such a measure would compel the court to consider why none of the available community-based sentences are appropriate in the case at hand. England and Wales has established a Sentencing Council, which has issued mandatory guidelines for courts on the imposition of community-based sentences.<sup>63</sup> These provide, inter alia, that

A custodial sentence must not be imposed unless the offence or the combination of the offence and one or more offences associated with it was so serious that neither a fine alone nor a community sentence can be justified for the offence.

There is no general definition of where the custody threshold lies. The circumstances of the individual offence and the factors assessed by offence-specific guidelines will determine whether an offence is so serious that neither a fine alone nor a community sentence can be justified. Where no offence specific guideline is available to determine seriousness, the harm caused by the offence, the culpability of the offender and any previous convictions will be relevant to the assessment.

The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.<sup>64</sup>

When a new community-based sentence is introduced, it may be difficult for the legislator and/or the court to assign the sentence its appropriate place in the penal system.<sup>65</sup>

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<sup>62</sup> See for example paragraph 22 of the background document for Workshop 2 (A/CONF.234/9).

<sup>63</sup> <<https://www.sentencingcouncil.org.uk/about-us/>>.

<sup>64</sup> Ibid.

<sup>65</sup> Although in theory the legislature could provide specific sentencing guidelines, most such guidelines deal primarily with the length of sentences of imprisonment, and at most with the borderline between

Is 40 hours of community service the equivalent of one month of imprisonment, for example? Is it more or less severe than a suspended sentence of a certain length? In sentencing, the court must make a choice among a number of different sentences using multiple criteria which compare the seriousness of the offence to what are deemed to be the relevant characteristics of the offender and the penal value of the community-based sentences available, either singly or in combination.<sup>66</sup>

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

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

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

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

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

At the lower end of the scale of offence seriousness, the possibility of imprisonment could be eliminated entirely through decriminalization and depenalization. Such “offences” as vagrancy and public drunkenness have been decriminalized in many countries. Although

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imprisonment and suspended sentences (probation). The most widely known such guidelines are the Minnesota Sentencing Guidelines, which stipulate a “presumptive sentence” for offences. These have been applied since 1980. The most recent version was adopted as of 1 August 2020; Minnesota Sentencing Guidelines 2020. The basic sentencing grid can be found at <<https://mn.gov/msgc-stat/documents/Guidelines/2020/2020StandardSentencingGuidelinesGrid.pdf>>.

<sup>66</sup> The Sentencing Council for England and Wales has issued very detailed and mandatory guidelines on a broad range of offences. The Sentencing Council’s guidelines for the imposition of community and custodial sentences (Sentencing Council 2016) provides clear guidance for example on the imposition and length of community service orders, the imposition of electronic monitoring orders, the imposition and amount of fines, as well as the imposition of custodial sentences.

these offences are rarely imprisonable offences in themselves, the persons who are fined are usually unable to pay any fines imposed, or because of their circumstances would often be in violation of conditions imposed on, for example, community service. Such non-payment or technical violations often lead to imprisonment. In this way, decriminalization of petty offences reduces the use of custodial measures.

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

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

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

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

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

One theme that has been repeated again and again in the debate over the greater efficacy of community-based sentences over imprisonment is that many offenders have a large range of challenges, ranging from health and mental health issues, lack of education and

vocational training, lack of a permanent home, to difficulties in forming stable relationships.<sup>67</sup>

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

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

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

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

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

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

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<sup>67</sup> Paragraph 23 of the background document for Workshop 2 (A/CONF.234/9) notes the importance, in sentencing, in case dispositions and in providing rehabilitative interventions, of assessments to identify the offenders’ individual risks, needs and environmental factors that may have a positive or negative impact on their chances of successful social reintegration.



#### *STEP 6 Ensure a continuous research component in planning*

One area of concern relates to the possible dysfunction of wider use of community-based sentences, in particular the so-called net-widening effect.<sup>68</sup> Statistical evidence from various countries clearly suggests that community-based sentences are either used far less than they might be or, when used, are used as substitutes for other community-based sentences and not for imprisonment. In addition, when suspended sentences are pronounced, the period of imprisonment imposed may be longer than if an unconditional sentence to imprisonment were to be used. In the event of activation of the original sentence, the offender can therefore go to prison for longer than would otherwise have been the case.

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

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

One area of research that is related to research on sentencing, concerns attitudes. Certainly, the attitudes of the sentencing judge affect his or her decisions on what available options to use. As important as the attitudes of the sentencing judge are the attitudes of other persons involved in the implementation of community-based sentences. In particular, the degree to which a community-based sentence is accepted by professionals as well as by the community influences the probability that this sentence will actually be applied.

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

#### **IV. COMMUNITY-BASED SENTENCES WITHIN THE FRAMEWORK OF THE PERSPECTIVE OF THE SUSTAINABLE DEVELOPMENT GOALS**

The assumption that imprisonment best fulfils the various functions of punishment and thus is suitable for medium-level and more serious offences has resulted in a general growth in the number of prisoners. However, societies around the world are becoming increasingly

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<sup>68</sup> The background paper for the Workshop (A/CONF.234/9, para. 4(e)) notes:

“The overuse of non-custodial measures, as well as their use without appropriate community support, can lead to ‘mass supervision’ and ‘net widening’, whereby the number of persons controlled by the criminal justice system increases. The excessive use of supervision for low-risk offenders may increase the reoffending risk, owing to unnecessary interventions”.

aware that the use of imprisonment has significant human, social and economic costs. With the increase in the number of prisoners, prisons are becoming overcrowded. Since the prisons themselves are often outdated, understaffed and underresourced, hundreds of thousands of prisoners around the world are being “warehoused” in poor conditions that impair their physical and mental health and make rehabilitation programmes difficult.

Our overreliance on prison also has an impact on equality in society. In many communities a considerable number in particular of young men belonging to racial or ethnic minorities, migrant groups and other such vulnerable groups are or have been in prison and have to deal with the stigma of being ex-prisoners (a particular difficulty in seeking employment) and possibly also the deprivation of certain rights, such as the right to use public housing.

In adopting the Tokyo Rules and the Bangkok Rules, the Member States of the United Nations agreed that the use of imprisonment should be lessened, and the use of community-based sentences should be expanded.

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

In 2015, the General Assembly of the United Nations adopted a resolution that should cause us to seriously rethink our dependence on imprisonment, and in turn look for a greater role for community-based sentences: the 2030 Agenda for Sustainable Development. A fair, rational, humane and effective criminal justice system is important in its own right. It protects societies against crime. It brings offenders to justice. It ensures that the rights of the victim are respected and protected. When it fulfils its function fairly, it plays an important role also in ensuring that the conditions are in place to allow for sustainable development.

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

All the Goals, however, are cross-cutting. We should see Goal 16, and the operation of the criminal justice system in the wide sense, in the broader context of the 2030 Agenda. This means in practice that we should take into consideration how the decisions that criminal justice practitioners make could have an impact on the different aspects of the life of the victim, the offender and the community – on physical and mental health, on education, on employment and economic survival, on the rural or urban environment, and so on. For

example, when a police officer decides to arrest a suspect (instead of letting him or her go with a caution), this may affect the suspect's employment or education. If a judge decides to impose a sentence of imprisonment, this decision may remove the only provider from a family, thus leading to the break-up of the family, with a knock-down effect on the education and future development of the children.

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

However, it is important to realize that decisions in the criminal justice system do have consequences in different sectors of life and society, and that the decision-maker could and should consider whether the decisions could be made differently, in a way that promotes sustainable development more broadly, while still ensuring that the purposes of criminal justice are met. Moreover, judges and decision-makers often have discretion in making their decision, and in weighing whether or not to opt for a custodial or a community-based sentence. For this reason, the entire question of sentencing should be examined also within the context of the Sustainable Development Goals adopted by the General Assembly in 2015.

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

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

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

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

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

- the diversification of community-based sentences has been paralleled in some countries by an extension of community-based sentences to a greater range of offences and offenders.
- a greater use of the classical community-based sentences such as the fine and probation.
- development of community-based sentences that include one or a combination of such components as work (as in community service), compensation/restitution and treatment.
- a renewed interest in traditional indigenous measures (such as restorative justice processes), and in sentences that rely on traditional infrastructures.

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

- On the statutory level, many states report that they do not have an appropriate range of community-based sentences, or that the legislation does not provide clear guidance on the purposes, imposition or implementation of these sentences.
- On the level of sentencing practice, the gap is reflected in the continuing predominance of imprisonment as the “norm”, as the main measuring stick in sentencing. Community-based sentences are either used far less than the law would allow, or they are used as alternatives for other community-based sentences.
- On the level of resources, the implementation of some community-based sentences remains hindered in many areas because of the lack of the necessary personnel, support structures, and funds.

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

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

## Appendix 1

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

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

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

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

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

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

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

(Source: SPACE II; selected countries that have provided data for some years)

(- = data not provided; \*\*\* = sentence does not exist / not applicable)

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

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

(Source: SPACE II; selected countries that have provided data for some years)

(- = data not provided; \*\*\* = sentence does not exist / not applicable)

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

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

(Source: SPACE II; selected countries that have provided data for some years)

(- = data not provided; \*\*\* = sentence does not exist / not applicable)

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

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# REDUCING REOFFENDING – IDENTIFYING RISKS AND DEVELOPING SOLUTIONS

*Jennifer Oades\**

## I. CORRECTIONS AND CONDITIONAL RELEASE IN CANADA

As a background, the population of Canada is approximately 38 million people with a median age of 41.1 years. Canada is a bilingual country with English and French as its official languages. It is a multicultural society with about 5 per cent of the population being Indigenous.

The Parole Board of Canada (herein referred to as the PBC) is an independent administrative tribunal that, as part of the Canadian criminal justice system, is responsible for making decisions with respect to conditional release and record suspension (pardons), as well as recommendations for clemency. The PBC contributes to the protection of society by facilitating, as appropriate, the timely reintegration of offenders and the sustained rehabilitation of individuals into society as law-abiding citizens. Public safety is the primary consideration in all PBC decisions.

The PBC works in partnership with the Correctional Service of Canada (herein referred to as the CSC) and both organizations are guided by the same federal legislation, the *Corrections and Conditional Release Act* (CCRA). In Canada, the CSC is responsible for managing and overseeing federal prisons, community based residential facilities, as well as providing for the supervision of offenders in the community by parole officers. In contrast, the PBC is responsible for making conditional release decisions for offenders serving sentences of two years or more, or offenders serving custodial sentences of six months to two years less a day in provinces and territories in Canada that do not have their own parole board. The PBC is comprised of approximately 90 Board members (full-time and part-time) which include the Chairperson, and the Executive Vice-Chairperson. Board members are appointed by the Government of Canada for 3- or 5-year terms and these terms can be renewed. Board members at the PBC represent the diversity of the community and come from a wide range of professional backgrounds (criminologists, lawyers, police, psychologists, social workers, businesspersons, academics, etc.). By law, Board members are independent in their decision-making responsibilities and make their decisions free from outside influence or interference. In the discharge of their official duties and at all other times, Board members are expected to conduct themselves in a manner that promotes respect for the law and public confidence in the fairness, impartiality and professionalism of the Parole Board of Canada.

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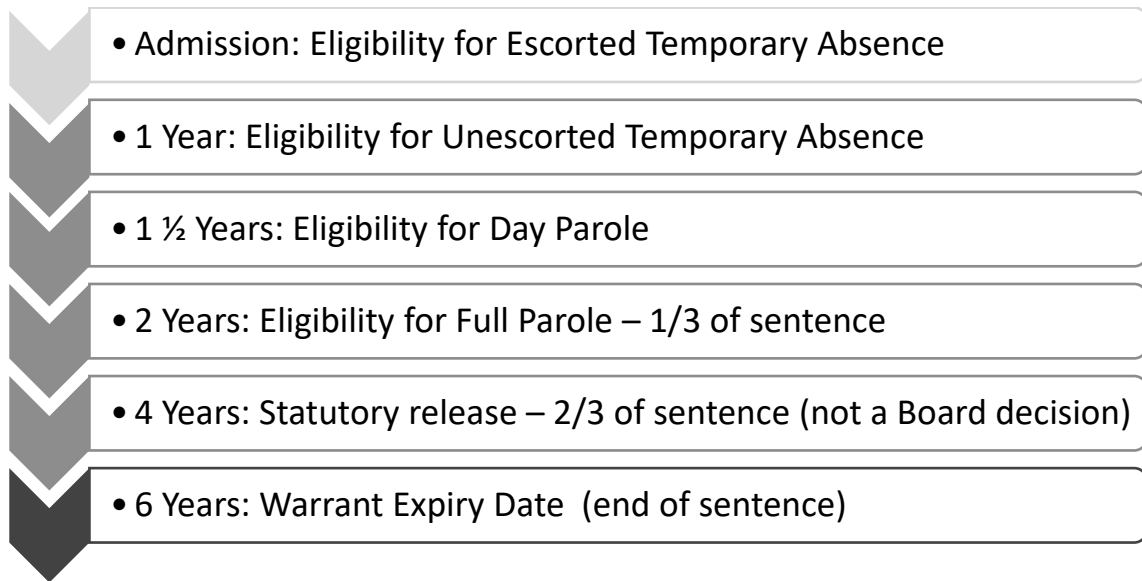
\* Chairperson, Parole Board of Canada. The following report is supplemental to the presentation by the Chairperson of the Parole Board of Canada, Jennifer Oades, at Workshop 2 “Reducing Reoffending—Identifying Risks and Developing Solutions” on 8 March 2021. Additional information about the Parole Board of Canada can be obtained at <<https://www.canada.ca/en/parole-board.html>>.

The legislation (CCRA) under which the PBC operates sets out the purpose of conditional release, which 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. The paramount consideration for correctional processes by the CSC and decisions by the PBC is the protection of society. The legislation is highly prescriptive and sets various aspects in managing an offender under sentence as well as the requirements and authorities for conditional release including but not limited to: decision-making criteria, types of release, eligibility for release, as well as the time frames for conducting conditional release reviews.

Research and Canadian experience demonstrate that the gradual and controlled release of offenders facilitates their safe reintegration back into the community. It is for this reason that Canada relies heavily on a system of gradual release where offenders are provided varying levels of supports and structure depending on their risk factors and needs. In Canada, the system of corrections and conditional release is a continuum of services between prison and the community. Given the vast majority of offenders are serving fixed prison sentences and eventually return to their communities, the community is where one can see the true measure of a successful corrections and conditional release system.

In Canada, there are various types of conditional releases that include temporary absences, day parole, full parole and statutory release. Both escorted and unescorted temporary absences from prison can also be granted/approved for a period of a few hours to a number of days for such purposes as attending medical appointments, court appearances, community service programmes, facilitating family contact and/or attending programmes in the community such as addictions counselling. Day parole can be granted by the PBC for a period of up to 6 months (which can be extended) and is designed to provide more structure for an offender such as requiring them to reside at a community-based residential facility. Full parole is a more expanded release which enables the offender to reside at their own residence. Both day and full parole releases require the offender to adhere to a set of standard conditions such as reporting to a parole officer, remaining within the geographic supervision district, etc. Offenders can also be required to adhere to special conditions that are imposed by the PBC to address risk factors and facilitate an offender's safe reintegration back into the community. Special conditions can include requiring an offender to abstain from alcohol, attend specific programmes, and/or avoid certain persons, etc. Throughout an offender's release in the community, they are supervised by a CSC parole officer. Conditional releases can be suspended, terminated or revoked. With the exception of offenders serving a life or indeterminate sentence, or those detained to their warrant expiry date, an offender is automatically released on statutory release after serving two-thirds of their sentence and this is not a Board decision. However, similar to parole, an offender who is released on statutory release must abide by standard and any special conditions imposed by the PBC. Offenders on statutory release are supervised by a CSC parole officer until the sentence expires. While statutory release is not granted by the PBC, it can be suspended and revoked by the PBC.

## II. TIME FRAMES FOR CONDITIONAL RELEASE IN CANADA – EXAMPLE USING A SIX-YEAR SENTENCE

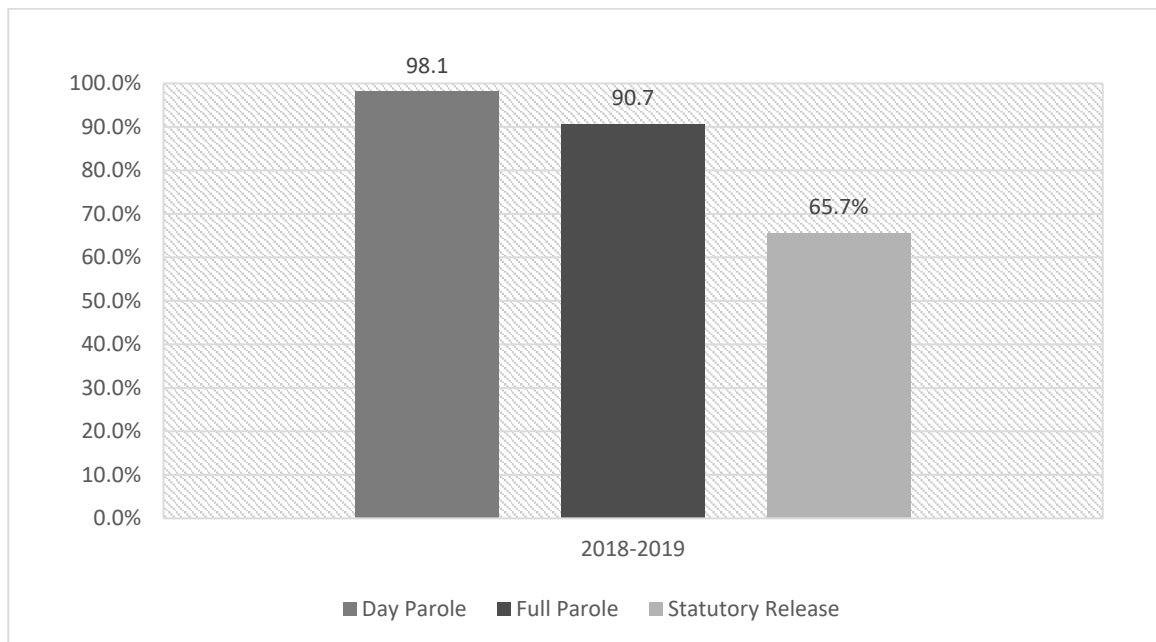


Last year, the total federal offender population in Canada was approximately 23,400 of which 13,200 were incarcerated and about 10,200 were in the community under some form of supervision. There were about 1,400 federal women offenders of which approximately 600 were incarcerated and 800 in the community. Women represent approximately 6 per cent of the federal offender population (41% are indigenous). Indigenous people represent 25.5 per cent of the total federal offender population (incarcerated and on conditional release). Over the last five years, the population of federal offenders under some form of community supervision has increased by 11 per cent.

In 2019-2020, the PBC made 21,982 conditional release decisions and 10,415 pardon/record suspension decisions. Over the last 10 years, the successful completion rates have been increasing for all types of conditional release, while revocations for breaches of conditions, non-violent and violent reoffending have been decreasing.

In 2018-2019, 99 per cent of federal offenders completed their day parole successfully without reoffending. Similarly, the success rate for full parole was 97.4 per cent. The success rate for Statutory Release is somewhat lower at 65.7 per cent given that this is a nondiscretionary (automatic) release that is not granted by the PBC.

### III. SUCCESSFUL COMPLETION RATES FOR FEDERAL OFFENDERS



The high rates of success of conditional release within Canada can be attributed to a number of factors that include but are not limited to: a gradual and structured release framework, quality case information, an evidence-based risk assessment framework, highly qualified Board members, specialized Board member training and evidence-based supervision strategies.

Canada's systems of structured releases ensure offenders have varying levels of support, and supervision during their transition from prison into the community. Board members undergo extensive training and mentoring that can take 6 to 8 months to complete. Board member training is based upon a rigorous, evidence-based risk assessment framework. In addition, PBC decisions are based on extensive and high-quality case information that include police reports, criminal records, court reports, judges' comments, court transcripts, victim impact statements, institutional programme, psychological and/or psychiatric risk assessment reports, institutional security information, as well as community-based information from family, potential employers and halfway houses. Board members are required to review all relevant and available information when making a conditional release decision. The PBC also holds hearings with offenders to gather additional information from the offender, the offender's assistant, and the parole officer about the offender's criminal history, programme participation, and release plan. The PBC has also adapted its hearings for offenders with special needs that include offering elder-assisted hearings for Indigenous offenders, should they want one, as well as having hearings that are gender and trauma informed which is particularly important for women offenders and those with mental health issues. Board members also consider victim impact statements as part of their decision-making and can impose conditions the board considers reasonable and necessary in order to protect a victim. Finally, the supervision of offenders is conducted by CSC parole officers who utilize evidence-based supervision strategies and have a manageable caseload of about 30 offenders to 1 parole officer.



#### **IV. OPENNESS AND ACCOUNTABILITY**

Openness and accountability are important within the Canadian model of corrections and conditional release so much so that it is entrenched in legislation (CCRA). An environment of openness and accountability for the PBC includes:

- the ability for the general public to observe a parole hearing;
- the ability for the general public to access the written decisions of the Board;
- the ability for registered victims to receive information about the offender that harmed them, observe PBC hearings, and submit and read a prepared victim impact statement for consideration by Board members in their decision-making and;
- the ability for victims to receive additional information about the offender that harmed them such as: the offences, length of sentence, eligibility dates for conditional release, location of the penitentiary, date of hearing, reason for release, date and destination of release, and conditions of release.

In 2019-2020, the Parole Board had over 31,000 contacts with victims. During this same time frame, 4,998 persons observed PBC hearings (of which 743 of these observers were victims).

In addition to information provided by attending hearings, the PBC also provides copies of its decision through its decision registry to victims, members of the public, and the media. The sharing of decisions contributes to a better public understanding of PBC decision-making and promotes openness and accountability. Last year the PBC provided 6,970 decisions through its decision registry.

#### **V. PARTNERSHIPS AND PUBLIC AWARENESS**

The PBC and CSC continually seek to forge and foster community partnerships. Partnerships are the foundation of an improved understanding of conditional release by stakeholders both within and outside the criminal justice system and are an essential element to the safe reintegration of offenders back into their communities. Numerous non-government agencies play a critical role through the provision of residential services, halfway houses, programmes and counselling for offenders. The list of agencies involved within the Canadian criminal justice system is extensive, and includes, but is not limited to: the Salvation Army, the Canadian Association of Elizabeth Fry Societies, l'Association des services de réhabilitation du Québec, the John Howard Society, St. Leonard's Society, the Native Women's Association of Canada, and many others. Communicating effectively with both the general public and partners within the criminal justice system is important. For a number of years, the CSC and PBC have contributed to a Judicial Institute programme entitled "Judges to Jails" where judges, as a part of their training, spend five days learning about corrections and conditional release by speaking with prison and parole staff, visiting prisons, remand centres, halfway houses, observing PBC hearings and speaking with offenders. Through this programme, judges are able to observe CSC operations and the Board's decision-making framework in real time. The "Judges to Jails" programme has been an invaluable opportunity to share information and knowledge with the judiciary so

that they can better understand the complexities of the federal system of corrections and conditional release.

In closing, strong partnerships both within and outside the criminal justice system lead to safer communities, and an improved understanding and public acceptance. These partnerships are integral to supporting desistance and an offender's successful transition back into the community.

## **“INTRODUCING A PROBATION SYSTEM THROUGH A STEP-BY-STEP APPROACH” – REPUBLIC OF CROATIA**

*Jana Špero\**

The Republic of Croatia is a European country, located at the seam of central and Southeast Europe. It is a Mediterranean country with more than 1,200 islands on the Adriatic Sea. On the north it borders with Slovenia and Hungary, on the east with Serbia, on the south with Bosnia and Herzegovina and Montenegro, while a long maritime border separates Croatia from Italy. The Republic of Croatia became independent after the dissolution of the Socialist Federal Republic of Yugoslavia in 1991. After the war for independence, Croatia started to grow as a new country and today it is recognized as a successful and developing economy and State. Croatia became a member state of the European Union on 1 July 2013 and still is the youngest member state in the European Union. The capital city of the Republic of Croatia is Zagreb, and the population is 4.3 million.

One of the youngest parts of the Croatian criminal justice system is the Probation Service. In a short period of time the Probation Service became an important professional part of the enforcement of sanctions for persons who committed a crime with a strong orientation to resocialisation and rehabilitation of offenders in the community. The Probation Service in Croatia is part of the Ministry of Justice and Public Administration. It is part of the Directorate for Prison System and Probation, formed as a Sector for Probation. The Sector for Probation consists of a central office and 14 local probation offices. Probation tasks have the purpose of protecting the community from the offender by resocialization of the offender and helping him/her to be reintegrated in the community and, as such, these tasks are of special interest for the Republic of Croatia.

The prison system has a long history, and prison sentences are also based on rehabilitation. However, the purpose of probation is to make enforcement of sanctions more humane and effective and by resocialization and reintegration of the offender making the community safer. So, when deciding on introduction of the Probation Service to the criminal justice system in Croatia, it is important to point out that when it comes to success of rehabilitation, short prison sanctions should be the last option. It was also important to bear in mind the financial benefit of probation supervision. Probation supervision is less expensive than a prison sentence. Offenders on probation do not have 24/7 care of the State and must provide all life necessities on their own.

When talking about the development of the probation system in the Republic of Croatia, we must go back in history before the service was developed to see the roots of it. The concept of probation already existed in the Croatian legal system, though not in its present form. For many years measures had been available for juvenile offenders in Croatia, and these measures were very similar to probation. For adult offenders a suspended sentence with protective supervision as a sanction, though different in form from probation, was regulated in 1976 by the provisions of the Criminal Code of the Socialist Federal Republic

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\* Assistant Minister, Prison System and Probation, the Republic of Croatia.

of Yugoslavia. After declaring its independence, the Republic of Croatia took over this Act and the sanction was kept and developed. Croatia's Criminal Code of 1997 introduced the possibility of replacing prison sentences with community work orders.

First community sanctions and measures started being implemented at the end of 2001, after a new Croatian Criminal Code came into force. The new Criminal Code led to the development of the special Supervision of Suspended Sentence and Community Service Act. But at that time, the enforcement of these sanctions was within the jurisdiction of the Directorate for Prison System, and community sanctions were executed by professionals who had university degrees mainly in social pedagogy, social work and psychology, and who were employees of the Ministry of Justice or Ministry of Social Welfare. These persons were called "commissioners", and they had their full-time jobs in prisons, penitentiaries, correctional institutions for juvenile offenders, social welfare centres etc., so they would only work with offenders part time. The best value of this early system was that commissioners were promoting the idea of probation in the wider community. This system demonstrated that Croatia was open to the concept of alternative sanctions and was ready to work with offenders in the community.

After that initial period, the need to establish and develop a more integrated probation system was recognized by the government. This new development was supported by the Council of Europe recommendations and other positive European practices. It is also important to underline that this was a time during Croatia's accession negotiations for EU membership and related judicial reforms, so we can say that there was "a good wind" for the development of the Probation Service.

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

Looking for solutions, there was strong support for the development of probation, and it was decided to get European experience as help for developing the best model. At the time, there were many European projects available to help and support Croatia during the negotiating time to become a member state of the EU. Within the framework of the CARDS 2004 project, the Ministry of Justice, Directorate for Prison System with National Offender Management System from the UK, conducted in 2007 the EU Twinning light project "Support to the Development of a Probation System in Croatia". Within this project, an array of European practices and experiences was reviewed, enabling Croatia to consider a wide range of options in the strategic planning process. Also, the gaps and needs analysis regarding the establishment of a probation system in Croatia was conducted. At the end of 2007, as a main result of the project, Croatia had a five-year strategy for the establishment of a Probation Service in Croatia.

The process of building the new service formally started after the Strategy for the Development of the Croatian Probation Service 2008-2012 was adopted. The strategy defined two main goals: (1) the development of professional practice and (2) the development of a professional organization. This short process might be called "from idea to professional service". It included aspects such as solving diverse legal matters, capacity

management, human potentials, infrastructure, partnerships, evaluation, stakeholders and communication issues.

The key year was 2009 when the first ever Probation Act was passed in Croatian Parliament. Unfortunately, not all other aspect were ready for a start of a probation service so “the theory and practice” were timely separated for a short period of time. During 2010, by-laws were prepared, infrastructure was organized (finding venues for probation offices, preparing offices) and we were conducting tenders for “future” probation officers.

So, the first Probation Act in Croatia was enacted in 2009 and the first probation offices opened in 2011. At the same time offices were opened, in 2011, a series of trainings for probation officers was organized on a regular basis. Since the beginning of 2013, the professional probation service has been available to all citizens because all anticipated probation offices were opened by then. During the first few years of practice, it was noticed that Croatia needed a broader net of probation offices, so two new offices were opened in 2018. During the first years of its existence the Probation Service was separated from the Prison System. However, after 6 successful years of probation it was decided in 2017 to merge prison and probation under the same directorate in the Ministry – the Directorate for the Prison System and Probation and this is the current organization structure.

Regarding the law, after the first Probation Act in 2009, in 2013 a big change happened. There were new changes to the Criminal Code that gave jurisdiction to the Probation Service in more tasks. Following the changes in the Criminal Code, the new Probation Act was also prepared and enforced from the beginning of 2013. With this new jurisdiction Probation Service doubled the number of cases. Five years later, in 2018, again a new Probation Act entered into force. There was no “big news” with this third law. However, it was prepared to have legal background of all the situations that probation officers have had in the probation practice since the beginning of the work of the professional Probation Service in Croatia.

If we show the growth of the Probation Service in the Republic of Croatia like the building of a house, we can say that ground floor was first Probation Act in 2009, the main part of the house was infrastructural preparations in 2010, followed by preparation of all relevant by laws in 2011 and a new law in 2013. The upper part of this house is the merger with the prison system in 2017 and a new law and two new offices in 2018. The roof consists of all the challenges during 2020: Covid-19 and earthquakes in Croatia. Also, there is the plan for future development – steps forward into introducing electronic monitoring. Considering all above, we are proud that today the Probation Service in Croatia is recognized as a valued and important part of the Croatian criminal justice system.

Introducing new services had many challenges. In order to become a professional and valued part of criminal justice we had to gain trust and respect from other stakeholders and prepare the ground for good and smooth cooperation. We had to show that we bring added value and in order to do so, we had to have motivated probation officers. We had to be professional, and we had to enforce different tasks of supervision and help for offenders in organized infrastructure of the probation service from the beginning. Also, it is always important to show the effect of the Probation Service. In Croatia, the Probation Service received more than 35,000 cases, out of which 30,000 cases are completed, 89.5 per cent completed successfully. Verification of the effect of the Probation Service can also be measured by the statistics. Taking into account that in Croatia one of the goals was to lower

the number of prisoners, it is also important to see the ratio between prison and probation. During the beginning of the work of Probation Service back in 2011, the Probation service received 1,067 cases while there were 5,084 prisoners within the Prison System at the same time. In 2012 the Probation Service received 1,573 cases for enforcement, and there were 4,741 persons serving prison sentences. In 2013 the Probation Service received 3,304 cases. Over the next few years the number of cases was increasing in probation while the number of prisoners was decreasing: in 2014 the Probation Service received 3,618 cases and there were 3,763 prisoners; in 2015 the Probation Service received 3,911 cases and there were 3,306 prisoners, in 2016 the Probation Service received 4,147 cases and there were 3,079 prisoners. From 2017 the Probation Service stabilized the number of cases (3,544 in 2017; 4,211 in 2018; 3,825 in 2019) while the number of prisoners started slowly increasing (3,190 in 2017; 3,217 in 2018; 3,533 in 2019). The numbers show that the Sector for Probation has become an important partner in the criminal justice system, acknowledged and valued by judges, state attorneys, police and the prison system. Second, an important fact for the verification of the effect of the Probation Service is the financial benefit. One day for one offender on probation costs 1.5 Euro, while one day for one prisoner costs 55 Euro. On top of this, we must consider that 500,000 to 600,000 hours of community work are performed by offenders on probation every year. This unpaid work for the benefit of the community must be pointed out when evaluating the financial benefits of probation.

Probation Officers are civil servants, employees of the Ministry of Justice and Public Administration. Every local probation office (14 in total in Croatia) has a Chief of the Office, Probation Officers and administrative staff. Probation Officers hold a degree in law, psychology, social pedagogy, social work or pedagogy, and are authorized to perform probation tasks in accordance with the Probation Act. There is also a special training for a new employee when becoming a probation officer and there are many specific programmes to be trained after. The Central Office manages coordination and service development.

At this moment, we can say that Croatia has a Probation Service capable of delivering a wide range of high-quality services. All probation cases are managed through the Information System, an electronic database accessible by all employees via a web interface. The Information System is used as a registry of all persons supervised and as a management programme supporting administrative processes. At first, this was a Probation Service system only, but after the merger, we have a new information system for prison and probation. The new system will be in the future connected with other relevant national information systems (police, health system, prosecution, courts ...).

The Sector for Probation in Croatia supervises adult offenders only, and probation tasks are performed through the entire criminal process: from pre-trial to the post-release supervision. The Probation Service is a treatment service. Treatment work starts after final judgment of the competent court. The Probation Service controls the offender and provides help to the offender. Tasks include education, support, work on learned behaviour with the special alert regarding the family situation and personal circumstances. The key idea is for the offender to adopt non-violent forms of behaviour in order to have a safe community. This process is only possible if the Probation Service has excellent cooperation with courts, police, prison service, prosecutors, social services, health institutions, NGOs, universities and other relevant institutions.

Bearing in mind that the Probation Service is still a young service, it must promote itself. There must be different types of promotion for cooperating organizations and for the lay public.

Although the Probation Service in Croatia is now a well-established professional organization, it still uses all possibilities to grow and to get to know good practice from other countries. The financial and expert assistance of the EU has been important in the development of the Sector for Probation in the Republic of Croatia from the beginning and still is. Starting from 2019 the Croatian Probation Service started new projects from the European funds. We also started a partnership with Norway under the Norwegian financial mechanism, preparing the permanent introduction of the use of electronic monitoring in the criminal justice process as a new task of the Probation Service in the future. Projects are important for the growth of the service and help broaden ideas regarding the probation possibilities. Every new service should have contact with services from abroad in order to get good ideas and also to avoid mistakes.

Further development of the Croatian Probation Service should head in two directions: the strengthening of its internal capacities, stronger affiliation with other stakeholders and the expansion of the scope of the tasks it performs, as well as the advancement in executing existing tasks. Improvement of professional competencies is a continuous process, and we want to maintain a high standard of staff competence. Croatia wants the best probation service we can have and want to create a performance led culture which values quality and continuous improvement. The Croatian Probation Service has excellent results and knowledge in building new service, and we are willing to help all services in need.





# COMMUNITY APPROACHES THAT SUPPORT DESISTANCE: MEETING OF PURPOSE: THE CCPO AND THE SPECIAL TASKFORCE ON CHILDREN MATTERS – A KENYAN STORY

*Hon. Lady Justice Teresia Mumbua Matheka\**

## I. INTRODUCTION: THE GOOD LAW

*...RECOGNIZING that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding,*

*RECOGNIZING that the child, due to the needs of his physical and mental development requires particular care with regard to health, physical, mental, moral and social development and requires legal protection in conditions of freedom, dignity and security..., TAKING INTO CONSIDERATION the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child, CONSIDERING that the promotion and protection of the rights and welfare of the child also implies the performance of duties on the part of everyone...<sup>1</sup>*

The Kenyan Children Act<sup>2</sup> domesticates this Charter bringing home the requirement for legal protection while taking into consideration the unique and privileged position of the child. This calls for performance of duties by everyone to ensure the promotion and protection of the rights and welfare of the child. To achieve this the law requires that the best interests of the child shall be of primary consideration in all actions concerning the child undertaken by any person or authority.<sup>3</sup>

When it comes to the child in conflict with the law, the welfare of the child offender must be taken into consideration during trial and any detention must only be of the last recourse and for the shortest time.<sup>4,5</sup> Further, Article 17(3)<sup>6</sup> states that the essential aim of treatment of every child during trial and also if found guilty of infringing the penal law shall be his or her reformation, reintegration into his/her family and social rehabilitation.

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\* Judge, High Court of Kenya at Nakuru, Kenya.

<sup>1</sup> Preamble, African Charter on the Rights and Welfare of the Child.

<sup>2</sup> Act no 8 of 2001.

<sup>3</sup> Section 4 Children Act, Article 4 ACRWC.

<sup>4</sup> S. 187 Children Act *Consideration of welfare (1) Every court in dealing with a child who is brought before it shall have regard to the best interests of the child and shall, in a proper case, take steps for removing him from undesirable surroundings and for securing that proper provision be made for his maintenance, education and training.*

<sup>5</sup> Constitution of Kenya 2010, Article 53(1) Every child has the right: (f) not to be detained, except as a measure of last resort, and when detained, to be held— (i) for the shortest appropriate period of time; (2) A child's best interests are of paramount importance in every matter concerning the child.

<sup>6</sup> ACRWC.

## **II. FACING THE REALITY: SEEKING HOME GROWN SOLUTIONS**

Serving as a children Magistrate in the early years of the Children Act, the law and the reality on the ground were different. There was lack of awareness of its existence among the agencies that were required to implement it. This was because at that time the statute had to be printed at the Government Printer, purchased and distributed to the agencies. In addition, even when they became aware of the law, its implementation was a challenge. The law had created a complete paradigm shift in the manner in which children in contact or in conflict with the law were required to be treated.

There were challenges. Pre-trial detention was used as a form of punishment, cases were delaying in court, committal to rehabilitation school, and Borstal Institutions were first often choice despite there being a raft of non-custodial options. Children were still being held with adults in adult institutions, there was no collaboration among the agencies, inadequate referral systems, and reintegration programmes/post supervision and upon release from these institutions, there was no referral system, and use of social inquiry reports was limited. There was inadequate involvement of the family and community in follow-ups for child offenders in institutions. They carried a stigma which led to rejection upon release, and reoffending to enable return to their “safe” space. Some of these child offenders continued reoffending until they ended up in adult prison.

Under the new regime, cases were required to be finalized within 3 to 6 months and Social Inquiry Reports were required as a mandatory prerequisite to orders regarding the child. Institutionalization of child offenders was discouraged as first line of treatment, the consideration of the welfare and the best interests of the child offender at all stages of the criminal trial from arrest to post-trial supervision required the involvement of the family and the community, making the use of social inquiry reports inevitable. New forms of treatment like counselling required bringing on board new stakeholders.

To breathe life into this law, and to create the requisite visible, accessible juvenile justice system required the creating of awareness of the law and its new approach (knowledge), the procedure of its implementation and the how to (skills). There was also the important question of the “why” of the law to address the need for a complete attitude change towards child offenders. This required the understanding of who a child was under the new regime and why it was necessary to treat them differently.

This realization led me as the Children Magistrate in Nakuru at the time to create the Child Protection Team, a multi-agency team made up of the key stakeholders in the juvenile justice system. It consisted of the police, who held the tripartite roles of the arresting, investigating and prosecuting officers, the Departments of Children and Protection & After Care Services, the Prisons, because they ran remand homes (before the new law) and the Borstal Institutions, and were holding youthful serious offenders, the Rift Valley Law society, because they were providing pro bono legal services to child offenders, the Charitable Children Institutions to whom we sent child victims for shelter, care and protection.

The Child Protection Team became the focus group for creating awareness on the new law<sup>7</sup>, the why and how of its implementation. of sharing the status of the children in the system within the jurisdiction of the children court, statistics,<sup>8</sup> how long cases took, the adherence to the standards set by the law in handling child offenders and the need to ensure that offenders were not kept together with adults, advocating for separate cells within police stations, for the child offenders who were arrested and had to spend time at the police station. The CPT met monthly, and the main goal was to collaborate so as to expedite the case to prevent the contamination by serious offenders held at the police stations, and even the remand homes, while at the same safeguarding their welfare through the use of Social Inquiry Reports to enable return to home or school or other placement, on for instance, some form of supervision.

This worked very well in my jurisdiction, and a juvenile justice system began to emerge that was based on the best interests of the child and welfare of the child offender.

It was while doing this that I was selected to join the Country Focused Delinquent Treatment Systems training at UNAFEI.

Prior to this I had attended local workshops that tried to address the gaps in knowledge, skills and attitude in the implementation of the new law.

The training at UNAFEI was mounted by the Government of Kenya in collaboration Government of Japan through JICA and UNAFEI. Teams of officers from the five key Juvenile Justice Agencies (JJAs)<sup>9</sup> attended the one-month training and were expected to implement what they learned when they returned.

In 2009 the idea was born that there was need to bring this training home so as to include more officers and hence increase the impact.

Professors from UNAFEI conducted Training Needs Assessment, from the five JJAs, from whom a team was selected to come up with a curriculum and training manuals. The Child Care and Protection Officers Capacity (CCPO) Building Curriculum was developed and launched. A team of Training of Trainers (TOTs) was trained, and a National Implementation Team was put in place. There were five thematic areas:

- Procedures in juvenile justice;
- Case management;
- Rehabilitation/treatment;
- Support networking;
- Ethics, self-care, responsibility and quality assurance.

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<sup>7</sup> For instance, because of lack of availability of the Act to Police Stations, we made copies of the relevant Rules and distributed them to the officers in charge of the stations. It made it easier to hold them to account if they violated the same. Eg the requirement to release the parent child on police bond instead of detaining the child.

<sup>8</sup> E.g. how many children were in the Remand home, how long they had been there, how many cases for review of bond terms, how many child offenders in transit to rehabilitation schools and Borstal Institutions, how many children in adult prisons? (And it was important to find solutions.)

<sup>9</sup> Judiciary, Police, Department of Children Services, Probation and After Care Services, Prison Services.

The training required that Magistrates, Police, Children, Probation and Prison Officers sit in the same class and learn from the same curriculum. It was four pronged: theory, the drawing of work plans, followed by the practicum in teams and supervision.

### **Impact of training**

- ✓ Broke down the bureaucratic barriers
- ✓ Made all officers realize that at any one stage they were dealing with the same child, and there was need to have same standards.
- ✓ Enhanced knowledge, skills, and attitude change towards child offenders
- ✓ Use of Social/Reports involvement of family and community
- ✓ Development and use of treatment plans, exit strategies for institutions
- ✓ Expeditious disposal of cases
- ✓ Enhanced collaboration through the CPTs and development of support networks
- ✓ Development and strengthening of referral systems
- ✓ Post-institutional supervision,
- ✓ The development of Through Care Guidelines
- ✓ Overall better service delivery for children

## **III. CHALLENGES AND MORE HOME-GROWN RESOLUTIONS**

The pilot training took place in 2010. In 2015 the CCPO project came to an end due to funding problems. There was also the need to review the curriculum after the 2010 Constitution. The new Constitution brought changes to the Children Act. The rights of the child were now protected in the Constitution.<sup>10</sup> There were new institutions as well. One of them was the National Council on the Administration of Justice<sup>11</sup> chaired by the Hon, the Chief Justice.

One of the mandates of the NCAJ was to ensure the establishment of Court User Committees in all the courts across the country. For clarity, these CUCs are modelled on the CPT where the specific users of that court come together to deal with issues related to that court; hence, they are not intended for children courts only but for the whole court, The Magistrates Courts, the High Court at various stations in the country. Now we have court user committees for even the specialized courts: Family, Criminal and Commercial Divisions at the High Court at Nairobi, Environment and Land, Employment and Labour courts.

At the same time the number of new officers entering the system from all the JJAs had increased. The police set up changed. There was now the Directorate of Public Prosecutions, and the Directorate of Criminal Investigations. The juvenile justice system had changed. There was need to regroup and retrain as things were falling back to the bad old days.

The Judiciary saw the need to take stock. In 2016, the then Chief Justice the Hon. Justice Willy Mutunga as the Chairperson of the (NCAJ) appointed the *Special Task Force on*

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<sup>10</sup> Article 53.

<sup>11</sup> The National Council on the Administration of Justice (NCAJ) is established under Section 34 of the Judicial Service Act (No. 1 of 2011). It is a high-level policymaking, implementation and oversight coordinating mechanism as reflected in its membership comprising State and Non-State Actors from the justice sector.

*Children Matters (the TF)* headed by the Hon Lady Justice Martha Koome, judge of the Court of Appeal. The TF had 16 Terms of Reference which included:

- ✓ Review of the status of the child in the administration of justice
- ✓ Review the laws, policies etc. on administration of juvenile justice
- ✓ Development of training policy and review of the curriculum for persons who handle children in the justice system.

The Task Force completed most of its work by 20 November 2019 and launched in its report<sup>12</sup> on its findings and recommendations to reform the Juvenile Justice System. The Task Force did not just make recommendations.

1. Entrenched and strengthened Children Court Users Committees which are styled on the model of the Child Protection Team. These CCCUCs were the focus for the research on the status of the child in the administration of justice within the Jurisdiction of the Children Courts where the TF visited.
2. The CCCUCs were also trained on the rights of the child in an effort to address the knowledge skills and attitude gap in the implementation of the Children Act.
3. The CCCUCs were the drivers for the reduction of case backlog of children cases through the Service Weeks<sup>13</sup> established by the TF. During Service Weeks there is training of the stakeholders, counselling of the children in contact /conflict with the law, discussions with the community on the rights of the child, and the emphasis on prevention of juvenile delinquency, public *barazas* with members of the public, their local leaders, and members of the TF of service delivery for children in the justice system within the jurisdiction being visited. In view of the vast diversity of cultures, traditions, social, economic situations and challenges in the implementation of the Children Act across the country, local solutions to issues are sought for ease of implementation by the local CCUC. There is emphasis on the use of non-custodial measures and rehabilitation, the reintegration of child offenders back into the community.
4. Visited Children Institutions and caused immediate changes in those that were not abiding by the new law
5. Reviewed the Children Bill 2020 and together with other stakeholders pushed for its legislation. It was passed by the cabinet on 25 February 2021 and forwarded to Parliament. The new law seeks to establish the juvenile/child justice system, raises the age of criminal liability from 8 to 12 years, entrenches the multi-agency framework (the CCCUs), and non-custodial modes of dealing with children- diversion, plea bargaining and ADR among others.
6. Developed a policy on training. Adopted and reviewed with the help of UNAFEI and JICA the CCPO training curriculum and launched it on 17 February 2021. This is key because the CCPO programme found a home under the NCAJ ensuring that it will be implemented by the JJAs.

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<sup>12</sup> <<https://ncaj.go.ke/wp-content/uploads/2019/11/NCAJ-Report-Digital-Version.pdf>>.

<sup>13</sup> Service Weeks are weeks set aside in the court calendar when the courts and the stakeholders concentrate on children's cases.

7. Developed guidelines for Children Courts
8. Developed guidelines for JJAs during the Covid-19 pandemic to ensure access to justice for children
9. Sourced laptops and internet connectivity for the remand homes so as to ensure that cases for children in custody could still be heard during the pandemic.

#### **IV. WHAT DOES ALL THIS HAVE TO WITH COMMUNITY APPROACHES THAT SUPPORT DESITANCE?**

1. It takes a village to raise a child,<sup>14</sup> and *asiyefunzwa na mamaye hufunzwa na ulimwengu*.<sup>15</sup> We also say that it is the sapling stage of a tree that is flexible otherwise it breaks. The CCCUCs are one way of bringing the village into the juvenile justice system to re-create the social support system that came with the village and has been taken away by both urbanization and the formal legal system.
2. The involvement of the family and the community is at the centre of prevention against both the offending and reoffending by children. Through the CCCUC there is emphasis on the responsibilities of the authorized officers: the chiefs, the children and police officers; the collaboration of teachers and community leaders.
3. The membership of that CCCUC must have the requisite knowledge, skills and attitude to be able to raise the children who come through the system; there must be standards and levels of accountability, hence the need for training.
4. The CCCUs form a safety net for the child who comes into the system, and for the one who is outside it to protect them from entry into the system where possible. This is through the referral systems, collaboration and networking.
5. The CCPOs are a core team of well-trained officers who are found within and across the JJAs. Among them are TOTs. They provide necessary guidance, training and support where necessary. They are members of the TF, CCCUs across the country. They occupy various positions in government as judges, magistrates, police, prison and probation officers. They are a network among themselves and take every opportunity to provide input on the improvement of the juvenile justice system. They will definitely be playing a major role in the new changes from our various positions.
6. So the future is here for the Kenyan child. With the above in place, the recommendations of the TF, and the implementation of the same, the New Children Act on the way, the new training policy and CCPO curriculum, we should find ourselves with few or no reoffending cases.
7. Thank you UNAFEI for this opportunity to share a bit of the Kenyan story on how networking and collaboration can change things for child offenders.

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<sup>14</sup> African Proverb.

<sup>15</sup> The Swahili Proverb, *He who is not raised/ trained/ taught by the mother will be taught by the rest of the world*, is used for those persons who either refuse parental training or do not get it and end up in trouble.

# KATARUNGAN PAMBARANGAY (VILLAGE JUSTICE) – THE SOUL OF THE PPA’S INDIVIDUALIZED, COMMUNITY-BASED RESTORATIVE JUSTICE PROGRAMME

*Dr. Manuel Goloso Co\**

## I. DEFINITION OF TERMS

1. **Restorative Justice** is a process through which remorseful offenders accept responsibility for their misconduct to those injured and the community that, in response allows the reintegration of the offender into the said community. It creates obligation to make things right through proactive involvement of victims, ownership of the offender of the crime, and the community in search for solutions which promote repair, reconciliation, reempowerment, and reassurance.
2. **Restorative Justice Programme** means any programme that utilizes restorative processes or aims to achieve restorative outcomes.
3. **Restorative Process** means any process in which the victim, the offender, and/or any individual or community members affected by a crime actively participate together in the resolution of matters resulting from the crime or offence, often with the help of a fair and impartial third party.
4. **Restorative Outcome** means any agreement obtained as a product of a restorative justice process.
5. **Restitution** is a process upon which the offenders accept accountability for the financial and/or non-financial losses they have caused to the victim.
6. **Community Work Service** is work performed without compensation by an offender for the benefit of the community as a formal or informal sanction.
7. **Parties or Stakeholders** mean the victim, the offender and the community affected by a crime that may be involved in a restorative justice process.
8. **Facilitator** is a third party who is fair, honest and impartial, whose role is to facilitate the restorative processes.
9. **Victims** are those who are directly injured or affected by the crime committed.
10. **Community** is a stakeholder who is indirectly injured or affected by the crime committed.

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\* CESO I, Former Administrator of the Parole and Probation Administration; Former Member of the Board of Pardons and Parole; President, Integrated Correctional Association of the Philippines; President, Crime Prevention Practitioners Association of the Philippines (ACPF Philippine Chapter).

11. **Offenders** are clients of the Parole and Probation Administration who were granted probation, parole or conditional pardon.
12. **Mediation** is a voluntarily process facilitated by a Mediator, with conformity to achieve voluntary agreement through communication and negotiation regarding the dispute.
13. **Conciliation** a process facilitated by an impartial conciliation to act as intermediary to open the line of communication between disputing parties with the objective to resolve their disputes.
14. **Arbitration** is a voluntary dispute resolution process facilitated by one or more arbitrators, appointed in accordance with the agreement of parties or rules promulgated pursuant to law, resolve a dispute by rendering award (Section 3(d)) RA 9285.
15. **Complainant** is a party filing complaint before the Lupon or Pangkat.
16. **Respondent** is a party being complaint before the Lupon or Pangkat.
17. **Katarungan Pambarangay** is a system of justice administered at the village level for the purpose of amicable settling of disputes through mediation, conciliation or arbitration without resorting to Courts of Law.

## II. INTRODUCTION

The development of criminal justice is a clamour of society to achieve public justice. Public Justice is the forerunner of punishing law violators by depending on prison as a way of dispensing justice. In the past, private justice is characterized as a private vengeance, and which assume that prison is less punitive and more humane. In reality, private justice, in broader context is not necessarily private, and does not necessarily involve vengeance. This, however, contributes to explore other ways of dispensing justice and now the development of private restorative justice. Private in the sense that persons affected by the impact of crime decided to meet together, voluntarily and actively participate in the resolution of their differences.

## III. PRISON AND HUMAN RIGHTS

A basic postulate which is almost always present in all fundamental laws of every state is that “No person shall be deprived of life, liberty or property without due process of law or be denied the equal protection of law.”<sup>1</sup>

As defined in the Criminal Justice System, Philippine Criminal Law is a branch or division of law which defines crimes, treats of their natures and provides for their punishments (12 Cys.129).<sup>2</sup>

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<sup>1</sup> Philippine Constitution of 1987, Article III.

<sup>2</sup> The Revised Penal Code, Criminal law, Book I by Luis B. Reyes, Article I, 19th edition, 2017, page 1.



By definition, criminal law is a product of a Classical School of thought established to protect the society through the imposition of a State standard punishment anchored on retribution or punitive justice. The idea of retributive justice, in the words of Justice Melecio-Herrera, rests on some dubious, interesting and intriguing assumptions.<sup>3</sup> First, Justice can be done by making the offender worse off (though imprisonment or execution); Second, there is a reasonable manner of determining the “just dessert” of criminal conduct in terms of prison sentences; and Third, the issue of justice is addressed by evaluating past event (crime committed). The focus therefore is on individual guilt and guilt is what justifies punishment. The victim, the raptured public order, the offence, all these recede to oblivion while the full attention is on the “just dessert” that the criminal deserves.

Deprivation of liberty, as a penalty is a costly intervention, and has a lot of added dehumanizing effects. In our country, prisoners are forced to survive under the worst conditions. The requirement of minimum standards for the treatment of prisoners are completely not observed, and the effects:

1. Congestion in confinement facilities aggravated by subhuman conditions due to inadequate supplies and services;
2. Lack of rehabilitation and intervention programmes to help prisoners improve or acquire social, economic and other life skills in preparation for their rejoining society;
3. Reported human rights violations;
4. Failure to provide adequate facilities and services to prisoners differently able and with special needs;
5. Unfair/unequal treatment of prisoners tilting to favour influential and prominent personalities deprived of liberty;
6. Jail/prison disturbances ushered by the existence of underworld organizations and other syndicates;
7. Absence of an effective reintegration programme for released offenders, particularly those who have been discharged from prison after completely serving their sentences;
8. Failure of administration of justice as private offended parties are unable to be compensated for their damages; and
9. The community or the raptured social fabric issues and problems are not appropriately handled and therefore unresolved.

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<sup>3</sup> The Criminal law Context of Restorative Justice by Justice Ameurfina Melecio-Herrera, published in *the CBCP ECPPC Pagkalinga 25 years of Prison Pastor core 1975-2000*.

#### IV. ALTERNATIVE WAY OF JUSTICE

An Act of Providing For A Local Government Act of 1991, specifically chapter 7, Section 399 to 442,<sup>4</sup> provides the landscape of Katarungan Pambarangay (Barangay Justice). It paved the way to establish a means a settling of disputes in the village level and lessening the caseloads of the Courts and other Agencies in the Justice System.

The Philippine Society is described as a highly personal and intimate community of “interrelated persons” of which the present political unit is structured. The most dominant characteristic of Philippine Society is the encompassing influence of close personal relations upon almost any conceivable human dealings or transaction.<sup>5</sup> With that, since crime or conflict happen in the context of the intricate web of personal relationships, adversarial and retributive conflict resolution methods such as litigation are usually not suitable.

In an association of people, what controls them is the degree of connectedness; of relationship, anchored on common and shared interest and a sense of connection based on that shared interest. These bonds of common feelings constitute “communitarian existence.”<sup>6</sup>

When a crime or conflict is committed in a community, the assumption is that three (3) relationships are disturbed:

1. Relationship between victim and the offender;
2. Relationship between offender and the community; and sometimes
3. Relationship between the victim and the community.

The three stakeholders are affected by the impact of crime or conflict, and relationship is disturbed, and deserve to be addressed appropriately. The offender should be accountable to rectify/correct a wrong committed and restitute whatever damages are inflicted (Accountability).<sup>7</sup> The victim deserves to be compensated and be empowered again (Competency Development). The community deserves an orderly and peaceful society (public safety).

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<sup>4</sup> *Presidential Decree No. 1508, The Katarungan Pambarangay Law of the Philippines, promulgated in June 1978, and further amended by Republic Act No. 7160, An Act of Providing For A Local Government Act of 1991, Chapter 7, Section 399 to 442.*

<sup>5</sup> *Pe, C and Tadiar, A (1982), (Ecls) International Survey of Conciliation system, Sosmena, J 88 APOM Papers at 291. Cited in the Barnes Paogram or conlict Resolution Working Papers.*

<sup>6</sup> *National Institute of Correction, US Department of Justice: Restorative Justice Principles, Practices and Implementations (1983), a Resource for state and local corrections*

<sup>7</sup> *An assessment of the Implementation of PPA’s Restorative Justice Program in the Parole and Probation Administration Offices of Bataan Province, Sta. Rosa City and Baguio City submitted to the National Defense College of the Philippines, by Manuel G. Co, page 33.*

## **V. KATARUNGAN PAMBARANGAY (KP) – ASCENDANT OF DOJ-PPA RESTORATIVE JUSTICE**

The KP System (Village Justice) was institutionalized under Presidential Decree No. 1508, which took effect on 30 December 1978.<sup>8</sup> Its real intent is to recognize the cultural heritage of the Filipinos, where differences among people are not resolved through a formal or adversarial manner, but by means of an effective problem-solving mechanism of negotiation, mediation or conciliation. This is a time-honoured tradition of the Filipino people rooted on our historical background.<sup>9</sup> The essential objective is to achieve a peaceful and harmonious resolution of conflicts anchored on Filipino values which we treasured most like: *pakikisama* (community spirit); *Utang na Loob* (debt of gratitude) and kinship. In addition, relevant values such as *pakikipagkapwa-tao* (human relation), *pakikiisa* (unifying spirit), generosity and helpfulness, love and caring, respect, strong family and community ties, and other sets of values that a majority of Filipinos endeavour most in their lives.

## **VI. LUPON-TAGAPAMAYAPA-KATARUNGAN PAMBARANGAY (VILLAGE JUSTICE)**

A system of settling disputes or differences operating in all barangays in the country with the objective to promote, among others, the speedy and effective administration of justice, by laying the ways to amicably resolve personal and family differences among barangay members which considerably reduced the bloating of court dockets.

The Katarungan Pambarangay is put to flesh by a “Lupon Tagapamayapa” to solve disputes within the village level before going to court. It consists of 10 to 20 members in the Barangay and chaired by the Barangay Chairman (Village Chief). The Members of the Lupon shall possess the following qualifications: Residing or working within the village; possess integrity; impartiality; independence of mind; sense of fairness; reputation; and not disqualified by law.

If there are matters involving questions of law, the provincial, city legal officer or the municipal legal officer or prosecutor shall provide legal advice on matters of questions of law whenever necessary.

The Lupon of each barangay has the power to settle disputes with the following exceptions:

1. Where one party is the government or any subdivision or corporate body;
2. Where one party is a public officer or employee, and the disputes relate to the performance of official functions;
3. Offences where there is no private offended party;

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<sup>8</sup> A Guide to the Katarungan Pambarangay System by: Atty. Gregorio Austral, Philippine Center for Civic Education and Austral Democracy.

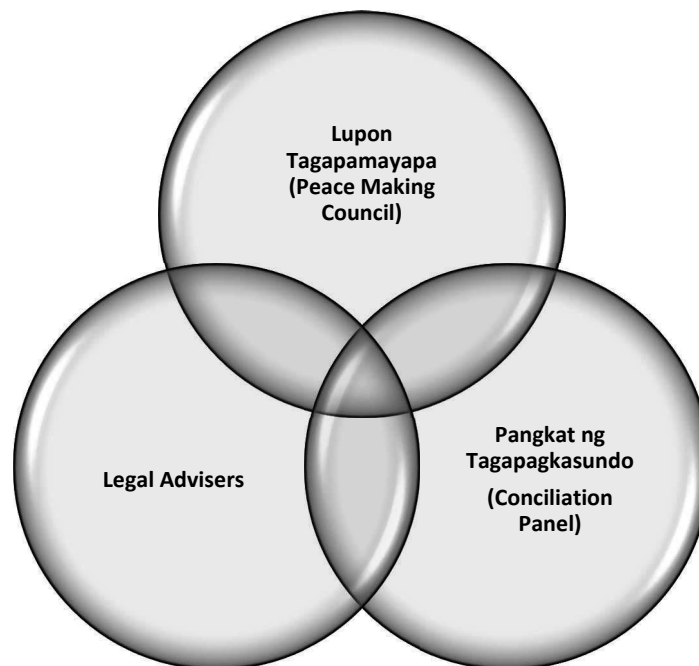
<sup>9</sup> <<https://owllcatron.com/social-services>>.

4. Offences punishable by imprisonment of more than one (1) year or a fine of Five Thousand Pesos (P 5,000.00);
5. Where conflict involves real property located in different cities or municipalities unless the parties agree to submit their differences to the settlement by the Lupon;
6. Conflict involving parties who actually reside in Barangays (Village) of different cities or municipalities, except where Barangay (Village) units adjoin each other and the Parties agree to submit their differences; and
7. Such other classes of disputes which the President may determine in the interest of Justice or upon recommendation of the Secretary of Justice.

**A. The Three Components of KP<sup>10</sup>**

1. Lupon Tagapamayapa
2. Pangkat ng Tagapagsundo
3. Legal Advisers

**Components of Katarungan Pambarangay<sup>11</sup>**



**B. Pangkat ng Tagapagkasundo (Conciliation Panel)**

It is a panel composed of three (3) members who are chosen by the parties to the dispute from the list of the members of the Lupon (Council). In case the parties fail to agree on the pangkat membership, the same shall be determined by lots drawn upon by the Lupon Chairman.

<sup>10</sup> <<http://zabalketa.org>>upload>Guideto theKCP2016/02Zalbaketa>.

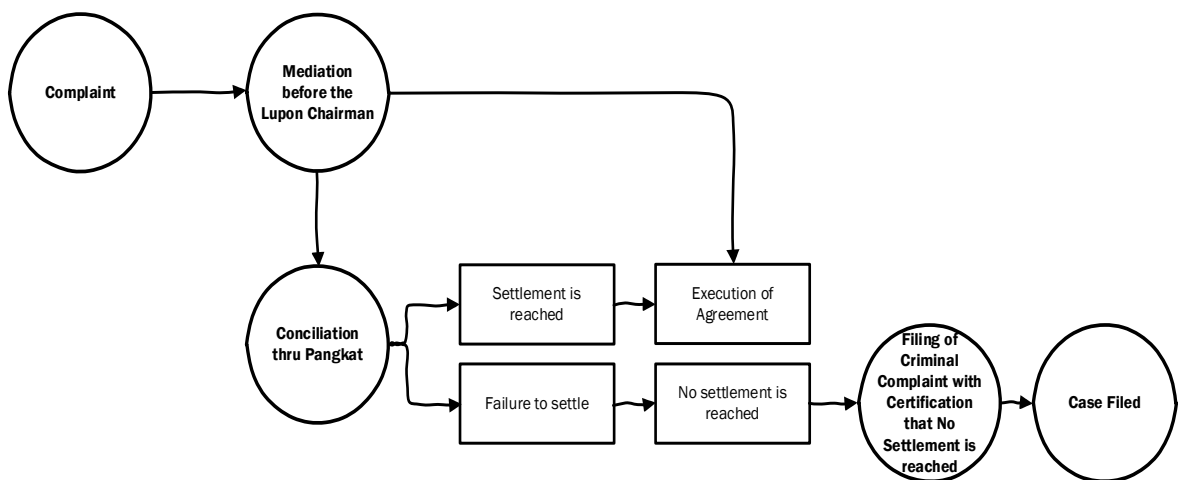
<sup>11</sup> <[Zabalketa.org](http://Zabalketa.org)>2016>02>Gu, Chapter 2, A guide to the Katarungan Pambarangay, by Atty. Gregorio Austral, Philippine Center for Civic Education and Democracy page 6.

### C. Who Is Disqualified from Membership in the Pangkat

1. Relationship
2. Bias
3. Interest
4. Any other similar ground

### D. Lupon/Pangkat Authority

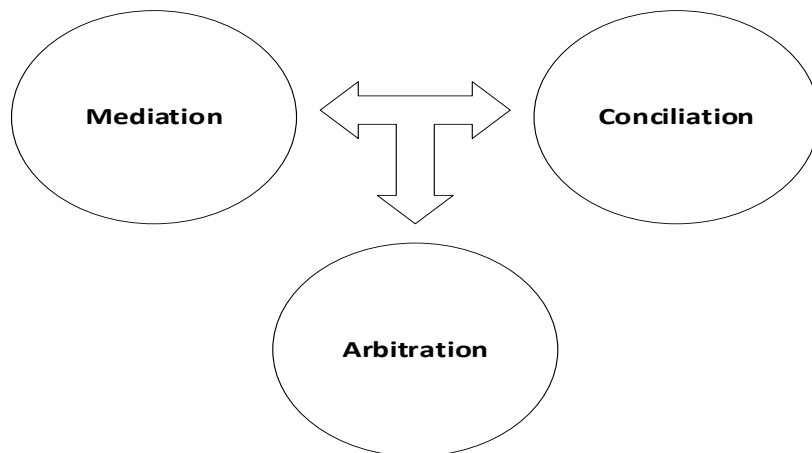
Basically, the Lupon and the Pangkat have no power to punish parties and their witnesses for contempt as it is only an inherent power of the Courts of Law.<sup>12</sup> However, the Lupon and the Pangkat, may file an application to cite any party or witness who refuses to appear without justifiable reason to cite uncooperative personalities for indirect contempt before a Court of Law. If found guilty, the person cited may be fined not exceeding Five Thousand Pesos (P 5,000.00) or imprisonment not exceeding one (1) month, or both.



### E. Stages of KP

The Katarungan Pambarangay (KP) has three stages as shown below<sup>13</sup>:

1. Mediation
2. Conciliation
3. Arbitration



<sup>12</sup> Zabalketa.org>2016>02>Gu, Chapter 4, Chapter 2, A guide to the Katarungan Pambarangay, by Atty. Gregorio Austral, Philippine Center for Civic Education and Democracy page 39.

<sup>13</sup> A Dissertation entitled "The Barangay Justice System in the Philippines: Is it an Effective Alternative to Improve Access to Justice for Disadvantaged People?" Silvia Sanz – Ramos Rojo, September 2002.

#### **F. Pre-Condition to Filing of Complaint Before the Court of Law**

Katarungan Pambarangay is not a Court of Law as duly recognized by the Constitution.<sup>14</sup> It is an innovation of the Philippine Justice System to usher the resolution of disputes at the Barangay (Village) level to achieve peace and harmony and likewise to be an accessible and effective form of achieving justice without resorting to adversarial proceedings.

#### **G. Consequences of Non-Appearance**

Upon the non-appearance of the complainant, the Lupon may dismiss the complaint and its dismissal shall bar the complainant from seeking any judicial recourse for the same cause of action.<sup>15</sup> On the other hand, the non-appearance of the respondent may bar the respondent from invoking counterclaims caused by or necessarily connected with the action filed by complaining party and, if invoked, may be dismissed. Its dismissal shall bar the subject respondent from filing a counterclaim in court. Likewise, unreasonable non-appearance may be a ground for issuance of a certification to file action and as consequence wilful failure or refusal may be a ground for citation for indirect contempt of court.

### **VII. BASIS OF RESTORATIVE JUSTICE IN THE PPA**

The United Nations Commission on Crime Prevention and Criminal Justice (ECOSOC) through draft Resolution recommended to the UN Economic and Social Council the adoptions of the “Basic Principles on the Restorative Justice Programme in Criminal Matters.”<sup>16</sup> The said document is a formulation of UN standards in the field of mediation and restorative justice. The Philippines being a signatory, ensured the adoption of this resolution in its law and procedures.

In the Philippines, the restorative paradigm become an alternative mode of settling disputes in all areas of legal, political, economic, environmental, social and even in administrative proceedings.<sup>17</sup> In a post-conviction, the Parole and Probation Administration (PPA) adapted restorative justice as a way to reintegrate offenders by reconciling with the victim and the community, and the opportunity to make things right.

Restorative Justice is founded on four (4) key values<sup>18</sup>:

1. Encounter: Create opportunities for victims, offenders, and the community members who voluntarily decide to meet together and discuss the crime and its aftermath;
2. Amends: Expect offenders to admit accountability and take steps to repair harm they have caused;

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<sup>14</sup> <<http://www.unafei.or.jp>>topic3>.

<sup>15</sup> Zabalketa.org>2016>02>Gu, Chapter 4, A guide to the Katarungan Pambarangay, by Atty. Gregorio Austral, Philippine Center for Civic Education and Democracy page 40.

<sup>16</sup> ECOSOC Resolution 2000/14, UNODC.E/2000/INF/ADD.2at35(2000)teoppo

<sup>17</sup> *An Assessment of the Implementation of PPA's RJ Program in the Parole and Probation Offices of Bataan Province, Sta Rosa City and Baguio City* (2008).

<sup>18</sup> “Working For Justice That Heals (2006)” A Source Book of Prison Ministry, Published by the Catholic Bishop Conference of the Philippines-Episcopal Commission on Prison Pastoral Care (CBCP-ECPPC) (Source: Daniel Vann Noss).

3. Reintegration: Seek to restore victims and offenders as a whole and help them become contributing members of society; and
4. Inclusion: Provide opportunities for parties with a stake in a specific crime to participate.

#### **A. Supervision and Treatment Components**

The Parole and Probation System (DOJ-PPA) is a line-bureau type of organization established under the Department of Justice in the Philippines. In carrying out its mandate, the Administration is organized into sixteen (16) Regional Offices, and as of December 2019, it has 227 City and Provincial Field Offices strategically located all over the Philippine Archipelago.

The Agency twin-concepts of corrections such as way to alternative treatment of offenders through probation or suspended sentence or as a re-entry intervention like parole and pardon with parole conditions, are the significant mandate of the Agency. The central goals of community corrections is to enhance the safety of the State and its citizens by preventing reoffending of offenders and making them productive and law-abiding citizens.

The “flesh and bone” of the community-based correction of offenders is its treatment intervention. The Agency adapted a three (3) pronged approach in the treatment of offenders with Restorative Justice as its philosophical foundation, Therapeutic Community Ladderized Program as its major treatment modality, and volunteer mobilization as its lead community resources.

#### **B. Restorative Justice**

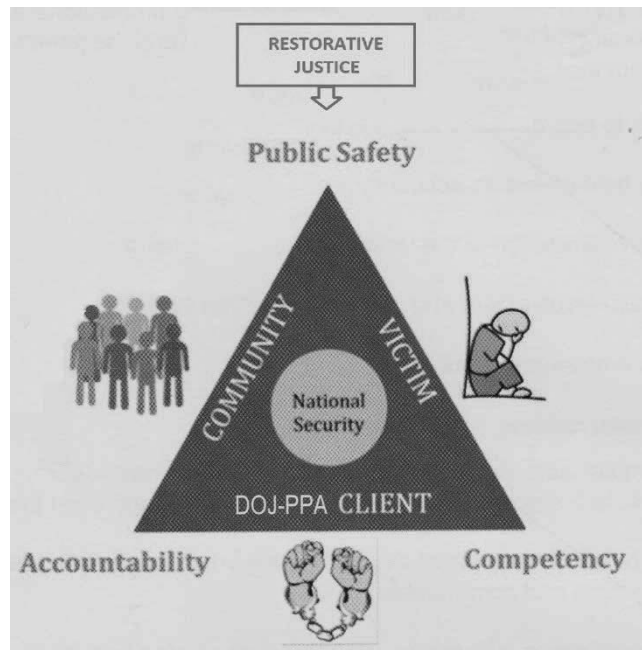
My discussion will just centre on Restorative Justice as the philosophical foundation of the Agency in reconnecting and integrating offenders into the mainstream of the community.

The Agency’s Restorative Justice programme treats crime as a violation of people and right relationships. It creates an obligation “to make things right and to right the wrong” committed through proactive involvement of victims, ownership of crime by the offender, and the participation of people in the barangay (Village) as community resource.

With this, the Agency Restorative Justice programme is inspired by the Katarungan Pambarangay (KP) or Village Justice. The intervention is to elevate or allow the important participation of the victims and the community leaders and members through their more active involvement in the justice process, holding the offender directly accountable to the people and providing a range of opportunities for dialogue, negotiation and problem solving, which can lead to a greater sense of community safety, social harmony and peace for all.

RJ in the heart of the Agency mandate anchored on Communitarian Spirit of Justice and sense of Community relation to address the disturbed relationship as it hurts people and their connections with each other.

By way of illustration, please see below:



Crime or conflict hurts people and relationships. The three stakeholders are disturbed by the impact of crime or conflict; therefore, their relationship is affected, and they deserve the end-goals of restorative justice. The client-offender should be accountable to correct his or her mistake, and retribute whatever damages were inflicted (accountability). The victim has to be compensated and be empowered again (competency development). The community and its inhabitants deserve an orderly and peaceful society (public safety).

The DOJ-PPA's role, through its provincial and City Field Offices, is very vital in the implementation of the RJ programme with respect to its clientele who are in the process of supervised rehabilitation and reintegration. The RJ programme, which has implications on the total efforts in the rehabilitation and reintegration of offenders, has vital national consequence on the evolving issues of human rights and social justice. These offenders, if not properly managed, and if the appropriate treatment is not implemented, certainly have an impact on national security.

Restorative justice emphasizes the importance of elevating the role of the victims and the community members through more active involvement in the justice process, holding offenders directly accountable to the people they have violated and providing a range of opportunities for dialogue, negotiations, and problem solving, which can lead to a greater sense of community safety, social harmony and peace for all.

#### 1. Three (3) Fundamental Principles of Restorative Justice

Crime is more than law breaking:

- i. therefore, victims, offenders and the affected communities should have opportunities for active involvement in the justice process as early and fully as possible;
- ii. justice therefore, requires that all stakeholders should work to heal victims, offenders, and the communities who have been affected;



- iii. therefore, we must rethink the relative roles and responsibilities of the government and the community. In broad terms, in promoting justice, government is responsible for preserving just order, and the community for establishing just peace.

## 2. The Basic Elements of Restorative Justice

- Encounter: Create opportunities for victims, offenders and the community members who want to meet and discuss the crime and its aftermath;
- Amends: Expect offenders to take steps to repair harm they have caused to their victims;
- Reintegration: Seek to restore victims and offenders as a whole and help them become contributing members of society; and
- Inclusion: Provide opportunities for parties with a stake in a specific crime to participate in the resolution.

## 3. The Goals of Restorative Justice

- Exert effort to appropriately respond to the victim's harm;
- Accordingly hold offenders accountable;
- Reduce the revictimization;
- Improve active involvement and cooperation of victims; and
- Protect and empower victims.

## 4. The Benefits of Restorative Justice

- It views criminal acts more comprehensively: rather than defining crime only as lawbreaking, it recognizes that offenders harm victims, communities and even themselves;
- It involves more parties: rather than giving key roles only to government and the offender it includes victims and communities as well;
- It measures success differently: rather than measuring how much punishment has been inflicted, it measures how much harm has been repaired or prevented;
- It recognizes the importance of community involvement and initiative in responding to and reducing crime, rather than leaving the problem of crime to the government alone.

## 5. The Objectives of Restorative Justice

- To proactively involve the community to support and assist in the rehabilitation of victims and offenders;
- To attend to the needs of the victims, survivors and other persons impacted by the crime as vital participating stakeholders in the criminal justice system, rather than mere objects or passive recipients of service or intervention that may be unwanted, inappropriate or ineffective;
- To reintegrate offenders to the social mainstream and to encourage them to assume active responsibility for the injuries inflicted on the victims and the community;
- To ultimately heal the effects of the crime or wrongdoing suffered by the respective stakeholders; and
- To prevent further commission of crime and delinquency.

## 6. Comparison of Retributive and Restorative Justice

<b>RETRIBUTIVE JUSTICE</b>	<b>RESTORATIVE JUSTICE</b>
<b>State and Community</b>	
Crime is an act against the State; a violation of law; an abstract idea.	Crime is an act against an individual person and/or the community
Control of crime lies in the criminal justice system	Control lies in the community
Community is peripheral as represented by the State through the court, prosecution and defence attorney	Community as a facilitator in the restorative process
<b>Offender and Victim</b>	
Reliance on justice professionals	Direct participation by the stakeholders
Victims are peripheral to the process	Victims are central to the process of resolving a crime
Focus on establishing guilt and the law violated by looking at the past (Did he/she do it?)	Focus on problem solving regarding liabilities/obligations by looking to the future (What should be done?)
Response to address offender's past	Response to address harmful consequences of offender's behaviour; emphasis on the future
<b>Relationship</b>	
Emphasis on adversarial relationship (win-loss)	Emphasis on dialogue and negotiation (win-win)
<b>Accountability</b>	

Crime is an individual act with individual responsibility	Crime has both individual and social dimensions of responsibility
Offender accountability is defined as taking punishment.	Accountability is defined as assuming responsibility and taking action to repair the harm.
Punishment is effective; threat of punishment deters crime; punishment changes behaviour.	Punishment alone is not effective in changing behaviour and is disruptive to community harmony and good relationships.

## **VIII. VICTIMS OF CRIME**

### **A. Victimology**

Victimology is the scientific study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system – the police, prosecution, court and corrections services – and the connections between victims and the other social groups and institutions. In RJ, no such classification of victimless crime is acceptable, because all crimes have direct or indirect victims and even the offender is also in broad terms considered a victim.

In reality, the issue of victimization is an encompassing issue that involves not just the direct victims, but likewise the indirect victims who have suffered the effect of victimization. The traditional justice system does not recognize the suffering of these indirect victims like the members of the family of the complainant (victim), and the community that are affected.

Restorative efforts shifted the definition of a case from an offender-based focus to victim-focus, and likewise change the nature of the intervention to humanize and transform the means by which community safety, accountability, competency development and healing of victims is achieved. The community, a side stream victim, facilitates the process through participative dialogue, and responds to present and future needs and obligations of stakeholders. In the case of the offender, restorative efforts are directed towards “righting the wrong” committed, and voluntarily understanding harm from the other person’s point of view; recognizing the fact that he or she has choices; taking steps to make changes for the better so that it will not happen again. To a victim, the above are his or her possible expectations and will satisfy his or her craving for truth and justice thereby reducing the chronic and catastrophic stressors that traumatized the victim.

### **B. 10 Fundamental Victim’s Rights in the UN Declaration**

1. The fundamental rights for victim to be treated with compassion and the dignity of the victim to be respected.
2. The right of the victim to receive information.
3. The right of the victim to provide information to the authorities; that is it allows for the views of the victim to be presented and considered in the course of criminal proceedings.

4. The right of victims to have proper assistance throughout the legal process.
5. The right of victims to protection of privacy and physical safety.
6. The right of victims to participate in any formal dispute resolution (restorative justice was not included in the 1985 UN Declaration).
7. The right of victims to social assistance.
8. The right of victims to restitution by the offender.
9. The right of victims to state compensation.
10. The right of victims that the State should build partnerships between government agencies, NGOs, and civil society to promote victims' rights.

## **IX. STAGES OF RESTORATIVE JUSTICE**

Restorative justice, as a new model of balanced justice, is globally emerging and experiencing remarkable growth of awareness and interest as a newly discovered correctional theme, guiding framework or paradigm shift ultimately focused to promote and encourage active involvement of the three (3) stakeholders in a crime situation, specifically the victim, offender and the community. As an emerging concept, the treatment of crime is future oriented, and it affords the stakeholders a chance to be heard and participate in the making of a better and brighter future by arriving at a solution which promotes repair, reconciliation, reassurance and re-empowerment.

### **A. Investigation Stage**

This starts the introduction of RJ concepts and processes to victims and their family and the community. Probation and Parole Officers get in touch with the victim and the community to listen to the victims' version of the offence, the effect of victimization on their lives, families, future, and plans to overcome the impact of victimization should be given importance in the RJ process. Likewise, obtaining victims' suggestions on how the damage/harm inflicted by the crime could be repaired, and accordingly healed. Soliciting stakeholders' interest for their introduction to the restorative process shall commence during this stage.

### **B. Supervision Stage**

An RJ programme (e.g. payment of civil liability or any RJ outcome as a result of an RJ process during the stage) should be part of the condition of client's conditional release incorporated in his My Personal Development Plan (MPDP) previously called Supervision Treatment Plan (STP).

### **C. Basic Guide for the DOJ–PPA Restorative Justice Practitioner**

- The Parties should be brought within the programme of their own free will. Parties should have the right to seek legal advice before and after the restorative process;

- Before agreeing to participate in the restorative process, the parties should be fully informed of their rights, the nature of the process, and the possible consequences of their decision;
- Neither the victim nor the offender should be induced by unfair means to participate in RJ processes or outcomes;
- Where no agreement can be made between the parties, the case should be withdrawn from the restorative process;
- In the event agreement was reached by the parties, it should be put in writing to give substance/essence to the agreement. The failure to implement any provision of the agreement made in the course of the restorative justice is a basis for the withdrawal of the case from the programme; and
- Discussion and disclosure made during the process shall be treated with strict confidentiality and shall not be disclosed and used against the parties involved.

#### **D. Supervision Process with Restorative Justice Impact**

1. A Probation and Parole Officer individually assigned to handle investigation and supervision caseloads shall act as RJ planner. As such, he/she has the following responsibilities:
  - a. Identifies and recommends to Chief Probation and Parole Officer (CPPO) a potential case for a peacemaking encounter;
  - b. Conducts dialogue to explore together the possibility of the RJ process;
  - c. Coordinates/collaborates with responsible members and leaders of community for their participation in the conference;
  - d. Serve as facilitator of the conference;
  - e. Assists in the healing process of stakeholders based in the STP;
  - f. Prepares case notes reflective of RJ values utilizing the following points:
    - i. Impact of crime and effect of victimization;
    - ii. Victim inputs and involvement opportunities;
    - iii. Offender opportunity to take direct responsibility for the harm.
2. A chief Probation and Parole Officer shall have the following responsibilities:
  - a. The CPPO approves the case for a Peace Encounter Conference and issues office order;

- b. Monitors plans and agreement for implementation achieved during the conference and sets direction to realize success of the process.
- 3. Volunteer Probation Assistants (VPAs) have the following responsibilities as assigned or designated by the CPPO or OIC:
  - a. Work in close consultation and cooperation with the Supervising Officer in the conduct of the RJ process;
  - b. Keep all information about the supervisee in strict confidentiality;
  - c. Make reports of activities in relation to the RJ process;
  - d. Denote a substantial and quality time for supervision of clients;
  - e. Act as resource individual, as donor, lecturer, speaker, organizer, coordinator, facilitator, mediator and planner for RJ activities;
  - f. VPAs assigned to supervise clients may be deputized to secure a Circle of Support venue, provide refreshments, etc.;
  - g. Endeavour to heal the victim, client and community relationships; and
  - h. Attend RJ activities as may be required.

#### **E. Ground Rules to Ensure Order during the Restorative Justice Process**

- 1. When somebody is talking, participants are expected to listen and refrain from interrupting.
- 2. When a participant wants to be heard, he should raise his hand and wait until the mediator/facilitator recognizes him to speak. Likewise, a participant should be advised to remain seated throughout the process and may only stand when acknowledged by the facilitator or mediator.
- 3. Participants are asked to refrain from saying foul or vulgar statements or making unnecessary comments.
- 4. Cell phones or any gadgets which may disturb or disrupt the process must be turned off.
- 5. Sharp or pointed objects and any deadly weapon are not allowed inside the activity room.
- 6. All matters discussed are to be kept confidential.

#### **F. Four Sequential Objectives**

During and at the conclusion of the restorative sessions, the stakeholders on any RJ process should:

1. Admit the harm inflicted. When crime happens there is damage to the stakeholders (e.g. broken relationships, physical harm etc.). This realization is essential for the offender as he needs to reach that point of accepting the fact that he had caused harm. Thus, it is important for the facts to be discussed carefully.
2. Share and understand the harmful effects of the crime. Sharing feelings about what happened can promote openness to the stakeholders. Personal liberation can be achieved and every incident properly discussed can transcend perspectives. Differences are levelled off as feelings are expressed to one another.
3. Agree on terms of reparation. An agreement entered after undergoing the process of careful dialogue and discussion is an indication of a successful encounter. Steps for total reconciliation with the victims are laid down through the terms stipulated in the agreement of the parties. This also provides re-employment of the stakeholders who were previously degraded by the crime.
4. Understand future behaviour and plan actions. This is carrying out of the plans for “amends”. Renewed behaviour and actions of the offender signify his remorse for the crime committed and that he is working towards righting the wrongs of the past. This ensures that the reforms implemented are genuine.

#### **G. DOJ – PPA’s RJ PROCESSES**

##### **1. Mediation**

Mediation is also known as VOM (Victim-Offender-Mediation). It is a form of alternative dispute resolution (ADR), a way of resolving disputes between parties with concrete effects. Typically, a third stakeholder, the mediator, assists the parties to negotiate a settlement. The mediator may moderate disputes in a variety of fields, such as commercial, legal, diplomatic, interested victim/s an opportunity to meet the offender in a safe and structured setting, and engage in a mediated discussion of the crime. In mediation for criminal cases, a neutral third party provides a bridge for dialogue between Victim and Offender.

##### **2. Conferencing**

Conferencing is a voluntary, structured meeting between offender/s, victim/s and/or both parties’ family and friends, in which they address consequences such as restitution and other outcomes.

- a. Family Conferencing – composed of different members of the family;
- b. Group Conferencing – composed of the victim’s and the offender’s support groups.

##### **3. Circle of Support**

Circle of support (COS) is a model of RJ which provides an opportunity for victims, offenders and community to discuss the crime, and its aftermath, particularly its effects on the relationship in the community. It also provides opportunities for stakeholders to participate in its resolution and expects offenders to take steps to repair the harm they have caused. Its ultimate objective is to restore broken relationships among the victims, offenders and community.

Circle of support can be considered as an appropriate RJ Model in the community-based treatment of offenders because of the active involvement of community as represented by the Volunteer Probation Assistants (VPAs) or other members such as but not limited to barangay officials in the process. The success of the Circle of Support lies not only on the skill of the facilitator, but more importantly, on the readiness and openness of parties – (victims, offenders, supporters and community representatives) to come together and to collectively decide on what can be done to repair and restore broken relationships among the stakeholders.

The role of the Probation and Parole Officer is only to facilitate the process. We want the community to eventually own the model and espouse or use any of the other RJ processes as tools in healing broken relationships among its members. With this end in view, the stakeholders will hopefully benefit from the results thus, rendering the community as the strongest pillar of our criminal justice system.

## **X. INDIGENOUS PRACTICES**

### **A. Guidelines and Principles for Indigenous Practices**

#### **1. Guidelines on the Conciliation Practices of Indigenous Tribal Clients of PPA-DOJ**

(Based on the Paper of PPO II Joyce A. Rendon, Region XI)

It is the policy of the PPA-DOJ to:

- Preserve, promote and protect the rights of the PPA tribal clients to cultural integrity and identity and to prescribe mechanisms to protect their customary beliefs;
- Ensure and guarantee the due exercise of rights of the concerned tribal community to reject or allow the intervention, documentation and publication of PPA-DOJ of the indigenous conciliation practice undertaken.

#### **2. Operating Principles of Indigenous Process**

In the implementation of the RJ programme to PPA tribal clients, the following measures shall be adopted:

- Protection of cultural intellectual rights and cultural treasures. PPA-DOJ shall give utmost respect and recognize the religious beliefs, tradition, ceremonies and culture of the concerned community. Any risks or foreseen adverse impacts must be fully disclosed to the concerned community. Thus, measures for the elimination or mitigation of the occurrence of such risks must be given utmost attention.
- Tribal community consent. Prior consent by the concerned tribal community shall be secured before any case referral of the DOJ-PPA may commence. Their voluntary consent should be based on informed opinion which means that they should be fully informed of what the activity is all about, the resources collated and the expected output, among other concerns.
- Culture sensitivity. The cultural peculiarities and specific circumstances of the concerned community shall be respected and given due compensation.



- Participatory. The full anticipation of the tribal community in all levels and stages of the activity shall be required. The nature and dynamics of participation of concerned stakeholders shall strictly adhere to customary laws. The Probation and Parole Officers shall limit themselves only to referral, coordination to the concerned indigenous community, documentation, monitoring to the agreement reached and evaluation of the whole activity.

### 3. Role of the Probation and Parole Officer

- Identification and referral of a potential case for indigenous conciliation practice to CPPO;
- Proper approval of the case referral and issuance of an Office Order;
- Make coordination to the concerned indigenous community;
- Ensure compliance to the concerned indigenous community;
- Facilitate, coordinate and document the whole activity;
- Assist the concerned indigenous community in the crafting and execution of agreements;
- Monitor compliance of the terms and conditions of agreements entered into;
- Prepare case notes reflective of the progress of the indigenous conciliation practice undertaken;
- Coordinate with the National Commission on Indigenous People if necessary.

## **B. Kinds of Indigenous Practices**

### 1. The Ifugao Justice System

*(Based from the Article of Prof. Mary Constancy Barrameda)*

The Ifugao Justice System can be described as the process by which peace and harmony in the Ifugao community should be preserved and maintained, through a peaceable resolution of a dispute over a wrong or wrongs that threaten an eruption of conflict. This is based on public determination of the truth concerning the alleged wrong or wrongs participated in by the community or its representatives, permitting a collective decision or judgment of guilt or innocence, with appropriate sanctions, compliance of judgment, and rituals for healing and restoration of social fabric.

Vital to this justice system is the Ifugao religion. It is the firm belief that justice is basically the intervention of their God in the vindication of the innocent and the exposure and condemnation of wrongdoing in the breach of peace, and the purging of sin committed in the latter case through repentance by prompt acknowledgement of guilt, atonement through payment of stipulated reparation, and reconciliation with aggrieved parties through healing rituals called *hidit*.

## 2. The Manobo Justice System

When conflict is caused by gossip, the Datu will conduct his investigation. Then, both the identified source and subject of the gossip are summoned to his presence. Based on the merit of his investigation, he would counsel and warn them not to repeat the issue. When both parties agree, he would cover the gong to symbolize an end to the conflict or gossip and will no longer hear the issue. However, if the gossip continues, the offender will be fined or penalized to the Datu's specification. Then, the Datu will say:

- *Tampud Tabahon* – cut a rattan to close the case;
- *Tadto Mata Alaw* – point to the sun and promise not to do it again;
- *Abukkatuso* – turn off the lamp to indicate that the gossip is off;
- *Sagpong Talinga* – cover the ears so that one will not hear;
- *Sagpong Ta Mata* – even if she sees it, she will keep quiet so that there will be no trouble;
- *Sablagan* – the offender will give the offended party food or animals. When she receives the *sablag*, she will not do anything because the fairies had blessed her.

## 3. Manabo-Dulangan Justice System

The Justice System of the Manobo-Dulangan ICCs is called Antang-antang. The common infractions are coveting another man's wife, theft, cattle rustling, homicide, murder and land disputes. These disputes are usually brought to the attention of the Sultan or Datu for resolution.

### **C. Restorative Justice Outcome**

Restorative Outcome is an agreement obtained as a product of a restorative process. Each hallmark of the restorative process – Mediation, Conferencing, Circle of Support and other indigenous ways of setting disputes – ends with an agreement on how the offender will make amends for the harm caused by the crime. The two traditional justice sanctions used in a restorative response to crime are Restitution and Community Work Services.

#### 1. Restitution

Restitution is the payment by an offender of a sum of money to compensate the victim for the financial losses caused by the crime.

#### 2. Community Work Service

As an integral component of Restorative Justice, Community Work Service (CWS) imposed upon an offender whether as a probation or parole condition or part of the treatment plan. In a way, work service in the community as an intervention if properly implemented will connect the missing link between the offender struggling to reintegrate himself and the community disturbed by the effect of the offender's behaviour necessary to make the treatment therapy a workable intervention, and not just to restrain offender's movement, or merely an added compliance with imposed conditions, thereby defeating its real purpose.

*a. Definition of Community Work Service*

Community work service (CWS) is a work performed by the offender without compensation for the benefit of the community as an outcome of an RJ process reached on a restorative agreement among stakeholders. CWS is:

- A free public labour performed by a criminal offender as a sanction for an offence for the benefit for the benefit of the community.
- Its essence is to present a meaningful lesson for the offender-client to realize that crime he has committed has a public repercussion, and therefore on his part incurred restorative obligation to settle.
- As a restorative practice, it should be included either as a condition of his release on individualized community-based programme or incorporated in the My Personal Development Plan (MPDP)

*b. Goals of Community Work Service*

- Holds offender accountable for the harm caused to the community.
- Provide communities with human resources that can improve the quality of life in public environment, business and even individual residences.
- Helps offender develop new skills through supervised work activities.
- Allows victim a voice and occasionally some direct benefit by recommending the type of community work service.
- It has three aims: Accountability on the part of the offender; Competency development; and Community Protection or safety.

*c. Forms of Community Work Service*

- Mentoring and Integrational Service – Offenders will develop their maturing needs through caring for other people; example: with senior citizens, orphanage or street children.
- Economic Development – to link directly in a business project; examples: cleaning downtown area, tree planting, maintenance of business zones, housing restoration, garbage and waste management, cleaning of esteros, recycling, construction, repair of streets, and the like.
- Citizenship and Civic Participation – experiential activities which involve solving community problems; examples puppet shows that showcase values, street dramas, peer-counselling.
- Helping the Disadvantaged – This will enhance offender's self-esteem; examples: assist handicapped, assist in soup kitchen, tutor peers, visit the aged in jails and hospitals.

- Crime prevention Projects – Examples: “barangay ronda”, giving testimony to the youth.

*d. Coverage*

For Probationers: All, except when:

- The community does not accept them;
- Due to ill health that may hinder performing CWS;
- If working or staying outside the country with proper authority;
- Other work/job which may not give probationers time for CWS;
- All at the discretion of the supervising officer.

For Parolees/Pardonees: All, provided they will not pose danger to the community.

*e. Time frame*

Serving client should be granted time to adjust to life which is not more than six (6) months before doing CWS. Its duration should depend on the length of the project, needs of the offender and the community within the RJ framework.

Probation / Surveillance Period	Length of CWS
6 years but not less than 5 years	144 hours or 6 hours/week
Not more than 5 years but not less than 4 years	120 hours
Not more than 4 years but not less than 3 years	96 hours
Not more than 3 years but not less than 2 years	72 hours
Not more than 2 years but not less than 1 year	28 hours
Less than 1 year	24 hours

*f. Procedural Implementation*

1. Such community work shall be recommended as one of the conditions on the case of probation and/or included in the My Personal Development Plan (MPDP), specifying the number of hours of community work to be rendered by the offender, the type of work service, and possibly the place and the contact person in the community. A successful community work service programme basically requires a true public-private partnership. All these may be done in coordination with local government units, other government offices, civic and religious organizations and other significant community support and healing circles.
2. During initial supervision, the client offender shall execute an undertaking duly subscribed before the Chief Probation and Parole Officer (CPPO) that he/she is willing to render community work service in compliance with the conditions of his/her probation or My Personal Development Plan (MPDP).
3. The undertaking shall be in triplicate distributed as follows: 1) Supervision Case Folder, 2) Responsible persons or office giving community work to client, 3) Client.

4. After completion of Community Work Service, the offender shall secure a Certification that he/she performed work service in a particular community, indicating therein the type or kind of work performed, the number of work hours rendered, and the date when community service is done.
5. Such Certification obtained by the client shall be surrendered to the PPA Office to be filed in his folder.
6. Compliance of this condition on Community Work Service shall be indicated in the Final or Summary Report submitted by his/her Supervising Officer to the court or Board of Pardons and Parole.

*g. CWS Indicators of Success*

1. Must have satisfactorily completed the prescribed number of hours of community work service;
2. Presence of established community linkage and work resources;
3. Has gained a certain degree of recognition and/or benefited the community;
4. Has maintained a favourable relationship with his/her community worker and the community;
5. Gained positive attitude towards work and sense of satisfaction for his voluntary service; and
6. Gained or enhanced competency in a specific area of work.

# RESTORATIVE JUSTICE PROGRAM

YEAR	NO. OF CLIENTS INVOLVED IN RJ PROCESS				RJ OUTCOME/ CIVIL LIABILITIES		
	MEDIATION	CONFERENCING	CIRCLE OF SUPPORT	OTHERS	Number of clients involved in community service activities	Number of clients with CL	Total amount of CL Paid
2010	173	302	31		1,381	1,186	25,324,050.63
2011	284	1,104	45		2,246	1,285	6,741,846.47
2012	434	797	96		10,548	1,115	11,201,548.65
2013	478	881	193		6,198	439	5,649,443.29
2014	476	2,086	212		3,401	390	7,207,509
2015	1,281	7,086	576	50	11,811	1,947	14,514,697.71
2016	616	7,360	786	700	10,020	352	18,571,379.27
2017	1572	35,915	2623	929	22,370	371	28,468,640.52
2018	3495	28174	3,762	1381	22,424	24,567	23,790,768.78
2019 (3rd Qtr.)	4379	35,065	6,366	1769	30,469	11,927	132,342,721.87

Restorative Justice Program  
a/o12/19/2019

Submitted by: ROSARIO T. LABASTIDA  
Sr. PO, CSD

## **PANEL III**

### **PRESENTATIONS**

Mr. IMAFUKU Shoji (Japan)

\* \* \*

Ms. Sodiqa Williams (Safer Foundation)

\* \* \*

Ms. Olivia Rope (Penal Reform International)

\* \* \*

Mr. Ali Reunanen (Criminals Return Into Society)

\* \* \*

Ms. Maria Cristina Mattei (Hedayah)





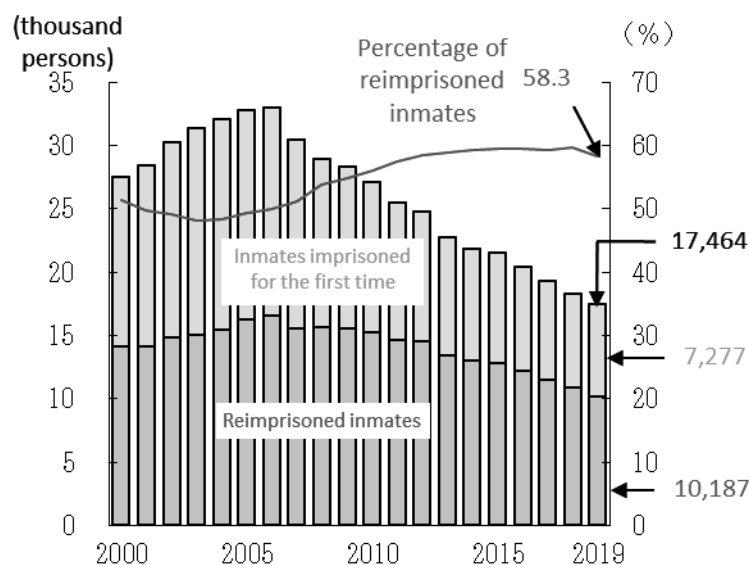
# A MULTI-STAKEHOLDER APPROACH TO ENSURING CONTINUOUS SUPPORT AND SERVICES FOR REHABILITATION AND REINTEGRATION OF OFFENDERS: FOCUSING ON HOUSING SUPPORT

*IMAFUKU Shoji\**

## I. OVERVIEW

In 2003, reported Penal Code offences reached the highest-ever number. Further, in 2006, the number of newly admitted reimprisoned inmates reached its peak. However, the ratio of reimprisoned to newly imprisoned inmates has remained high over the years, reaching 58.3 per cent in 2019, as revealed by the line graph in Figure 1. This figure reveals that the majority of offences were committed by recidivists.

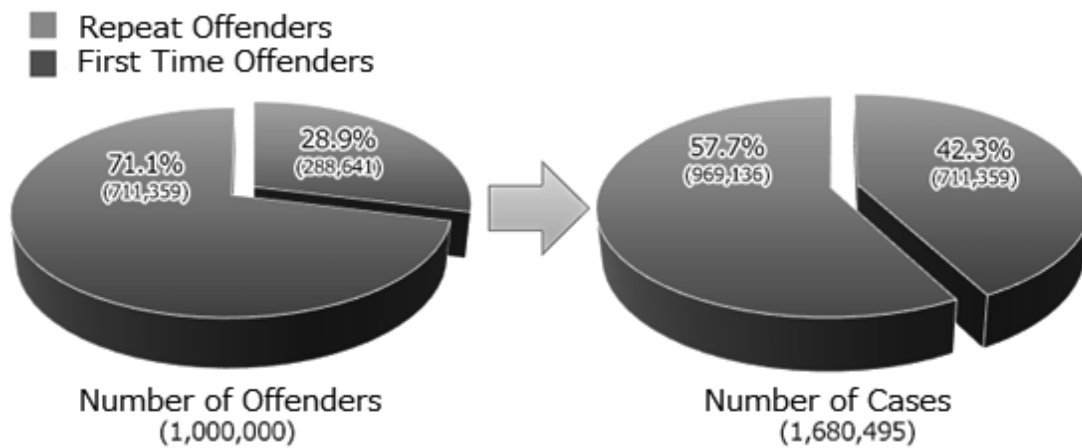
Figure 1 Reimprisoned inmates among new sentenced inmates, and percentage of reimprisoned inmates



Source: Annual Report of Statistics on Corrections 2019

Furthermore, among those who were sentenced between 1948 and 2006, 1 million were randomly selected and the tendency of these subjects was investigated and analysed. As shown in the pie chart below, when looking at the extracted cases by offenders, 71.1 per cent were first-time offenders, while 28.9 per cent were repeat offenders. On the other hand, looking at the number of cases caused by each, the number of cases caused by first-time offenders is 42.3 per cent, while the number of cases caused by repeats offenders is 57.7 per cent. In other words, about 60 per cent of crimes are committed by about 30 per cent of repeat offenders in Japan.

\* Director General of the Rehabilitation Bureau, Ministry of Justice, Japan



Source: White paper on crime 2007

This recognition led to the development of national strategies for the prevention of crime, particularly reoffending. To effectively reduce reoffending, it is necessary to meet each offender's individual diverse needs. Therefore, criminal justice authorities are required to involve various stakeholders in areas such as employment, housing and social welfare services to facilitate offenders' smooth re-entry into society. In Japan, the continuous development of reoffending prevention strategies requires the involvement of all relevant ministries. They are implemented by governments from the national to the local level and involve both the public and private sectors.

## II. MEASURES IMPLEMENTED BY THE GOVERNMENT

### A. Comprehensive Measures to Prevent Recidivism

On 20 July 2012, the Council of Ministers for Crime Countermeasures decided on "Comprehensive Measures to Prevent Recidivism." This is a comprehensive measure taken by the government to prevent the recidivism of released offenders, and the initiative's numerical target to be achieved 10 years after its formulation is as follows: "the ratio of those who will re-enter prison within 2 years after being released from prison will be reduced by more than 20 per cent in the next 10 years." Further, in 2016, a milestone that marked five years after decision was made on this comprehensive measure, a follow-up was conducted of the initiative's achievements and challenges.

In addition, the Council of Ministers for Crime Countermeasures declared "No Returning to Crime, No Facilitation of a Return to Crime" in 2014, and the government provided various measures for recidivism prevention. As a result, a circle of cooperation by community volunteers such as *hogoshi* and cooperating employers was widely facilitated. On the other hand, many drug addicts who face various challenges in recovery and the elderly and disabled who have committed crimes have fallen between the criminal justice system and the local community and have been reoffending without the necessary support. Therefore, "Emergency Measures to Prevent Reoffending by Drug Addicts and Elderly Criminals" were decided to prevent recidivism of such criminals by the Council of Ministers for Crime Countermeasures in 2016.

### B. Act for the Prevention of Recidivism

The Act for the Prevention of Recidivism (hereafter, "the Act" in this section) enacted

in 2016 aims to comprehensively and systematically advance initiatives to prevent recidivism, prevent people from becoming the victims of crime, and contribute to the realization of a society in which people can live safely and peacefully in accordance with the following principles:

- a. Laying down fundamental principles for recidivism prevention;
- b. Clarifying the responsibilities of the central and local governments regarding initiatives to prevent recidivism;
- c. Specifying the basic aspects of recidivism prevention measures, and comprehensively and systematically implementing these measures.

The Act emphasizes local governments' endeavours to implement initiatives that facilitate the appropriate sharing of roles with the State according to the circumstances in the areas under their jurisdiction. Based on the Act, criminal justice agencies, including probation offices, provide guidance and information on recidivism prevention measures to the local governments and support the formulation of the "Local Recidivism Prevention Plan" with the cooperation of the community volunteers who support offender reintegration. Further, the local governments play an important role in recidivism prevention in adherence with the Act and its "Recidivism Prevention Plan." As of 1 October 2020, 71 local governments, not only prefectural governments but also municipal governments, across Japan have established their own Local Recidivism Prevention Plans, and prefectural and municipal governments have strengthened cooperation in the field of reoffending prevention (see subsection (3) in this section).

### **C. Recidivism Prevention Plan**

Currently, the Recidivism Prevention Plan, which was formulated in 2017, consists of 7 priority issues with 115 specific measures based on a nationwide multi-stakeholder approach. The plan highlights the importance of employment, welfare services, housing and so on.

### **D. Regional Recidivism Prevention Model Project**

To promote recidivism prevention in accordance with the Act, the Ministry of Justice has been implementing the "regional recidivism prevention model project" since 2018 in cooperation with local governments. Accordingly, the local governments carry out several activities such as (1) researching the status of recidivism in the region and formulating a model project implementation plan, (2) implementing the model project and (3) examining the effects of the model project. As of 31 December 2019, 37 projects have been implemented by 36 local governments.

## **III. JAPAN'S APPROACH TO SECURE HOUSING**

Housing forms the basis of our daily lives by providing us with a place to call our own. It gives us a sense of stability and security. The same is true for people who re-enter society after serving time in prison. For them, securing a place to live is closely linked to the ability to find employment, receive welfare benefits, become a member of the community and so on.

In Japan, there are more than 500 privately run or publicly run facilities that support the rehabilitation and reintegration of offenders. The offender rehabilitation facilities, which function as so-called halfway houses, have played an important role as the last bastion for released inmates who could not secure a residence. Since those released inmates have increased, it is necessary to secure various measures and residences systematically. To ensure that offenders are able to secure housing by themselves in the community, the probation officer provides them with knowledge and information on securing housing, such as the procedures to rent a house, and guidance to help them live independently. In addition, for probationers and parolees who have nowhere to live, the probation officer actively secures employers who can provide a residence and helps them move into the National Center for Offender Rehabilitation as well as offender rehabilitation facilities.

Correctional institutions and probation offices in Japan collaborate in coordinating offenders' re-entry, such as by securing housing tailored to each inmate's needs. In correctional institutions, specialized staff conduct assessments of inmates at the beginning of incarceration to identify their needs. Such information is shared with probation officers in a timely manner. Moreover, at major prisons, a probation officer is stationed full time for coordination of offenders' reintegration into the community.

Coordination and information sharing between correctional institutions and probation offices are systematically and continuously conducted for almost all inmates regardless of their offence. These practices start from the early stage of incarceration and continue up to the point of release, making it possible to find housing tailored to each inmate's needs. The regional parole boards and probation offices promote securing housing for released inmates in cooperation with housing support corporations, which provide support for securing housing for people in need of housing support, such as those in need of housing, the elderly, and the disabled, as stipulated in the Act on Promotion of Offering of Rental Housing to Persons Requiring Special Assistance in Securing Housing.

To find the most suitable place to live after release, probation officers consult with a variety of stakeholders. For instance, for those who need welfare or medical support, the probation officers consult with the welfare or medical section of local governments which can offer housing or other accommodation with access to welfare or health-care service. For people with addictions such as drugs and alcohol, the probation officers contact self-help groups which can offer accommodation with rehabilitative programmes. For those who cannot return to their family and cannot find a proper place to live, the probation officers coordinate temporary housing.

When coordinating re-entry into the community, it is of vital importance that it is done according to the conditions relevant to the community to which the offenders return. Thus, *hogoshi* (volunteer probation officers), as community volunteers, help probation officers coordinate re-entry.

For instance, *hogoshi* visit the offender's future residence, interview the offender's family or guardian, and foster the relationship between the family or guardian and the offender during his/her incarceration. Furthermore, if the offenders are released on parole, the same *hogoshi* are generally assigned to conduct their community supervision and to support them as a good neighbour. Under the national strategies, criminal justice authorities have engaged these stakeholders and have developed cooperative partnerships with them with clearly identified roles.

However, it is hard for some members of the general public to understand the importance of accepting offenders back into society, and they often refuse to cooperate. For example, there are some cases in which released offenders cannot rent an apartment or they cannot be employed because of their criminal records. To tackle these challenges, probation officers make full use of their contacts and resources in the community, particularly *hogoshi*. *Hogoshi* are usually highly respected senior members of their communities. Using their personal networks and knowledge of their communities, *hogoshi* regularly make efforts to recruit and encourage community stakeholders who can potentially offer housing and other support to released offenders.

Furthermore, other volunteers such as members of Big Brothers and Sisters, the Women's Association for Rehabilitation Aid and cooperating employers, also play an important role in gaining public understanding of the importance of successful reintegration of offenders into society.

#### IV. CONCLUSION

Still, the process of reintegration into society is complicated, and some offenders need a long time to reintegrate into the community. In these cases, the local governments are required to provide continuous support for those offenders, because they have the authority and the responsibility to take care of their own residents' housing and welfare issues. Therefore, the Ministry of Justice provides the local governments with the necessary information for prevention of reoffending in order to take effective measures in cooperation with them. According to such a mechanism, each local government has individually been developing a local recidivism prevention plan.

To facilitate communication among relevant governmental agencies, the Ministry of Justice has taken the initiative to establish platforms for cooperation between the national and local governments, such as the Conference of Prefectural Officials and the Conference of Mayors.

According to the statistics, 26.9 per cent of prison inmates did not have proper and stable housing at the time of release in 2008. Since then, comprehensive efforts to intensify housing support as above mentioned have been implemented. In the result, the percentage had decreased to 18.7 per cent in 2019 (Annual Report of Statistics on Corrections 2019).

In conclusion, the multi-stakeholder approach to ensuring continuous support and services for the rehabilitation and reintegration of offenders emphasizes the following three key points: enhancing the multi-stakeholder approach based on public-private partnership, activating stakeholders' strengths engaged in a variety of areas of services and support, and gaining public understanding for successful offender rehabilitation and reintegration into society. This approach will be further promoted through practices as a legacy of the 14th United Nations Congress on Crime Prevention and Criminal Justice.



# **INTENSIVE COMMUNITY RESTORATION: THE NEED FOR EFFECTIVE AND EFFICIENT RE-ENTRY INFRASTRUCTURE PROVIDING HOLISTIC SERVICES**

*Sodiqa Williams Esq.\**

## **I. INTRODUCTION: THE STATE OF MASS INCARCERATION IN THE UNITED STATES**

In May of 2020, a viral video of the killing of George Floyd at the hands of a police officer in Minneapolis, Minnesota, led to a national reckoning on the disproportionate effect that the American criminal legal system has on its black and brown communities. For years, the Black Lives Matter movement has driven the effort to reanalyse our broken criminal legal system, not only as a matter of public safety but also as a matter of public health. This movement has gained broader traction than ever before, finding an increasing international stage. A poll conducted by ABC News/ Washington Post in July of 2020 found that 69 per cent of Americans surveyed believe Black people and other minorities do not receive equal treatment in the criminal justice system.<sup>1</sup>

People with arrest and conviction records are permanently deprived of certain rights and stripped of opportunities for housing, education, employment, social services and other necessities. It has become clear that contact with the criminal legal system can permanently disable individuals' ability to readapt to society resulting in substantial social and economic costs and a lifetime of social stigmatization. The economic fallout is widespread across all systems, compounding the negative effects of poverty, food insecurity, housing insecurity, employment, violence, physical health needs, mental health needs and education.

The Covid-19 pandemic has exacerbated the difficulties associated with re-entry, as the pandemic has prompted a wave of early release. According to Rob Jeffreys, acting Director of the Illinois Department of Corrections (IDOC), the Illinois prison population has fallen by more than 18 per cent during the pandemic. This means that as records of numbers of people return to their communities it is imperative that state and local leaders provide the critical services required for successful re-entry to avoid high rates of recidivism.<sup>2</sup> While this early release is positive news, it has put a strain on existing services and increased competition for already rare employment opportunities. Considering that as of September 2020 the number of nonfarm jobs decreased in all fourteen Illinois metropolitan areas, and that no industry sector saw job gains in most

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<sup>1</sup> Langer, G. (2020, July 21). ABC news. Retrieved from <<https://abcnews.go.com/Politics/63-support-black-lives-matter-recognition-discrimination-jumps/story?id=71779435>>.

<sup>2</sup> Ebert, J. (2020, October 14). Illinois prison population decreased by 18 percent since start of pandemic. Retrieved from <<https://thedailyline.net/chicago/10/14/2020/illinois-prison-population-decreased-by-18-percent-since-start-of-pandemic/>>.

metro areas, the need for services will only increase.<sup>3</sup> Without vital support services, the pandemic will exacerbate human suffering and recidivism rates.

However, the current state of existing support services is dire. In early 2020 the Council of State Governments conducted a survey of community-based service providers and found that only 30 per cent of re-entry service providers were operating at full capacity during the rise of the pandemic in the first quarter of the year.<sup>4</sup> Concurrently, the survey found that “significant numbers” of programmes such as “in-reach services in jails and prisons, educational support in the community, and employment services” had largely ceased functioning altogether.<sup>5</sup> In addition, nearly 20 per cent of organizations had reported layoffs, with more expected in the future.<sup>6</sup> The deficiencies of the current non-profit system were made starkly clear, reliant as it is on piecemeal acquisition of resources via a cumbersome and unpredictable grant system. As the economy stumbled, and resources began to run dry the effect on non-profits and small community-based organizations quickly led to the shuttering of many agencies.

It is imperative that people re-entering their communities from incarceration be recognized as being among the most vulnerable members of society. With the economic fallout of the pandemic, it is certain that local, state and federal budgets will be constrained, meaning those most vulnerable will bear the brunt of the effects. The challenges people impacted by mass incarceration face are numerous and deep, and the inequities being revealed by the pandemic will only be deepened without aggressive, proactive action. We must acknowledge the existence of these inequities engage in a reconciliation process to begin to repair the harm.

This report discusses the ways re-entry is directly tied to a wide range of socioeconomic problems faced by people impacted by mass incarceration, each with their own set of bureaucratic, social and financial obstacles. A discussion of the social determinants of health displays the complexity of re-entry, challenging the traditional view of addressing “crime” and “recidivism” as merely bad choices or any number of outmoded versions of cultural blame or deficiency theory.<sup>7</sup> By viewing the issue of re-entry through a holistic lens and appreciating the complexity and unique experiences of people with records, it becomes clear that the issues we are facing are not as simple as “crime” or “violence”, but a complex web of interrelated socioeconomic inequities embedded within much of the fabric of America.

Ultimately, the story of re-entry is one of cyclical poverty, racism, systemic anachronisms, inequity, and all too often, despair. However, more than ever communities are coming together to solve these issues, collaborating closely to find innovative solutions to historically entrenched problems. To continue this work, communities need

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<sup>3</sup> Illinois Dept. of Employment Security. (2020). Illinois Still Impacted by COVID-19 Pandemic, Unemployment Rates Up Compared to Last Year. (2020). Retrieved from <<https://www2.illinois.gov/ides/SitePages/NewsArticleDisplay.aspx?NewsID=518>>.

<sup>4</sup> The Council of State Governments (CSG) Justice Center. (2020). Survey Shows Reentry Services Halting Across U.S. (2020, June 25). Retrieved from <<https://csgjusticecenter.org/survey-shows-reentry-services-halting-across-u-s/>>.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> “Cultural deficiency” refers to “the perspective that minority group members are different because their culture is deficient in important ways from the dominant majority group”. Salkind, N. J. (2008). Cultural deficit model. In *Encyclopedia of educational psychology* (Vol. 1, pp. 217-217). SAGE Publications, Inc.



long-term, sustained investment.

This report, in discussing the sheer numbers of people with records and the challenges they face, argues that the services required for successful re-entry is among the most important areas of social investment. As this report will show, there is a desperate need for an effective and efficient re-entry infrastructure geared towards increasing quality of life and reducing recidivism and violence. By addressing the challenges discussed within this report policymakers and community activists can take a bold step towards ending the cycle of poverty that all too often leads individuals back to crime and violence. Without sustained and dedicated support systems, we will see more homelessness, more poverty, more desperation, more crime and ultimately more violence within our communities. Recent research by the Illinois Criminal Justice Information Authority has found a direct relationship between criminal offending and victimization by homicide in Illinois, particularly in Cook County. Between 2015 and 2016, 40 per cent of suicide victims had an arrest record and 3 per cent had a prior incarceration, while 77 per cent of homicide victims had a prior arrest and 31 per cent had been previously incarcerated.<sup>8</sup> These chilling statistics paint a stark picture. Holistic re-entry services are a means of reducing violence in our communities.

Considering the current fiscal state of the United States and the State of Illinois it is now more critical than ever that we act decisively and proactively to get in front of the problem by investing the resources required to provide a smooth transition back into society for individuals exiting incarceration.

Currently, relevant agencies are siloed in a range of service sectors, including health and behavioural health, housing and homelessness, employment, criminal justice, family, and social services, etc. As is, re-entry is made up of a hodgepodge of policies and programmes. The allocation of an insufficient amount of funds to re-entry efforts has resulted in an infrastructure inadequate to the task of facilitating the successful re-entry of the formerly incarcerated. Indeed, a report by the Collateral Consequences Resource Center (CCRC) states “there is nothing *coordinated* about the current system.”<sup>9</sup> Rather, this lack of a unified response is attributable to a policy approach that devolves responsibility to municipalities and non-profit agencies that currently lack the sustained, reliable resources required to provide efficient, coordinated, mid-to-long-term responses.

What is required by the re-entry, and workforce development sectors is an integrated tool that pulls together “the best thinking about reducing recidivism and improving job placement and retention to guide correctional supervision and the provision of community-based services”.<sup>10</sup> Within this, a “multidimensional approach that considers the inmates themselves along with the broader social context...could incorporate assistance with

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<sup>8</sup> Prior Criminal Justice Involvement of Persons Experiencing Violent Deaths in Illinois. (2020). Illinois Criminal Justice Information Authority. Retrieved from <<https://icjia.illinois.gov/researchhub/articles/prior-criminal-justice-involvement-of-persons-experiencing-violent-deaths-in-illinois>>.

<sup>9</sup> Love, M., & Schlusell, D. (2020, September 8). "The Many Roads to Reintegration": A 50-state report on laws restoring rights and opportunities. Retrieved from <<https://ccresourcecenter.org/2020/09/08/the-many-roads-to-reintegration-a-national-survey-of-restoration-law/>>.

<sup>10</sup> Duran, L. (2013). Integrated Reentry and Employment Strategies: Reducing Recidivism and Promoting Job Readiness. Retrieved from <<https://nicic.gov/integrated-reentry-and-employment-strategies-reducing-recidivism-and-promoting-job-readiness>>.

housing and job training for the soon-to-be-released, to smooth their transition.<sup>11</sup> This report provides background context specifically related to the following subjects: process of re-entry; housing; workforce development and employment; health (physical and mental health, as well as substance abuse); and criminal justice reform.

By reviewing existing studies, reports and the best available data and comparing with the results of Safer's own qualitative investigations and institutional experience, this report attempts to provide a more systematic understanding of the complexities and problems attendant with prisoner re-entry as both concept and practice, taking into consideration the critical need for a holistic continuum of services spanning pre- and post-release from incarceration. In addition to existing research, this report is informed by oral histories conducted by Safer staff with people directly impacted by mass incarceration. Oral History is a method used by social scientists to help inform the context of a certain historical event using the perspective of those who lived through it. Everyone's story is unique, and while no person's story falls neatly into any one clear category these rich narratives illustrate the complexity of re-entry in Chicago and the way these obstacles interweave and cascade, rendering re-entry a complex and stressful process that requires a dedicated and holistic set of services.

In Illinois, the benefits to sufficiently supporting holistic re-entry services will be counted both in dollars and in lives. The sheer numbers of people impacted by mass incarceration is nothing short of a crisis. With over 3.3 million Illinoisans arrested or convicted of a crime since 1979<sup>12</sup> and 54 per cent of these individuals expected to have returned to Chicago,<sup>13</sup> it is reasonable to presume that at a minimum 1,782,000 individuals with records currently reside within Chicago. The Illinois Sentencing Policy Advisory Council (SPAC) calculates that the cost of each individual reconviction costs taxpayers an average of \$151,662,<sup>14</sup> and considering that 17 per cent of formerly incarcerated people will reoffend within one year while 43 per cent will reoffend within three years,<sup>15</sup> the cost to Illinois taxpayers could reach \$13 billion by 2023.<sup>16</sup> The Council estimates that reducing recidivism by a mere percentage point could potentially save the state of Illinois \$10 million annually. This takes on a particular resonance in the midst of a continuing pandemic and a devastated economy.

At the national level, the cascading costs of imprisonment are passed along from the individual to the family and on to the community, the state and ultimately the nation. Buckner and Barber (2016) estimate that nationally the cost related to shutting people with

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<sup>11</sup> Weidner, R. R., & Schultz, J. (2019). Examining the relationship between U.S. incarceration rates and population health at the county level. *SSM - Population Health*, 9, 100466. doi:10.1016/j.ssmph.2019.100466

<sup>12</sup> Heartland Alliance 2020 Poverty Report. (2020). Retrieved from <<https://www.heartlandalliance.org/heartland-alliance-2020-poverty-report/>>.

<sup>13</sup> Visser, C., & Farrell, J. (2005). Chicago Communities and Prisoner Reentry. PsycEXTRA Dataset. doi:10.1037/e720022011-001

<sup>14</sup> Illinois Sentencing Policy Advisory Council. (2018). Illinois Results First: The High Cost of Recidivism 2018 Report. Retrieved from <<https://spac.illinois.gov/publications/cost-benefit-analysis/high-cost-of-recidivism-2018>>.

<sup>15</sup> Lyon, E. (2019). Illinois Calculates the High Costs of Recidivism. Retrieved from <<https://www.prisonlegalnews.org/news/2019/feb/5/illinois-calculates-high-costs-recidivism/>>.

<sup>16</sup> Illinois Sentencing Policy Advisory Council. (2018). Illinois Results First: The High Cost of Recidivism 2018 Report. Retrieved from <<https://spac.illinois.gov/publications/cost-benefit-analysis/high-cost-of-recidivism-2018>>.

records out of the economy equates to an annual GDP loss of between \$78-87 billion. In 2008, job discrimination against ex-offenders in the U.S. alone removed 1.5 to 1.7 million workers from the labour market, leading to a productivity loss of \$57-65 billion dollars that year (Bucknor and Barber, 2016; National Conference on State Legislatures, 2018).

Aside from loss of productivity and purchasing power, according to Guyer, Bachrach and Shine (2015) 4.2 per cent of adults who have had contact with the criminal justice system are accountable for an estimated 7.2 per cent of hospital costs and 8.5 per cent of emergency department expenditures. Furthermore, considering the heavy interplay between incarceration and homelessness, the U.S. Interagency Council on Homelessness estimates that each individual suffering from chronic homelessness costs the public between \$30,000 to \$50,000 per year in associated costs. Conversely, research from Portland State University found that each dollar invested in assisting justice-involved homeless individuals results in a savings of \$13.

The costs above are well documented, yet when one attempts to investigate the true numbers of individuals with criminal records in the United States, it becomes more difficult to tease out the specifics. This difficulty is replicated at the state level, making estimations difficult though not impossible. Despite these challenges, attempts to calculate the numbers are currently being made, and the work that has become available demonstrates that the sheer numbers of residents of Illinois, Cook County, and Chicago with criminal records are staggering, and considering the myriad challenges people attempting to re-enter society from incarceration face, the issue amounts to no less than a public emergency.

## II. THE STATE OF RE-ENTRY IN ILLINOIS: A LOOK AT THE NUMBERS

According to the Prison Policy Initiative, within the American criminal justice system there are approximately 2.3 million people incarcerated within 1,833 state prisons, 110 federal prisons, 1,772 juvenile correctional facilities, 3,134 local jails, 218 immigration detention facilities, and 80 Indian Country jails.<sup>17</sup> More than 600,000 Americans are released from prisons each year, and the number of people who enter and leave jails each year has been estimated at 9 million.<sup>18</sup> *In fact, if all Americans with arrest records were combined into a single nation it would be the world's 18th largest country.* Estimates show that by age 23 nearly 33 per cent of Americans will have an arrest record, and Bucknor and Barber contend that in the U.S., one-third of the adult population are subject to the collateral consequences of involvement with the criminal justice system.<sup>19</sup> In 2020, the racial disparities within the criminal justice system are widely known, yet still Black people are incarcerated in state and federal prisons at a rate almost six times that of whites, and nearly double the rate for "Hispanics".<sup>20</sup> In fact, the disparity in arrest rates is so systemic

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<sup>17</sup> Wagner, W. (2020). Mass Incarceration: The Whole Pie 2020. Retrieved from <<https://www.prisonpolicy.org/reports/pie2020.html>>.

<sup>18</sup> Leverentz, A. M., Chen, E. Y., Christian, J., & Maruna, S. (2020). *Beyond recidivism: New approaches to research on prisoner reentry and reintegration*. New York: New York University Press.

<sup>19</sup> Buckner, C., & Barber, A. (2020, February 6). The Price We Pay: Economic Costs of Barriers to Employment for Former Prisoners and People Convicted of Felonies. Retrieved from <<https://cepr.net/report/the-price-we-pay-economic-costs-of-barriers-to-employment-for-former-prisoners-and-people-convicted-of-felonies/>>.

<sup>20</sup> Weidner, R. R., & Schultz, J. (2019). Examining the relationship between U.S. incarceration rates and population health at the county level. *SSM - Population Health*, 9, 100466. doi:10.1016/j.ssmph.2019.100466.

that midlife physical health disparities found to exist along racial lines are due *primarily to disproportionate rates of incarceration*.<sup>21</sup> “Over the past quarter century, there has been a profound change in the involvement of women within the criminal justice system. This is the result of more expansive law enforcement efforts, stiffer drug sentencing laws, and post-conviction barriers to re-entry that uniquely affect women.”<sup>22</sup>

The re-entry crisis in Illinois holds astounding economic and psychological consequences for impacted individuals, their families and the larger communities. There are over 3.3 million Illinoisans<sup>23</sup> and over 1.7 million individuals with arrest and conviction records in Chicago, Cook County, with an average of 54 per cent of Illinois residents returning from IDOC facilities to Chicago-Cook County every year between 2005 and 2019.<sup>24</sup> The Illinois Sentencing Policy Advisory Council (SPAC) calculates that the cost of each individual reconviction costs taxpayers an average of \$151,662.<sup>25</sup> Considering that 17 per cent of formerly incarcerated people will reoffend within one year while 43 per cent will reoffend within three years, the cost to Illinois taxpayers could reach \$13 billion by 2023.<sup>26</sup>

As in all fields, gender inequities are of great significance within issues related to mass incarceration. Despite national trends towards declining incarceration rates, nearly all of the decrease in the number of people in state prisons since 2009 has been among men, with women’s prisons actually growing by 834 per cent over the past 40 years, doubling the rate of men over the same period.<sup>27</sup> This will be critical work, as evidence shows that once released from incarceration the collateral consequences of having a record make finding employment, housing and financial support even more difficult for women.<sup>28</sup> As stated in The Sentencing Project’s fact sheet *Incarcerated Women and Girls*, “Over the past quarter century, there has been a profound change in the involvement of women within the criminal justice system. This is the result of more expansive law enforcement efforts, stiffer drug sentencing laws, and post-conviction barriers to re-entry that uniquely affect women.”<sup>29</sup> This is a critical factor to keep in mind throughout this report, and while this work wishes to draw attention to the challenges specifically faced by women, the topic will be more fully investigated in future research

That the United States’ system of mass incarceration is institutionally racist is well

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<sup>21</sup> Ibid.

<sup>22</sup> Hill, H. (2019, July 10). *Incarcerated Women and Girls*. Retrieved from <<https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>>.

<sup>23</sup> Heartland Alliance 2020 Poverty Report. (2020). Retrieved from <<https://www.heartlandalliance.org/heartland-alliance-2020-poverty-report/>>.

<sup>24</sup> Illinois Department of Corrections, “Annual Reports,” [www.illinois.gov](http://www.illinois.gov) (Illinois Department of Corrections), accessed 20 September 2020, <<https://www2.illinois.gov/idoc/reportsandstatistics/Pages/AnnualReports.aspx>>.

<sup>25</sup> Illinois Sentencing Policy Advisory Council. (2018). *Illinois Results First: The High Cost of Recidivism 2018 Report*. Retrieved from <<https://spac.illinois.gov/publications/cost-benefit-analysis/high-cost-of-recidivism-2018>>.

<sup>26</sup> Ibid.

<sup>27</sup> Prison Policy Initiative, P. (2018, January 9). *The Gender Divide: Tracking women's state prison growth*. Retrieved from <[https://www.prisonpolicy.org/reports/women\\_overtime.html](https://www.prisonpolicy.org/reports/women_overtime.html)>.

<sup>28</sup> Ibid.

<sup>29</sup> Hill, H. (2019, July 10). *Incarcerated Women and Girls*. Retrieved from <<https://www.sentencingproject.org/publications/incarcerated-women-and-girls/>>.

documented,<sup>30</sup> yet there remains little political will to alleviate the structural issues that have plagued our communities for hundreds of years. Across the United States, Black people and people of colour are arrested at higher rates than that of whites. In fact, Black people are incarcerated in state prisons at rates five times higher than those of white people.<sup>31</sup> This is perhaps best exemplified by the fact that while drug use rates are approximately the same among white and Black people, Black people are almost four times as likely to be arrested for a drug offence as white people.<sup>32</sup> This disparity has been so consistent that research shows that the racial disparities in incarceration cannot be explained by crime rates alone, and point toward social factors.<sup>33</sup> This is corroborated by the fact that serious crimes such as homicide do not show the same racial disparities that are apparent for more minor crimes such as those related to drugs.<sup>34</sup> In fact, the racial disparities increase the further along the legal process an individual moves.<sup>35</sup> This suggests biased processes inherent within the system itself.

According to recent research presented by the Heartland Alliance within their 2020 Poverty Report, since 1979 at least 3.3 million adults within Illinois have been arrested or convicted of a crime (904,729 women and 2,314,877 men).<sup>36</sup> Of these arrests, 1.2 million resulted in convictions (36.7%), 602,201 of which were felony convictions (18.5%).<sup>37</sup> Arrest and conviction numbers show that Black people are disproportionately represented in Illinois. For example, while Black people make up only 13.8 per cent of Illinois' adult population, they make up 34.9 per cent of the individuals convicted of crimes overall, and 45.3 per cent of those convicted of felonies.<sup>38</sup> The disparity is clear when the numbers are compared against arrest rates for white people. While white people make up 73.2 per cent of Illinois' adult population, they only account for 64.4 per cent of criminal convictions, as well as only 47.8 per cent of those convicted of felonies.<sup>39</sup>

Numbers for people exiting IDOC facilities for the past 15 years have been on average 32,018 (median: 30,639).<sup>40</sup> Those who have been mandated to stay in Illinois for parole have been on average 28,799 (median: 28,043).<sup>41</sup> As of September 2020, there were approximately 31,010 people in the custody of the Illinois Department of Corrections.<sup>42</sup> This was down from a total of 32,500 in June 2020, which is indicative of a gradual decrease from 36,900 in March 2020 resulting from the initiation of early release at the

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<sup>30</sup> Balko, R. (2020, June 10). Opinion | "There's overwhelming evidence that the criminal justice system is racist. Here's the proof." Retrieved from <<https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/>>.

<sup>31</sup> Nellis, A., & Hill, H. (2019, January 10). The Color of Justice: Racial and Ethnic Disparity in State Prisons. Retrieved from <<https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>>.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Heartland Alliance 2020 Poverty Report. (2020). Retrieved from <<https://www.heartlandalliance.org/heartland-alliance-2020-poverty-report/>>.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Illinois Department of Corrections Prison Population Data Sets. <<https://www2.illinois.gov/idoc/reportsandstatistics/Pages/Prison-Population-Data-Sets.aspx>>.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

beginning of the Covid-19 quarantine period.<sup>43</sup>

Cook County is the largest county in Illinois and one of the largest in the United States with an estimated 5,277,575 residents in 2016.<sup>44</sup> Of those on parole, 15,555 return to Cook County on average (median: 15,215) each year.<sup>45</sup> Chicago is by far the largest city in Cook County, accounting for 52 per cent (2,714,017) of the entire population in 2016. Based on arrest data for the City of Chicago, between 2001 and 2019, there was a total of 1,943,597 arrests in Chicago according to the City of Chicago's Data Portal. Unfortunately, there is no way to track the portion of arrestees who have never been arrested; however, as discussed above it is feasible that at least 1,782,000 Chicagoans have arrest or conviction records. Based on IDOC's Prison Population Data Set for 31 December 2019, the number of inmates with exits planned for 2020 was 12,116 (10,329 to be released to parole supervision plus 1,787 whose sentence is scheduled to be discharged during 2020). However, considering the return rate of 35 per cent, for the immediate future this suggests approximately 4,240 former inmates would return to Chicago during 2020 (n.d.). However, this estimation was developed prior to the rise of the Covid-19 pandemic, and the acceleration of early release means that this number will increase for so long as the pandemic maintains its momentum. Research has shown that as recently as 2019 the City of Chicago was home to 35 per cent of returning residents released from Illinois state prisons.<sup>46</sup> Of these, nearly all returned to six of the Chicago's 77 Community Areas: Austin, North Lawndale, East Garfield Park, West Englewood, Humboldt Park, and Englewood.<sup>47</sup>

Given the scope of the personal and financial costs of mass incarceration within Illinois, it has become evident during the pandemic that in order to understand the true impact of mass incarceration upon individuals, family and society there must be a sustained effort to support and fund community-based applied research efforts. Within this, research efforts that are based in an equitable collaboration between community-based organizations and research institutions will go a long way in finding the most effective means of organizing and delivering critical services.

### III. SOCIAL DETERMINANTS OF HEALTH AND RECIDIVISM

A conversation about the social determinants of health can help us to better understand the long-term effects of mass incarceration on individuals. The United States Office of Disease Prevention and Health Promotion describes the social determinants of health as "conditions in the environments in which people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks".<sup>48</sup> In consideration of this, Dr. Keesha M. Middlemass defines a felony conviction as a "social disability", explaining that those convicted of felonies:

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<sup>43</sup> Ibid.

<sup>44</sup> Loyola University Center for Criminal Justice Research: Cook County's Criminal Justice System: Trends and Issues Report: 2nd Edition. (2019, November). Retrieved from <<https://www.luc.edu/media/lucedu/ccj/pdfs/CookCountyTrendsandIssuesReportNovember2019.pdf>>.

<sup>45</sup> Illinois Department of Corrections Prison Population Data Sets.

<<https://www2.illinois.gov/idoc/reportsandstatistics/Pages/Prison-Population-Data-Sets.aspx>>.

<sup>46</sup> Carson, E. A. (n.d.). Bureau of Justice Statistics: Prisoners in 2018. Retrieved from <<https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6846>>.

<sup>47</sup> Ibid.

<sup>48</sup> Office of Disease Prevention and Health Promotion. (n.d.). Social Determinants of Health. Retrieved from <<https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>>.

are legally disabled and incapacitated which limits their ability to engage with and in society. Once someone is convicted of a felony, his or her conviction carries an unexamined power over his or her body. When felons exit prison, society stigmatizes, discredits, and fears them, which results in a societal exclusion that is more complete than for adults living with a disability.<sup>49</sup>

Having a record, regardless of having “served one’s sentence,” condemns people to a lifetime of hardship by systematically negatively impacting the primary social determinants of quality of life, like safe housing, health care, education, sustainable job opportunities, job trainings, social supports, exposure to violence and the associated effects of concentrated poverty.<sup>50</sup>

A substantial body of research has established that there are a common set of socioeconomic obstacles to re-entry. These are:

- Housing insecurity caused by a “lack of access to affordable housing and housing discrimination”;
- Unemployment, resulting from “lack of education and skills, lack of experience”, discrimination and stigma from incarceration”;
- Substance abuse disorder.<sup>51</sup>

Navigating the systems that surround these social determinants are made infinitely more complex when one has an arrest record or conviction, which can easily result in a cycle of poverty and recidivism that directly impacts family and in turn the greater community. Research shows that the close quarters involved with incarceration has negative effects on community-level social dynamics as well as public safety and health disparities.<sup>52</sup> The concentration of justice-impacted individuals can lead towards a stigmatization of the community, leading towards the criminalization of the medically underserved, spiralling educational achievement gaps and family dissolution as children lose parental support, both emotional and financial.<sup>53</sup> High rates of incarceration can become “criminogenic rather than deterrent, increasing the likelihood of victimization and associated stressors among members of high-incarceration communities”.<sup>54</sup> In fact, research shows that mass imprisonment as a national policy may be harming the physical health of black women in particular by increasing the likelihood of obesity, hypertension, and cardiovascular disease, while the work of Wildeman (2012b) found that incarceration was correlated with substantially increasing the black–white life expectancy gap.<sup>55</sup>

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<sup>49</sup> Keesha M. Middlemass, *Convicted and Condemned: The Politics and Policies of Prisoner Reentry* (New York: New York University Press, 2017).

<sup>50</sup> Office of Disease Prevention and Health Promotion. (n.d.). Social Determinants of Health. Retrieved from <<https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health>>.

<sup>51</sup> Jacobs L.A., Katcher K., Krummenacher P., Tonnesen S. (2017) Root & Rebound: An Innovative Program Paints the Reentry Landscape. In: Stojkovic S. (eds) *Prisoner Reentry*. Palgrave Macmillan, New York.

<sup>52</sup> Weidner, R. R., & Schultz, J. (2019). Examining the relationship between U.S. incarceration rates and population health at the county level. *SSM – Population Health*, 9, 100466. doi:10.1016/j.ssmph.2019.100466

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

Individuals who frequently encounter crisis systems, such as shelters, hospitals, and jails, are more likely to experience negative social determinants of health.<sup>56</sup> A 2015 study by the Prison Policy Initiative found that poverty has a direct correlation to involvement in the justice system. The study found that prior to incarceration incarcerated people had a median annual income 43 per cent lower than non-incarcerated individuals from similar cohorts.<sup>57</sup> Within the study, this factor stood true across gender, race and ethnicity, drawing a direct line between poverty and negative involvement in the justice system. It is important that issues facing re-entry populations and their families and communities be addressed through a concerted policy and programmatic focus that also requires an examination of the root causes of poverty across the state.

For instance, research shows that people with incomes less than 150 per cent of the federal poverty guidelines are 15 times more likely to be charged with a felony than people with incomes greater than 150 per cent of the federal poverty level.<sup>58</sup> In other words, the poorer one is the more likely to be arrested. Furthermore, at least 33 per cent of incarcerated individuals fall under the poverty line at the time of arrest.<sup>59</sup> Poverty is not merely associated with a standard of living but contributes directly to future choices. Research has shown that poverty has a significant effect on cognitive functioning, directly affecting decision-making and the setting of priorities.<sup>60</sup>

Any successful re-entry model must address the six outcomes (health, education, employment, housing, substance use and recidivism) of greatest importance to the re-entry population.<sup>61</sup> Yet, in impoverished and oppressed communities “housing, employment and educational opportunities, transportation infrastructure, and health care services are inaccessible, limited, or nonexistent”.<sup>62</sup> Therefore, individuals from low-income families and neighbourhoods are disproportionately impacted by the challenges individuals face upon re-entry.

Despite this available information, in an analysis of data from the Serious and Violent Offender Reentry Initiative (SVORI) evaluation, Gill and Wilson discovered that less than half of the participants obtained the services they required upon re-entry.<sup>63</sup> This is due in part to the lack of “specificity in matching services to individuals’ unique risk and need profiles”.<sup>64</sup> As of now, there is no triage, no case management, and therefore no organized system within which people re-entering society from incarceration can participate in order to access the variety of services available that can prove critical in ensuring successful re-entry. The absence of an existing system to facilitate re-entry can be overcome with the

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<sup>56</sup> Ibid.

<sup>57</sup> Prison Policy Initiative. Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned. (2015, July 9). Retrieved from <https://www.prisonpolicy.org/reports/income.html>.

<sup>58</sup> Texas Criminal Justice Coalition- Return to Nowhere: The Revolving Door Between Incarceration and Homelessness. (2019, February). Retrieved from <<https://www.texascjc.org/system/files/publications/Return%20to%20Nowhere%20The%20Revolving%20Door%20Between%20Incarceration%20and%20Homelessness.pdf>>.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Washington State Institute for Public Policy Benefit-Cost Results (2019). Retrieved from <<https://www.wsipp.wa.gov/BenefitCost>>.

<sup>62</sup> Jonson, C. L., & Cullen, F. T. (2015). Prisoner Reentry Programs. *Crime and Justice*, 44(1), 517-575. doi:10.1086/681554

<sup>63</sup> Gill, Charlotte, Wilson, David B. Improving the success of reentry programs: Identifying the impact of service-need fit on recidivism. *Criminal Justice and Behavior*. 44, (3), 336-359.

<sup>64</sup> Ibid.



organization and coordination of existing agencies and institutions and the provision of sufficient and reliable resources required to ensure the maintenance and improvement of that system. The following sections analyse the three main socioeconomic obstacles for successful re-entry – housing insecurity, economic mobility and health – compounded with the barriers presented by the criminal legal system, and offers the PEERR Model<sup>SM</sup>,<sup>65</sup> designed by Safer Foundation as a response to the wave of early releases from prisons in the state of Illinois throughout the pandemic, as a solution to address these obstacles.

## **A. Housing**

Policy and practice in public housing and the private housing markets discriminate against returning residents and create a significant social disability that prevents them from successfully reintegrating into community. Access to safe and secure housing is considered fundamental to successful re-entry upon release from incarceration, yet each year approximately 50,000 Americans enter homeless shelters directly upon release from correctional facilities.<sup>66</sup> For many, family or friends provide the first option for housing after release from a correctional institution. For those who cannot rely on families or friends for housing, even at least temporarily, the other options are transitional housing, homeless shelters, hotel or motels, and homelessness.<sup>67</sup> The necessity for housing is particularly critical for the parolee population because it affords stability for compliance with requirements of release, serves as a base for service provision and facilitates community integration.<sup>68</sup>

The importance of stable transitional housing is made evident by the statistics. In the first national estimates of homelessness among the previously incarcerated, the Prison Policy Initiative found that formerly incarcerated individuals are almost 10 times more likely to be homeless than the general public”; almost 20 per cent of single homeless adults have been previously incarcerated; 15 per cent of incarcerated people experience homelessness in the year prior to being incarcerated; people who have been incarcerated just once become homeless at a rate nearly seven times higher than the general public while those who have been incarcerated more than once have rates of homelessness 13 times higher than the general public.<sup>69</sup> Furthermore, those without access to stable or reliable housing are more than twice as likely to commit additional crimes when compared to those with access to housing.<sup>70</sup> Homeless youth are particularly vulnerable to violence, including victimization and perpetration of violent behaviours according to recent research conducted across seven U.S. cities that found 45 per cent of homeless young adults had experienced direct or indirect gun violence, while 17 per cent had perpetrated gun violence themselves.<sup>71</sup>

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<sup>65</sup> Video recording of PEERR<sup>SM</sup> Panel discussion at Safer Foundation’s CARRE Conference (October 2020).

<[https://www.youtube.com/watch?v=sYoMmD9jHkY&feature=emb\\_title](https://www.youtube.com/watch?v=sYoMmD9jHkY&feature=emb_title)>.

<sup>66</sup> Cortes, K., & Rogers, S. (2010). Reentry Housing Options: The Policymakers' Guide. Council of State Governments.

<sup>67</sup> Couloute, L. (2018, August). Nowhere to Go: Homelessness among formerly incarcerated people.

<sup>68</sup> Kras KR, Pleggenkuhle B, Huebner BM. (2016). A New Way of Doing Time on the Outside: Sex Offenders' Pathways In and Out of a Transitional Housing Facility. *Int J Offender Ther Comp Criminol*.

<sup>69</sup> Ibid.

<sup>70</sup> Tran-Leung, M. (2015). When Discretion Means Denial. Sargent Shriver National Center on Poverty Law.

<sup>71</sup> Hsu HT, Fulginiti A, Petering R, Barman-Adhikari A, Maria DS, Shelton J, Bender K, Narendorf S, Ferguson K. Firearm Violence Exposure and Suicidal Ideation Among Young Adults Experiencing Homelessness. *J Adolesc Health*. 2020 Aug;67(2):286-289.

The interplay of homelessness and incarceration is even more stark when mental health issues are taken into consideration, as 40 per cent of incarcerated respondents in a national survey reported use of mental health services and/or medications for a mental illness, which is a rate twice that found among incarcerated individuals without a history of homelessness.<sup>72</sup> A study conducted by the Department of Justice found that of incarcerated individuals reporting a mental health disorder, 31 per cent had major depressive disorder, 25 per cent had bipolar disorder, 18 per cent had an anxiety disorder and 16 per cent had PTSD.<sup>73</sup>

As is often the case, the issues related to incarceration, homelessness and mental health hit women the hardest. A study by the Marshall Project found that 66 per cent of incarcerated women reported having a history of mental illness, while 20 per cent reported recently experiencing psychological distress while in prison.<sup>74</sup> Considering that formerly incarcerated women are more likely to be homeless than formerly incarcerated men, the cycle of homelessness and incarceration is exacerbated by the higher prevalence of mental health issues reported by incarcerated and formerly incarcerated women.<sup>75</sup>

The increasing criminalization of homelessness coupled with the difficulty in finding consistent mental health resources has created a near hopeless situation, as homeless people are frequently arrested for minor crimes directly related to their condition. The National Law Center on Homelessness and Poverty describes the criminalization of homelessness as “when law enforcement threatens or punishes homeless people for doing things in public such as sleeping, resting, sheltering oneself, asking for donations, or simply existing in public place”.<sup>76</sup> A cycle of criminalization and homelessness means that people in poverty find it nearly impossible to extricate themselves, facing an increased risk of reincarceration. This risk is compounded by the inherent dangers of sleeping outdoors, contributing toward difficulty in complying with probation requirements (lack of a stable address); difficulty accessing reliable transportation in order to meet supervision requirements; and loss or theft of personal items, such as cell phones, due to sleeping rough or in crowded shelters.<sup>77</sup> These issues are particularly salient in Illinois.

Many of the clients<sup>78</sup> that come through Safer Foundation experience homelessness after incarceration. One Safer Foundation client, Liam, had been in and out of incarceration since he was 14, as a ward of the Department of Child & Family Services (DCFS) of the State of Illinois. He explains how his record forced him into homelessness and is making it hard to escape poverty:

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<sup>72</sup> Texas Criminal Justice Coalition- Return to Nowhere: The Revolving Door Between Incarceration and Homelessness. (2019, February). Retrieved from <<https://www.texascjc.org/system/files/publications/Return%20to%20Nowhere%20The%20Revolving%20Door%20Between%20Incarceration%20and%20Homelessness.pdf>>.

<sup>73</sup> Bronson, J., & Berzofsky, M. (2017). Indicators of Mental Health Problems Reported by Prisoners. Retrieved from <<https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf>>.

<sup>74</sup> Equal Justice Initiative. (2019). More Incarcerated Women than Men Report Mental Health Problems. (2019, October 16). Retrieved from <<https://eji.org/news/more-incarcerated-women-report-mental-health-problems/>>.

<sup>75</sup> Couloute, L. (2018, August). Nowhere to Go: Homelessness among formerly incarcerated people.

<sup>76</sup> National Law Center on Homelessness & Poverty. (2019). Housing not handcuffs - Ending the Criminalization of Homelessness in U.S. Cities.

<sup>77</sup> Texas Criminal Justice Coalition- Return to Nowhere: The Revolving Door Between Incarceration and Homelessness. (2019).

<sup>78</sup> All qualitative interviews were conducted by Christian Flores.

*I've never had a house at any point after DCFS. At one point, I stayed at hotels. I was paying the equivalent of rent for a one bedroom for essentially a space no larger than the cell I had in jail. I had no microwave. No refrigerator. No oven. Just a bathroom in the hotel. After spending \$800 a month for that space, for a couple months, I decided I could save money and either bunk up with a friend or [live on the streets] and save money. Right now, I'm staying with a friend on the South Side and my IT job is up North. There are only certain times I can be at the house. It affects my ability to get to and from work.*

Although Liam has received several support services from Safer Foundation, including finding a job with an IT firm, his inability to access affordable housing is prohibitive and threatens the sustainability of his job. The lack of access to affordable housing makes it difficult to survive even with a basic income. While Safer Foundation can connect people like Liam to other organizations that work more directly with transitional housing and homelessness, the lack of a formalized system or process makes it difficult for clients to navigate on their own. People with records often need to find stopgap solutions, like Liam did with cheap hotels and friends, because transitional housing options are in high demand with little space.

The housing options that most people who experience incarceration are often unsustainable. A survey of 323 Safer Foundation clients found that 75 per cent of clients who were released between March and June of 2020 went home to family or friends.<sup>79</sup> While this may be an initial solution, these living arrangements are often short lived. Evan, another Safer Foundation client, experienced the difficulty of finding sustainable housing after returning from prison. While he was initially able to stay with family, he explains the challenges:

*It was really tough because who wants a 'criminal' living [with them]? You don't have money to go anywhere really. Like I have family that lives in Joliet, but they don't want you to be living there. They will because they're family. But it's only gonna be so long you're gonna be able to be on that couch, especially in the suburbs without a car and I didn't have a license... I still don't.*

The hostility that Evan felt at home led him back to the streets, where old friends led him back to old habits of substance abuse. Greg was incarcerated again and had to find other living arrangements upon return to his community. This time, he had opted to attempt one of the transitional housing opportunities – typically referred to as a “halfway house” – that was promoted by the penitentiary.

However, that option was another gateway to recidivism:

*I had to go to a halfway house [that] was so nasty and dirty. There were bed bugs all over the place. There was people smoking crack and shooting heroine. My roommate [overdosed] like four times. And this is the place that came to the prison and told us to come there because they were offering us money. They offered us like \$500 if we went there and so everybody was going there and it was literally disgusting. And like those are sanctioned places. I saw the flyer at the prison for*

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<sup>79</sup> Otto, Barbara; Flores, Christian. “Prison Emergency Early Release Response (PEERR) 2020 Report.” Safer Foundation; Smart Policy Works. October 2020. p. 22.

*this place and I went there. So it's like, are you expecting me not drink in this crap? I needed a drink. It was a breeding ground to go back to prison. How can you take someone who was locked up and in prison all this time and then put them at a halfway house where everyone is drinking, everyone is doing drugs, maybe one person is working and expect that person to not go back, to not get involved in all of that. Like, that is a tough pill to swallow. I don't see very many people not going back to those old behaviours that sent them to prison, which is why I got that parole violation. I went back to prison. Not blaming it on anybody else. But I didn't have anything positive.*

Safer Foundation found that (IDOC) contracted “halfway houses” – many which were also licensed as recovery homes – were the second most common option for the 323 clients surveyed, with 20 per cent reporting that they were released to a “halfway house.”<sup>80</sup> Like Evan, many clients express that these homes felt like hostile environments for recovery. Most survey participants who reunited with family reported having more access to basic needs and financial support than those returning to halfway houses.

However, home is not always a safe place to return to, especially for women. Sylvia, for example, was released from DuPage County Jail in October of 2019, after serving 8 months for an aggravated assault case which she was found not guilty of. To be discharged, she had to prove she had a place to go to. She explains how this stipulation forced her to go back to an abusive relationship for housing:

*I went back to a very difficult relationship which I was trying to get away from, from the beginning when I first ended up with them charges. I was in a domestic violence relationship. I ended up catching the case because I was trying to get away from that relationship. That's how I ended up homeless, and I ended up running into that man [who pressed charges]. Being in jail, like I said, I didn't have my family. My family is in... My mother's side of the family lives in Texas and my father's side of the family lives in Puerto Rico, so I really didn't have anybody. So, when I came out of jail, I had no choice but to come back to that person, you know, to that relationship, and things got worse. Things got worse. It was scary, confusing. You know, you go through all these different emotions, because sometimes you can't help who you love because you try to see the good in people, and then every day they show you how horrible they are, and it's like, I don't know, I guess you grow accustomed to certain things, and it makes it hard for you to get away, to break that cycle.*

Despite national trends towards declining incarceration rates, nearly all of the decrease in the number of people in state prisons since 2009 has been among men, with women's prisons growing by 834 per cent over the past 40 years, doubling the rate of men over the same period.<sup>81</sup> This increase complements the expansion of incarceration begun with the War on Drugs and continues today as drug convictions make up a disproportionately high percentage of convictions for women – in particular, women of colour.<sup>82</sup> Like Sylvia, many women have been increasingly caught up in the criminal legal system as a direct result of

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<sup>80</sup> Ibid.

<sup>81</sup> Prison Policy Initiative, (2018, January 9). The Gender Divide: Tracking women's state prison growth. Retrieved from <[https://www.prisonpolicy.org/reports/women\\_overtime.html](https://www.prisonpolicy.org/reports/women_overtime.html)>.

<sup>82</sup> Heartland Alliance 2020 Poverty Report. (2020). Retrieved from <<https://www.heartlandalliance.org/heartland-alliance-2020-poverty-report/>>.

their attempts to resist or escape from abusive situations. Many states' policies effectively limit women's options when attempting to respond to gender-based abuse and discrimination, such as limiting women's options for self-defence in cases of domestic violence; criminalizing running away among abused minors; and criminalizing "misbehaviour" by school-aged girls.

To get away from that hostile home situation, Sylvia attempted to live in a shelter. However, she explains how the shelter she stayed at was not habitable either:

*Due to the pandemic, they haven't had domestic violence shelters available because they've been maxed out. There have been shelters that at first I was able to go, but right now with this pandemic has been difficult. The last shelter I was in, it was rough. It was rough, because it wasn't a domestic violence, it was like a last-minute resort kind of thing that they opened up, so they had to put me in that shelter. The experience wasn't too good, for the fact of the background that I come from. It didn't make it easy, because it was male and female mixed, so it really made it hard in there. They had certain people on their staff during the night that really made me feel, not only myself, but other people that were there with me, they made us feel like our life could have been in danger, you know. They weren't doing no background checks, they weren't really doing much to uphold the safety, the welfare of people. They were letting just people come and go, especially in this pandemic, so, yeah, it was a pretty hard experience.*

The difficulty of acquiring housing is compounded when gender is factored in. Secure housing options for women are scarce in Illinois. In Chicago, there exist 19 domestic violence shelters for women. Outside of Chicago, there are only 47 domestic violence shelters in the rest of the state, most of them concentrated in the suburbs of Chicago.<sup>83</sup> The lack of safe housing options for women re-entering society leads many back to the streets, unable to recover.

In the State of Illinois, research by the Metropolitan Planning Council (MPC) and Illinois Justice Project (IJP) has shown that the lack of affordable permanent housing options for people returning to the community means that as many as 60 per cent of unsheltered men and 58 per cent of women report being previously incarcerated, while 40 per cent of women report being unable to pay rent.<sup>84</sup> Research conducted by the Chicago Coalition for the Homeless shows that each year as many as 1,200 people are released directly from prison to homeless shelters in Chicago, with 48 per cent of individuals living in emergency shelters reporting a felony conviction.<sup>85</sup> Given the need, it is noteworthy that the State of Illinois does not set aside specific funding to provide or support housing for the re-entry population.<sup>86</sup> These estimates likely understate the problem because counting the intermittently homeless is not a full measure of homelessness, which should include those who have experienced homelessness for sustained periods in the last year (the causes of homelessness last longer than an individual's last night on the street), and as such, "there

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<sup>83</sup> <<https://www.dhs.state.il.us/page.aspx?item=31886>>.

<sup>84</sup> Metropolitan Planning Council. (2019). Re-entry Housing Issues in Illinois: The Current Situation, Challenges, and Possible Solutions.

<sup>85</sup> Hamlin, M. (2017). Giving Prisoners Another Chance Through Affordable Housing. Retrieved from <<https://www.bloomberg.com/news/articles/2017-08-10/giving-prisoners-another-chance-through-affordable-housing>>.

<sup>86</sup> Ibid.

is not yet a way to calculate this fuller picture of homelessness among formerly incarcerated people”.<sup>87</sup>

## **B. Economic Mobility and Opportunity**

According to the World Health Organization, poverty is the single largest determinant of health.<sup>88</sup> The correlation between imprisonment and poverty is starkly revealed when considering that a National Institute of Health study found that 90 per cent of people with criminal records were food insecure.<sup>89</sup> Food insecurity is one symptom of the negative lifelong effects of mass incarceration, as people typically have poor employment outcomes for years to come upon release from incarceration, as well as low earnings when able to find work. This results in a weak attachment to the formal sector.<sup>90</sup> Research shows that nationwide, 66 per cent of people on probation make less than \$20,000 per year, and approximately 30 per cent of people on probation make less than \$10,000 per year, an amount much lower than the official poverty line.<sup>91</sup> In fact, Looney and Turner found that in the first full calendar year after release, a mere 55 per cent of people with records reported any earnings at all.<sup>92</sup> The work of Saluja and Rosen found that between 40 to 50 per cent of people with criminal records report no annual income quite a few years after a period of imprisonment while wage growth itself, even when people with records are able to find a job, is reduced by over 30 per cent for those with criminal records.<sup>93</sup> Even those that were able to find jobs often were only able to secure low-paying jobs, with a median annual pay of \$10,090 while only 20 per cent of individuals reporting earned incomes above \$15,000.<sup>94</sup> These numbers look even more bleak when considering the research findings that imply that each additional year of incarceration diminishes earnings potential by as much as 12 per cent and future earnings growth by as much as 30 per cent.<sup>95</sup> Unsurprisingly, the earning gap between men and women persists even within prisons, where women make less than men.<sup>96</sup> Even after leaving prison, women typically have

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<sup>87</sup> Couloute, L. (2018, August). Nowhere to Go: Homelessness among formerly incarcerated people.

<sup>88</sup> World Health Organization: Regional Office for Europe. (2020, November 17). Poverty and social determinants. Retrieved from <<https://www.euro.who.int/en/health-topics/environment-and-health/urban-health/activities/poverty-and-social-determinants>>.

<sup>89</sup> Cook County Food Access Task Force. Final Recommendations: Improving Food Access for Individuals with Justice-System Involvement and Their Families. (2020, May 13). Retrieved from <[https://www.chicagosfoodbank.org/wp-content/uploads/2020/06/2020\\_CCFATF-Report.pdf](https://www.chicagosfoodbank.org/wp-content/uploads/2020/06/2020_CCFATF-Report.pdf)>.

<sup>90</sup> Looney, A., & Turner, N. (2018, March 14). Work and opportunity before and after incarceration. Retrieved from <<https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>>.

<sup>91</sup> Finkel, M. (n.d.). New data: Low incomes – but high fees – for people on probation. Retrieved from <[https://www.prisonpolicy.org/blog/2019/04/09/probation\\_income/](https://www.prisonpolicy.org/blog/2019/04/09/probation_income/)>.

<sup>92</sup> Looney, A., & Turner, N. (2018, March 14). Work and opportunity before and after incarceration. Retrieved from <<https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>>.

<sup>93</sup> Saluja, S., & Rosen, H. (2019, August 22). Why public health practitioners should care about job prospects for people with criminal records: Employment challenges and successful prison and jail reentry. Retrieved from <<https://harvardpublichealthreview.org/why-public-health-practitioners-should-care-about-job-prospects-for-people-with-criminal-records-employment-challenges-and-successful-prison-and-jail-reentry/>>.

<sup>94</sup> Looney, A. (2018, March 20). 5 facts about prisoners and work, before and after incarceration. Retrieved from <<https://www.brookings.edu/blog/up-front/2018/03/14/5-facts-about-prisoners-and-work-before-and-after-incarceration/>>.

<sup>95</sup> Looney, A., & Turner, N. (2018, March 14). Work and opportunity before and after incarceration. Retrieved from <<https://www.brookings.edu/research/work-and-opportunity-before-and-after-incarceration/>>.

<sup>96</sup> Prison Policy Initiative, P. (2018, January 9). The Gender Divide: Tracking women's state prison growth. Retrieved from <[https://www.prisonpolicy.org/reports/women\\_overtime.html](https://www.prisonpolicy.org/reports/women_overtime.html)>.

lower wages, lower employment rates and higher rates of underemployment than men.<sup>97</sup>

These numbers illustrate the myriad difficulties that individuals re-entering from incarceration face, not least of which is widespread employer discrimination correlated with a rise in the use of criminal background checks. Data from the Federal Bureau of Investigation (FBI) shows that between 2010 and 2014, the utilization of criminal history records for non-criminal justice reasons increased 22 per cent, with 30 million records provided.<sup>98</sup> In consideration of this, a survey conducted among employers in 2012 found that 69 per cent reported regular use of criminal background checks,<sup>99</sup> and a 2009 study conducted by the Justice Department found that a criminal record of any kind reduces the chances of a job offer by half, with a compounded effect being felt by Black job applicants as compared to white applicants.<sup>100</sup> This is significant not only for people with convictions on their record, but also for those Americans who merely have an arrest record. As has been found, background checks sometimes do not make a distinction between arrests that led to a conviction and those that did not, adding unwarranted punishment and pressure upon people. This line of reasoning stands in contrast to available evidence, as research shows that individuals with records are no more likely to be arrested than any other person on the street.<sup>101</sup>

Research suggests there is an inherent racism intertwined with the system of background checks by hiring entities. Indeed, white applicants who themselves have records actually receive more job callbacks than Black applicants, even when the Black applicants are equally qualified and do not even have a criminal record.<sup>102</sup> Compounding unofficial, employer-based discrimination, people with records must face institutional obstacles as well. Within Illinois, there exist 1,189 unique collateral consequence laws of which 982 create severe obstacles to gaining employment.<sup>103</sup> Collateral consequence laws can be understood as the “legal disabilities imposed by law as a result of a criminal conviction regardless of whether a convicted individual serves any time incarcerated”.<sup>104</sup> These difficulties often relegate people with records to low paying jobs, contributing to maintaining individuals and families trapped in poverty and fostering a potential spiral back towards recidivism. In fact, sustainable employment with a living wage can be an important factor in whether an individual feels they must engage in criminal activities simply in order to survive. Duane, La Vigne, Lynch and Reimal (2017) state that individuals with records who earn \$10 or more per hour are less likely to be imprisoned

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<sup>97</sup> Heartland Alliance 2020 Poverty Report. (2020). Retrieved from <<https://www.heartlandalliance.org/heartland-alliance-2020-poverty-report/>>.

<sup>98</sup> Ibid.

<sup>99</sup> Friedman, M. (2015, November 17). Just Facts: As Many Americans Have Criminal Records as College Diplomas. Retrieved from <<https://www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas>>.

<sup>100</sup> Pager, D., & Western, B. (2009). Investigating Prisoner Reentry: The Impact of Conviction Status on the Employment Prospects of Young Men. Retrieved from <<https://www.ojp.gov/pdffiles1/nij/grants/228584.pdf>>.

<sup>101</sup> Blumstein, A., & Nakamura, K. (2009). 'Redemption' in an era of widespread criminal background checks. *PsycEXTRA Dataset*. doi:10.1037/e516022010-003.

<sup>102</sup> Heartland Alliance 2020 Poverty Report. (2020). Retrieved from <<https://www.heartlandalliance.org/heartland-alliance-2020-poverty-report/>>.

<sup>103</sup> Ibid.

<sup>104</sup> Collateral Consequences of Criminal Convictions Judicial Bench Book (2018, March). Retrieved from <<https://www.ncjrs.gov/pdffiles1/nij/grants/251583.pdf>>.

again than corresponding individuals earning lower wages.<sup>105</sup>

Considering the uphill battle those with records face in finding stable, sustainable employment, it is not difficult to understand why some make the decision to participate in the informal economy, potentially risking re-arrest, simply as a strategy of survival. Many Safer Foundation clients like Evan experience this uphill battle several times. Even though Greg was a high school graduate and had some college education, he found it nearly impossible to find a job that paid a living wage. He explains:

*The jobs [I had post-incarceration] were like... it wasn't that hard, but those weren't really jobs. Everything was through temp services. It was like you are an employee, but you don't have any benefits. So it was like you're just a number to them. So I was like "Oh yeah, they're offering you ten dollars an hour." Which is, you know, if you don't have any money coming in, ten dollars an hour sounds great. But this company that referred you, they are getting \$16. So, you're working to give them six dollars, you know what I mean? There's no moving up in the company, you know, no that's not gonna happen... But when you don't have any skills and you don't have anything to offset those background checks and stuff like that, it's like, what kind of job can you really get... It's a rock and a hard place. Cause when do you have time to go to school without working?*

In order to offset the stigma of his conviction, Evan needed some form of education. Clearly, the solution is to provide alternatives as well as access to the knowledge, experience and skills required to participate in the twenty-first century economy. It is here where the role of in-prison educational opportunities, as well as post-release educational programming is critical. Considering that nearly two thirds of new jobs created since 2010 require a minimum basic digital competence,<sup>106</sup> and the fact that many employers are hesitant to hire individuals with records, providing access to relevant educational opportunities is a critical step in successful re-entry, and plays a direct role in attaining sustainable employment and upward mobility. Research shows that most people who enter correctional institutions have “limited marketable work experience, low levels of education or vocational skills” to begin with, and as such need suitable educational opportunities to develop knowledge and skills.<sup>107</sup> Harlow found that 31 per cent of offenders on probation had not finished high school or acquired a GED compared with 18 per cent of the general population.<sup>108</sup> Considering that educational attainment directly impacts job prospects, job placement, and opportunities to advance on the job, the necessity of educational opportunities for incarcerated individuals is paramount. Not surprisingly, access to employment with sustainable wages also directly lessens the chances of recidivism.

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<sup>105</sup> Duane, M., Reimal, E., & Lynch, M. (2017). Criminal background checks and access to jobs. Retrieved from <[https://greaterdc.urban.org/sites/default/files/publication/91456/2001377\\_criminal\\_background\\_checks\\_and\\_access\\_to\\_jobs\\_dc\\_case\\_study\\_1.pdf](https://greaterdc.urban.org/sites/default/files/publication/91456/2001377_criminal_background_checks_and_access_to_jobs_dc_case_study_1.pdf)>.

<sup>106</sup> Muro, M., Liu, S., Whiton, J., & Kulkarni, S. (2018, October 12). Digitalization and the American workforce. Retrieved 3 March 2021, from <<https://www.brookings.edu/research/digitalization-and-the-american-workforce/>>.

<sup>107</sup> Solomon, A., Osborne, J., LoBuglio, S., Mellow, J., & Mukamal, D. (2008). Life After Lockup: Improving reentry from jail to the community. Retrieved from <<https://www.ojp.gov/library/publications/life-after-lockup-improving-reentry-jail-community>>.

<sup>108</sup> Bureau of justice statistics special report education and correctional populations (2003). US Department of Justice, Office of Justice Programs. Retrieved from <<https://www.bjs.gov/content/pub/pdf/ecp.pdf>>.



Despite the fact that in-prison education has been proven to be a significant means of reducing recidivism, more effective even than more aggressive approaches such as boot camps and even vocational development, access to education has been difficult within prisons.<sup>109</sup> Historically, most in-prison college programmes have been dependent upon federal aid such as Pell Grants, and as such dependent upon the decisions of policymakers.

The rise and precipitous decline in educational opportunities in prisons is an artifact of the chilling effect the 1994 Violent Crime Bill had upon educational opportunities for incarcerated people. In 1982 nearly 27,000 incarcerated individuals were enrolled in a total of 350 college-in-prison programmes (9% of the national prison population that year).<sup>110</sup> By the 1990s, estimates show that the number of available in-prison college programmes had grown to 772 (a 121% increase from the previous decade) and were operating in 1,287 correctional facilities.<sup>111</sup> Despite this positive trend, policy decisions in the 1990s led to a drastic decrease in in-prison college opportunities which has had cascading effects on individuals, families, communities, and as shown above, on local, state and the national economy. The decline primarily began in earnest in 1992 when people serving life sentences without parole and those sentenced to death became ineligible to access Pell Grants. This policy change was followed in 1994 by the Violent Crime Control and Law Enforcement Act, which banned anyone incarcerated in prison from receiving federal Pell Grant aid.<sup>112</sup> The impact on in-prison college opportunities was dramatic, with estimates showing that by 1997 there were only eight in-prison college programmes across the entire United States (down from 772 in the 1990s).<sup>113</sup> In addition, access to educational opportunities was often further restricted at the state level, with many states following the federal government's example to increase restrictions on accessing funds within regional programmes.

Nearly a decade later, in 2005 there existed a mere 12 prison programmes despite the fact that research released that very same year found that recidivism rates were 46 per cent lower for those who participated in prison education programmes versus those who had not.<sup>114</sup>

The first light began to appear in 2016 when the Education Department's New Second Chance Pell Pilot Program was released, expanding college access to 12,000 incarcerated individuals in partnership with 68 universities throughout the country.<sup>115</sup> Still, this number remains 56 per cent lower than the enrolment rates of the early 1980s. Ironically, as of 2015 approximately the same number of Americans had criminal records as had four-year

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<sup>109</sup> Prison Studies Project (2018). Why prison education? Retrieved from <<https://prisonstudiesproject.org/why-prison-education-programs/>>.

<sup>110</sup> Sawyer, W. (2019, August 22). After Pell Grants were cut, college participation in prisons dropped by half. Retrieved from <<https://news.prisonpolicy.org/t/ViewEmail/r/45EC2A695D322EE62540EF23F30FEDED/36BCA921E95808A5DDA3541AF197FE1F>>.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Prison Studies Project (2018). Why prison education? Retrieved from <<https://prisonstudiesproject.org/why-prison-education-programs/>>.

<sup>115</sup> U.S. Dept. of Education (2016, June 24). 12,000 incarcerated students to enroll in Postsecondary educational and training programs through Education department's new second chance Pell pilot program. Retrieved from <<https://www.ed.gov/news/press-releases/12000-incarcerated-students-enroll-postsecondary-educational-and-training-programs-through-education-departments-new-second-chance-pell-pilot-program>>.

college degrees.<sup>116</sup>

Organizations like Safer Foundation are essential to mitigate the challenges to work for folks with arrest and conviction records. Through a broad spectrum of supportive services, Safer Foundation offers clients the tools they need to acquire stable employment, including intensive case management that can help clients access behavioural health treatment, training and certificate programmes, resume and interview coaching, and legal services. Working with legal service providers like Rights and Restoration Law Group, Legal Aid Chicago, and Cabrini Green Legal Aid, Safer Foundation can connect clients with lawyers to seal and expunge their records, obtain executive clemency, and acquire waivers needed to work in certain industries with a record, such as health-care worker waivers and Federal Deposit Insurance Corporation (FDIC) waivers for the financial industry. Tiana was one client who had a lengthy arrest and conviction record for offences committed in the 1990s. In 2017, she was able to get all but three records sealed through a Safer Foundation programme looking to pair people with arrest and conviction records with jobs in the health-care industry. Working with Cabrini Green, she got the remainder of her records sealed. In an interview, Tiana expressed a tremendous sense of joy:

*My background sealed now, the story is, ain't no stopping me! I'm going to the top now! I got them three [records] sealed. Yes. Two years. Two years of me working hard, crying, you know, trying to get it done so I can work at the jobs I'm working now. So after I got them sealed, my first job was at West Suburban Hospital. I did three years there. So I resigned from them, you know you gotta go out right, 'cause Chicago Public Schools had got me a job. So I gave them a two week's notice. They did not want me to leave because by me working through warehouses and labor-ready, they was letting us come in with backgrounds. That's how I got my experience for my resume. I had a resume...*

Through the legal relief options Safer was able to offer Tiana, her job prospects were instantly amplified. She no longer had to worry about being rejected by workforce screening companies because of her record, and she was able to get stable jobs at schools and hospitals for the first time in her life.

While clients explore their legal relief options, Safer Foundation works on building out the connections to get them successfully employed. Clients are prepared for the workforce through several job readiness programmes. Safer Foundation then creates relationships with employers in diverse industries, like JP Morgan Chase Bank, West Suburban Hospital, Freedman Seating, and Jolt Technologies. Account Executives at Safer then work to educate these organizations on the benefits of hiring people with records, including higher retention rates and company loyalty. Account Executives build out pipelines of highly trained candidates to match with these employers. This relationship gives clients from Safer Foundation a foot in the door. Through Safer Foundation's services and thoughtful case management Evan was able to find a good paying job that provides a higher standard of living and a brighter future.

*I've been working at Freedman for nine months and I got two raises and a promotion in two months... Ernest [Safer Foundation Account Executive] was a*

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<sup>116</sup> Friedman, M. (2015, November 17). Just Facts: As Many Americans Have Criminal Records as College Diplomas. Retrieved from <<https://www.brennancenter.org/our-work/analysis-opinion/just-facts-many-americans-have-criminal-records-college-diplomas>>.

*big help! Everything that I told him was going on, he listened and he did what he could. I got a CNC Mill and a Material Safety and Data certifications. Without that certification I would never have gotten this job. I had never seen a dial caliber. I didn't know what a micrometer was. I had never even seen a blueprint before. Without Safer I would've never gotten any of that stuff. Like, it's insane to see where my life was two years ago and like where I am now. I went on vacation! I actually was at my job long enough that I get vacation days! I'm going to Bali. I'm like... dude, to think this person... I was homeless! I was sleeping in a truck. From sleeping in a truck and going to Bali in two years. So the sky's the limit. I just wanna be happy and just peaceful... Remain grateful for the opportunity and take advantage of what you've been given, you know what I mean? Just take advantage of what it is. And then try to change it into what you want it to be.*

These job readiness and certificate programmes were able to give Evan the education he needed to overcome the stigma of his record. Once in the workforce, Greg proved himself a loyal and competent worker and was quickly promoted. However, if Evan had never found Safer Foundation, his potential may have never been discovered.

The reality is that people with arrest and conviction records have a lot of untapped potential that is being withheld from the economy. People who have experienced incarceration have a unique life experience to share and build on. Their perspective is invaluable. Liam, for example, has used his experience to create innovative ideas in the world of app development. Liam went through the Safer Foundation IT Training Program and successfully gained employment. He explains:

*I currently work for [an app development] company. There's over 29,000 laundromats in the USA, mostly in inner cities and underserved communities. I'm working on an app [that] brings people with washers and dryers into the gig economy... It's exciting to see how this will come along and disrupt a whole industry that historically hasn't really provided economic value to the communities that it served. [At laundromats] all the transactions are done in cash, there's a lot of money that's not reported by those laundromats, therefore, they're not paying taxes on, that's not going back into the communities that they're at. And they're not really employing anyone there within that community, they're not creating jobs in that community, and they're not paying their fair share of taxes. This app could drastically change that.*

Liam was able to discover a product that was desperately needed in the communities he was a part of. His life experience and innovativeness, combined with his training in information technology acquired through Safer, allowed him to create a solution to his community's needs. Social services like those provided by Safer Foundation help to potentialize growth and stimulate the economy. Ultimately, if the United States' economy continues to ostracize people with records, it is wasting untapped potential like Liam's.

### **C. Physical and Behavioural Health**

Many of the formerly incarcerated do not receive needed medical treatment despite the necessity for timely and continuous access to care. Despite this, Greifinger argues that the American prison health system does not do enough to ensure that the incarcerated return

to society in good health.<sup>117</sup> Many of those within correctional institutions entered incarceration with existing health-related issues ranging from mental illness to substance abuse histories and/or relatively high rates of communicable diseases. Despite treatment options while incarcerated, often these health difficulties resume upon release and progressively grow more serious due to difficulty in accessing and maintaining care. Any treatment inmates receive while incarcerated usually ends when they re-enter the community due primarily to a lack of health insurance. For example, less than 25 per cent of those with chronic disorders see a physician in the first-year post-release while 80 per cent report no community treatment preceding their last arrest. This is of particular concern as many of the individuals cycling in and out of correctional institutions have above average rates of chronic medical conditions, acute mental health disorders, and substance abuse disorders.<sup>118</sup> Guyer, Bachrach and Shine note that before Medicaid expansion, less than 20 per cent of the incarcerated were enrolled in Medicaid prior to re-entry and more than 60 per cent gained coverage less than a year subsequent to expansion.<sup>119</sup>

According to Binswanger et al., previously incarcerated individuals are “at high risk for death after release from prison, particularly during the first 2 weeks”, with the leading causes of death being drug overdose, cardiovascular disease, homicide and suicide.<sup>120</sup> In a study involving previously incarcerated beneficiaries of Medicare fee-for-service found that 1.4 per cent of individuals were hospitalized within 7 days after release, 3.9 per cent within 30 days and 8.3 per cent within 90 days. The study also found that approximately 1.4 per cent of former inmates were hospitalized for an acute condition within seven days of release, and 8.3 per cent by 90 days, a rate much higher than in the general population. Evan illustrates how the vicious cycle of substance abuse perpetuated itself each time he was released:

*That whole time I was just doing drugs man. Like, I had been able to, like, put together some sober time, you know what I mean? I would stop drinking and stuff like that until like I got an ok job. And then an apartment. But then I would go back to drinking and then like I would lose all of that stuff. And so it was the same thing when I got out of prison. You know like, I got a job, but then I started drinking and like it didn't matter, you know what I mean? It was just like, you know, it's my job to get away with it, it's their job to catch me. A whole messed up thought process behind that, you know what I mean. Not even just thinking about drink – well not drinking, but like thinking about drinking and thinking about how like how selfish I was and how my brain was just warped to think that it was ok to lie and it was ok to hurt people and it was okay to do all of these things, because that's the way the world is. You know what I mean? That's how I used to look at it. Only through God, AA, and Safer. You know, seriously bro, Safer allowed me to go to school to get my*

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<sup>117</sup> Greifinger, R. B., Bick, J. A., & Goldenson, J. (2010). *Public health behind bars: From prisons to communities*. New York, NY: Springer Science+Business Media.

<sup>118</sup> Bronson, J., & Berzofsky, M. (2017, June). Indicators of Mental Health Problems Reported by Prisoners and Jail Inmates, 2011-12. US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <<https://www.bjs.gov/index.cfm?ty=pbdetail>>.

<sup>119</sup> Guyer, J., Bachrach, D., & Shine, N. (2015). Medicaid Expansion and Criminal Justice Costs: Pre-Expansion Studies and Emerging Practices Point Toward Opportunities for States. State Health Reform Assistance Network.

<sup>120</sup> Binswanger, I., Al., E., Author Affiliations From the Puget Sound Veterans Affairs Medical Center, Okie, S., Gibney, E., J. H. Beigel and Others, . . . A. G. Letizia and Others. (2007, January 11). Release from Prison - A High Risk of Death for Former Inmates: NEJM. Retrieved from <<https://www.nejm.org/doi/full/10.1056/nejmsa064115>>.

*certifications [manufacturing] and helped out and [helped with] my rent because I had to quit the job that I was at to get into, you know like, the program, cause it was school five days a week, and like they gave me bus passes, you know, so I could go not only to school but to my AA meetings too.*

While Evan found alcoholics anonymous and Safer Foundation to support him through his recovery, after years of recidivism, most people who return from incarceration do not find these community resources in time.

Many times, people with arrest and conviction records do not know their health-care options if they do not have a community-based navigator to help them. When talking about the most valuable resources Safer Foundation was able to provide, Liam expressed access to mental health services was chief among them:

*Besides training and employment resources, transportation to those trainings, have been very helpful, and general guidance on where I can go for treatment for depression or anything like that. Different psychiatrists and therapists they could point me toward or how I can just go about talking to someone... Which I currently do speak to a therapist and psychiatrist on a monthly basis. Thanks to Safer, I was able to find one.*

The deep and extensive impact of incarceration in terms of the development of severe, long-term health limitations is laid bare by the fact that any contact at all with incarceration is in general more statistically significant upon health than the degree and extent of contact with incarceration.<sup>121</sup> In other words, one experience with imprisonment is often enough to imprint permanent negative health outcomes. Even the discrimination experienced while searching for employment has been shown to be linked to negative health outcomes such as high blood pressure as well as mental illness.<sup>122</sup> Thus, community-based services that connect people with arrest and conviction records to basic physical and mental health care become necessary for their survival.

As in all aspects of mass incarceration, the stressors associated with incarceration extend beyond the individual to directly impact family members negatively. Research shows that children of incarcerated parents also experience a variety of negative health effects such as ADHD, developmental delays including speech and/or language problems and behavioural issues.<sup>123</sup> According to Turney “Incarceration is likely compounding the disadvantages...setting them further behind, and contributing to racial and social class inequalities in children’s health”.<sup>124</sup> Children of incarcerated parents experience an array of negative health outcomes, including attention deficit hyperactivity disorder, developmental delays, speech or language problems and behavioural or conduct problems.<sup>125</sup> This impact is so great, that the work of Wildeman et al. show that “mass

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<sup>121</sup> Massoglia, M., & Pridemore, W. A. (2015). Incarceration and Health. *Annual review of sociology*, 41, 291–310. Retrieved from <<https://doi.org/10.1146/annurev-soc-073014-112326>>.

<sup>122</sup> Pascoe, E., & Smart Richman, L. (2009). Perceived discrimination and health: A meta-analytic review. Retrieved from <<https://pubmed.ncbi.nlm.nih.gov/19586161/>>.

<sup>123</sup> Morsy, L., & Rothstein, R. (2019). Mass incarceration and children's outcomes: Criminal justice policy vs education policy. Retrieved from <<https://www.epi.org/publication/mass-incarceration-and-childrens-outcomes/>>.

<sup>124</sup> Turney, K. “Stress Proliferation Across Generations? Examining the Relationship Between Parental Incarceration and Childhood Health,” *Journal of Health and Social Behavior* 55, no. 3 (2014): 302-19

<sup>125</sup> Ibid.

incarceration has increased both intracountry inequality in child health in the United States and intercountry inequality in child health between the United States and other developed democracies.”<sup>126</sup> In other words, mass incarceration in the United States has such a high impact on child health that it affects the country’s standing within comparative international health indicators.

Women in jails especially report high rates of mental health issues compared to men. Inmates with a past of a mental health disorder, 31 per cent had major depressive disorder, in comparison to bipolar disorder (25%), an anxiety disorder (18%) or PTSD (16%).<sup>127</sup> Combined, poor physical and mental health, the trauma of incarceration and the stigma of having a criminal record make it even more difficult for formerly incarcerated women to find employment, a critical factor in maintaining a healthy, stable life. Sylvia explained her own trauma after being in jail for 8 months:

*It’s a lot of mental abuse with these jails. They think because you’re behind bars or behind doors that they take it as, that’s a way of them controlling you. They will sit there and have you go through necessities. Simple necessities, like a simple shower or your meal. At times, the food wasn’t even up...you know, it was expired or it was just nasty, and they expected us to eat that. I had a lot of females open up to me in this jail and let me know how [the guards] would sit there and record them sometimes. I’ve seen it...one time, I seen the camera. I was in the hold downstairs in DuPage County, and they brought in a female, and they stripped her naked in front of males. One of the male officers had a camera recording. I heard when this female told an officer, “Please,” and I seen it, and they told the officer, “Please, don’t be touching me improperly. I’m not...” They ended up fondling her. They put complaints about the sexual assault in there by officers... I’ve seen it for myself how these officers would take the authority and do whatever they wanted to these people’s lives.*

Women have a higher chance of entering incarceration with a history of abuse, trauma and mental health issues and while in prison are more likely to suffer serious psychological stress, often related to the fact that women face sexual abuse by both staff and other incarcerated women. Sylvia, as was mentioned earlier, went back to an abusive relationship after incarceration. After all that trauma, Sylvia did not know how to cope. Treatment options are often lacking or completely unavailable for women who have experienced incarceration.

It was not until Sylvia reached Safer Foundation that she finally had the resources to help her address these traumas:

*The only health condition I have, and I’ve been dealing with it, is PTSD, post-traumatic stress disorder, for the, you know, for the things that I’ve endured in my life and the experiences and the things that have happened to me. They had put me on a few medications, but I noticed that it’s no point of you taking any medication when you don’t have the other part of the treatment, which is the counseling, the therapy... I am a domestic violence [survivor] right now, [and] that’s where Safer*

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<sup>126</sup> Wildeman, C., Goldman, A., & Turney, K. (2018, June 1). Parental Incarceration and Child Health in the United States. Retrieved from <<https://www.ncbi.nlm.nih.gov/pubmed/29635444>>.

<sup>127</sup> Bronson, J., & Berzofsky, M. (2017). Indicators of Mental Health Problems Reported by Prisoners ... Retrieved from <<https://www.bjs.gov/content/pub/pdf/imhprpji1112.pdf>>.

*Foundation also plays in. I'm a new client, and they're helping me with trying to get counseling and things like that. It's been a very hard experience. A lot of people have no way of speaking about their experience because they don't have anyone they can trust, because everyone that has had the opportunity, or has had the resources to help, they take advantage of them resources and they don't use them for good."*

Without community-based organizations, Sylvia would have been at a loss. Thanks to Safer, she received the help she needed to recover from her experience with the criminal legal system. In order to ensure that all communities are healthy, the state must aggressively invest in community-based organizations that can connect people with arrest and conviction records to the resources they need.

#### **IV. CRIMINAL LEGAL SYSTEM REFORM**

In the State of Illinois and throughout the United States, we disproportionately punish those who are poor, Black, and brown and underserve people with arrest and conviction records, their families, and their communities. The current criminal justice system sets those returning from prison up for failure by limiting their movement, failing to provide access to essential resources, and overscrutinizing technical parole violations. Comprehensive criminal justice reforms designed to reduce incarceration and lessen the impact of collateral consequences will help the state refocus its efforts towards equity and justice. Addressing social determinants of crime and incarceration will require immediate and sustained reform. The recommended policies provide effective alternatives to incarceration and ensure that people receive the services and treatment they need to promote their successful re-entry to society.

Correctional agencies place individuals on electronic monitoring to ensure that they are in compliance with conditions of pre-trial release, probation or parole with little to no regard on the restrictions they place on people's lives. According to a study by the Pew Charitable Trust, electronic monitoring rose 140 per cent in the United States over a 10-year period. For more than two decades, the Illinois Department of Corrections has been using electronic monitoring, which has cost the state over 32.5 million dollars since 2014. Currently 2,400 individuals are on electronic monitoring according to the Illinois Department of Corrections as a condition of mandatory supervised release.

Sean, who served 28.5 years in detention and was released during the pandemic, explains what being on electronic monitoring was like:

*About three days after I was out, they'll tell you to stay put and somebody's going to come out to your house and hook an ankle monitor up. I'm on an electronic device where I had to be in the house at a certain time and I could leave the house at a certain time... My movement is seven to seven. That means from seven o'clock in the morning till seven at night, I can move. Any time after that, I'm not supposed to be moving. I'm on there for two months... Then they was rioting from Thursday all the way till Monday of last week. The parole officers call and they say anybody on electronic movement, your movement has been suspended for the whole week. That means Monday till Friday we couldn't leave the house because they were making sure that we wasn't participating in the rioting...*

That restriction in movement is severely limiting for returning citizens. The first two months after release are pivotal to readapting to society and going through the processes of becoming a citizen again, from bureaucracy like obtaining a State ID to getting a job. The time restriction also makes it difficult to gain access to part-time employment that operate for overnight shifts or early morning shifts, jobs which are typically more friendly to people with criminal records.

Electronic monitoring renders even the most basic of daily tasks a potentially life altering decision, and small missteps can have cascading effects. As a report by the Greater Chicago Food Depository states, the “restrictions placed on individuals during electronic monitoring may make it difficult for them to go to the grocery store, food pantry, or seek medical attention in a timely way.”<sup>128</sup> The strictest conditions of electronic monitoring include but are not limited to:

- Not being allowed to go to a hospital in an emergency without first obtaining permission from the parole officer, regardless of the time of day or the seriousness of the situation.
- No working overtime or changing work schedule without permission from the parole officer.
- Submitting a detailed description of all movements out of the house two weeks in advance, including the departure and arrival details of transportation and household movement and work assignments for jobs (i.e., house cleaning, construction, and gardening)
- Restricted times of bathing
- Drug testing during working hours without the parole agent making prior arrangements with employers.

The Illinois Prisoner Review Board issued a memorandum that, among other things, altered the conditions of electronic monitoring. The rule, effective immediately as of July 2019, requires IDOC to grant those on monitoring at least twelve hours of movement, or time outside of the house. However, the rule is poorly enforced. People in the programme report that they are usually given much less than 12 hours and are not made aware of the new regulation at all.<sup>129</sup>

The concerns surrounding electronic monitoring are exacerbated by the Covid-19 pandemic. As judges release more people from Cook County Jail in response to the coronavirus outbreak, many individuals are being placed on electronic monitoring. Nearly 2,000 people recently released from prison are on electronic monitoring as part of the terms of their release, many of them in Cook County. In May, Cook County Jail announced that it was facing a shortage of electronic monitoring equipment. Due to the shortage, anyone assigned to electronic monitoring will be held at the jail until a judge modifies their bond – a process that could take months. Furthermore, the thousands of people who already had ankle monitors before the pandemic are not getting off them because of court closures, worsening the shortage.

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<sup>128</sup> Cook County Food Access Task Force. Final Recommendations: Improving Food Access for Individuals with Justice-System Involvement and Their Families. (2020, May 13). Retrieved from <[https://www.chicagosfoodbank.org/wp-content/uploads/2020/06/2020\\_CCFATF-Report.pdf](https://www.chicagosfoodbank.org/wp-content/uploads/2020/06/2020_CCFATF-Report.pdf)>.

<sup>129</sup> Lerner, K., Vaughn, J., Weill-Greenberg, E., & Corey, E. (2019). Illinois loosened Ankle-Monitor restrictions, but advocates say it's too soon to celebrate. Retrieved from <<https://theappeal.org/illinois-loosened-ankle-monitor-restrictions-but-advocates-say-its-too-soon-to-celebrate/>>.



A client of Safer Foundation, Warren, explains how after he was released from prison, it was nearly impossible for him to get a State ID – the most basic tool he needed to access his finances, housing and employment – while he was on electronic monitoring:

*Most of the guys here in the house with me need IDs. So, the DMV was closed. They opened up a couple weeks ago on a Monday, and we went out there that first Monday, and there was over 200 people in line when we got there about 8:30. They closed it off [before we could get our IDs] 'cause there was too many people, they couldn't have too many people, because of the virus, working inside. So, we came back home, and we had decided to come the next day, but later on that day the IDOC parole officer for our whole house, basically told us we couldn't leave. We were on lockdown, no movement until further notice. They give us a 30-day certificate that allows us to redeem the state ID free. We hadn't used it, so I tried to call the Parole office a couple times to let them know I wanted to move, go out and try to get the license. They never called me back after the calls I left for them, three or four times. Once I get my electronic monitoring off, I'm going to try to be down there first in line and just try to go through without. But they talk about August as the time frame, before they're going to start reopening. So that's really kind of hard. We need IDs to do most anything you need to do.*

Parole and electronic monitoring were prohibitive especially during the summer of 2020, amidst the pandemic and social upheaval. We found that several clients, even those who spent only a few months in prison for DUI and other non-violent convictions, were usually on electronic monitoring. Of 273 clients who were surveyed on the condition of their parole, 39 per cent were on electronic monitoring. This limited the movement of clients and in some cases complete lockdown hindered them from getting access to care packages, ID, food, clothing, employment and health-care services.

Those on electronic monitoring who are ill are faced with the challenge of choosing between their own health and the health of their families or being reincarcerated if they violate the restrictions placed on them. Receiving permission to leave the house, even in emergencies, is a process that can take up to three days. For any medical emergency, in order to not to violate monitoring conditions, information including the name and title of the medical personnel and location, the exact time of the appointment, and the mode of transportation must be emailed to the electronic monitoring unit 72 hours in advance. The Cook County Sheriff's office has no data on whether they are tracking how many people on EM have Covid-19.

Data transparency around electronic monitoring in the State of Illinois is severely lacking. Despite, the cost of electronic monitoring and the strict rules people must abide by, there has been little to no research conducted on how well monitoring programmes work. The Illinois Sentencing Policy Advisory Council (SPAC) examined a sample of people under electronic monitoring for people leaving prison between April and June of 2018. The report revealed that the IDOC had no guidelines or criteria when using electronic monitoring.<sup>130</sup> For example, those who have committed sex crimes and violent offences are required under state law to wear an ankle monitor; however, the report shows that those with violent convictions were not given one. The council's report also found that the overwhelming majority of people being tracked had committed nonviolent offences. The

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<sup>130</sup> Ibid.

report concludes that there is an increased chance that a low-risk offender will recidivate when placed on an electronic monitor due to technical violations.

In response to this lack of data and information, the Illinois legislature unanimously passed HB0386 which requires correctional officials to release an annual report recording on who goes on electronic monitoring. The data breakdown includes demographic of the monitored population – including race, gender, and age. Agencies must also record whether someone is being monitored because it is mandated by law or according to the Prisoner Review Board. Additionally, correctional officials will need to track what offences people are convicted of, and how many returns to prison due to violations. So far, there has been no issued report by IDOC tracking these new regulations.

Another critical issue facing many is the continued use of cash bail. Across the nation the requirement of cash bail results in minorities being detained in jails at a significant disproportionate rate. Whites who typically have the family and personal wealth to pay cash bail, post bail and are released. Minorities who do not have the family or personal wealth cannot afford to post bond and are detained in jails for the same charges. cash bail is a de facto racially discriminatory system. Detention in jail should be based upon assessment of an individual's flight risk, danger to themselves or the public, not the ability of the person to post cash bail. Safer Foundation client, Sharon, explains how her pre-trial detention upended her life completely:

*I caught a DUI in 2017. I had never been in any trouble. I had arrests but never been convicted. So, I caught a DUI out in King County and I had to go to jail. Went back and forth with the court for a year and a half and I had to do 12 days in King County Jail to keep my case from being a felony, I didn't want to be a felon. So, I did the 12 days in jail and I was placed on probation, which I'm on probation right now, I get off in December. I hate it when I got my DUI because I had never been in trouble, had never been to jail or anything and I just thought my world would end. I lost my job in the process of that because of what I went through.*

For the last twenty years, the primary driver of mass incarceration has been pretrial detention.<sup>131</sup> Increasingly, people who are not convicted of crimes and awaiting trial are incarcerated in local jails and prisons. Almost 18 times as many people are admitted to jail than in prison annually. And nearly 730,000 people are held in more than 3,000 jails across the US on any given day.<sup>132</sup>

In Illinois, the Pretrial Fairness Act was passed on 13 January 2021 by the state legislature.<sup>133</sup> This law would make Illinois the first state in the nation to end cash bail, if signed by Governor J.B. Pritzker. In order to end the discriminatory criminal legal system, ending cash bail and electronic monitoring are necessary steps that the state and the nation must take.

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<sup>131</sup> Wagner, P., Sawyer, W. (2018). The Prison Policy Initiative. Mass incarceration: The whole pie 2018.

<sup>132</sup> Copp, J.E., Bales, W.D. (2018). Jails and local justice system reform: Overview and recommendations. The Future of children, 28(1), 103-124.

<sup>133</sup> Kiran Misra, "Illinois Poised to Become First State to End Wealth-Based Pre-Trial Detention," The Guardian (Guardian News and Media, 21 January 2021), <https://www.theguardian.com/us-news/2021/jan/21/illinois-pre-trial-fairness-act-wealth-based-detention>.

## **V. THE PRISON EMERGENCY RELEASE RESPONSE (PEERR<sup>SM</sup>)<sup>134</sup> MODEL: CREATING FORMALIZED PATHWAYS TO SUCCESSFUL RE-ENTRY**

On 6 October 2020, Illinois Governor J.B. Pritzker voiced his support for successful re-entry when he stated the need to “*Prioritize rehabilitation and reduce the risk of recidivism by increasing access to housing and healthcare for returning residents. The state is committed to expanding opportunities, supports, and services for people who are exiting the prison system so that they are set up to succeed upon return to their communities, and which will save taxpayers money by reducing the number of people trapped in a cycle of recidivism.*” Well before this announcement, Safer Foundation has been working with community partners to provide the services required for successful re-entry. When the Covid-19 virus began hitting jails and prisons hard, Safer Foundation was able to step up and act when needed most.

At the request of the Governor’s Office and in partnership with the Illinois Department of Corrections (IDOC), in March of 2020 Safer Foundation developed an interdepartmental emergency release crisis response team and a hotline to receive and work with the hundreds of people returning to the Community. Dubbed the Prison Emergency Early Release Response team (PEERR<sup>SM</sup>), this group comprises eight agencies organized to receive referrals from re-entry navigators and provide services, resources and support for individuals released early during the pandemic. The PEERR<sup>SM</sup> collaboration began providing immediate, emergency support to Illinois prison inmates and jail releasees who were released early due to the Covid-19 outbreak to limit the spread of Covid-19 in the correctional populations via a hotline set up with the IDOC Director of Reentry and Cook County Jail and continues operating today. Functioning like a Virtual Triage Call Center, PEERR<sup>SM</sup> maintains a hotline number provided to inmates at the time of their release. To facilitate a smoother transition and hinting towards the need for the development of pre-release services and planning, IDOC provides a copy of each inmate’s release file to Safer with information regarding existing behavioural health issues, physical health, and other confidential but relevant information, upon inmate consent, to ensure each individual is provided with the precise services they require. The PEERR<sup>SM</sup> group also established a system to safely and securely assess people upon exit and determine their urgent needs, such as medications, benefit assistance (Medicaid and SNAP), State IDs, immediate cash assistance, housing and clothes, and other immediate needs.

Safer's Reentry Navigators have been working to triage the immediate needs of people returning from incarceration to stabilize them via the services available through the PEERR<sup>SM</sup> network of provider partners. Once stabilized they are put on a career pathway for long term self-sufficiency. By addressing these immediate needs and providing socioeconomic opportunities, PEERR<sup>SM</sup> is providing people with alternate pathways than a life of crime and reinvolverment with the justice system. To successfully accomplish this, we must put in place a systemic, holistic re-entry process for people returning from prisons. While efforts are underway to improve the re-entry process, there are not formalized pathways for people to be successful post-release. To address this, it is critical that processes such as PEERR<sup>SM</sup> are formalized and become a standard part of the re-entry system on a state and municipal level.

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<sup>134</sup> Please see PEERR<sup>SM</sup> Report included as appendix to this document as well as a presentation on PEERR<sup>SM</sup> at SaferFoundation’s CARRE Conference (October 2020):  
<[https://www.youtube.com/watch?v=sYoMmD9jHkY&feature=emb\\_title](https://www.youtube.com/watch?v=sYoMmD9jHkY&feature=emb_title)>.

## VI. CONCLUSION

There currently is no systemic, holistic re-entry process in place for people returning from prison. While efforts are underway to improve the re-entry process, there is a lack of engrained pathways for people to be successful post-release. It is critical that processes such as the Prison Emergency Release Response effort become a standard part of the re-entry process for individuals coming home. The cost of doing nothing or not enough thwarts efforts to reduce prison populations due to Covid-19 and efforts to reduce violence. The demand for critical services due to the Covid-19 Pandemic continues each week and will continue for the foreseeable future as we begin to see evidence of a resurgence in the illness around the country. And while we are moving into a new phase with the pandemic, Safer continues to receive referrals from IDOC, as the problems are not going away any time soon. In particular, the need for housing for people released early as a result of Covid-19 is growing rapidly as returning residents are beginning to have difficulty living in their approved host sites. The housing backlog grows by the day. Some have already become homeless, and it has been a struggle to find placement in alternative housing with limited resources.

Any re-entry system must be accessible, effective, coordinated, fair and administrable. Developing such a system requires an understanding of the great diversity of the formerly incarcerated, and the equally diverse, yet unique, challenges they face “as an essential first step”.<sup>135</sup> In consideration of this, Safer has engaged in a systematic effort to identify the pathways of prisoner reintegration and examine what factors play significant parts in successful or unsuccessful re-entry experiences while identifying how to inform public policy most effectively. Safer plans to continue a systematic recording and analysis of the re-entry process as informed by individuals directly impacted by incarceration, including family members of those who have spent time imprisoned, and leaders in the field of re-entry.

In order to document the historical significance of the period and draw applicable lessons capable of informing future direct services and public policy decisions, Safer Foundation included within its PEERR<sup>SM</sup> work a qualitative research component intended to continue into the foreseeable future. This research includes rigorous interviews with individuals re-entering from corrections facilities as well as conversations with direct services providers who have worked within PEERR<sup>SM</sup>. To effectively document this work Safer Foundation is collaborating with subject matter experts and process systems consultants Smart Policy Works to create Journey Maps, effective tools that put a face to the numbers and tell the story of those released in an impactful way. Utilizing an oral history methodology and journey mapping, these interviews provide actionable information to service providers as well as policymakers. Safer Foundation plans to continue the qualitative investigations begun within PEERR<sup>SM</sup> and work to continuously provide practical, actionable recommendations for service providers and policymakers while also contributing towards the growing body of knowledge in the field of re-entry.

This approach reflects what is needed in the field of re-entry, in particular the examination of re-entry from the perspective of the returning individual while also considering the unique challenges facing women as the fastest growing demographic

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<sup>135</sup> Christy Visher, Nancy G. La Vigne, and Jeremy Travis, *Returning Home: Understanding the Challenges of Prisoner Reentry (Maryland Pilot Study: Findings from Baltimore)* (Washington, DC: The Urban Institute, 2003).

within jails and prisons. As noted by Holtfreter and Wattanaporn, while “‘one-size fits all’ correctional programmes may represent efficient and cost-effective approaches to re-entry in terms of implementation, failure to attend to gender responsive factors may prove more economically and socially costly in the long run.”<sup>136</sup> This report argues that any effective paradigm of prisoner re-entry must consider the perspectives expounded by those impacted by mass incarceration. Through their individual and collective experiences, people returning from imprisonment offer first-hand experience of what successful re-entry involves from their point of view. It is with this perspective, coupled with nearly half a century of public service, that Safer Foundation intends to continue this work for another century and provide our communities with the sustainable re-entry services they deserve.

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<sup>136</sup> Holtfreter, K., & Wattanaporn, K. A. (2013). The transition from prison to community initiative. *Criminal Justice and Behavior*, 41(1), 41-57. doi:10.1177/0093854813504406

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# REHABILITATION OF WOMEN IN PRISON

*Olivia Rope\**

## I. ABOUT PRI AND OUR WORK ON WOMEN'S IMPRISONMENT

Penal Reform International (PRI) is a non-governmental organization working globally to promote criminal justice systems that uphold human rights for all and do no harm. We work to make criminal justice systems non-discriminatory and protect the rights of disadvantaged people. We run practical human rights programmes and support reforms that make criminal justice fair and effective.

Women's imprisonment is a priority for PRI – not least because we know that implementation of the UN Bangkok Rules on women has remained piecemeal in many respects. One grave indicator of this is that the number of women in prison worldwide continues to rise; our latest analysis shows an increase of 17 per cent globally since the Bangkok Rules were adopted a decade ago.<sup>1</sup> PRI has undertaken a significant amount of work to support rehabilitation of women who find themselves in conflict with the law including in Georgia, a small country in the South Caucasus. Our approach when we work with women in criminal justice systems is based on the simple premise of putting into practice the UN Bangkok Rules as summarized below.

## II. DATA AND RESEARCH FOR A GENDER-SENSITIVE APPROACH TO REHABILITATION OF WOMEN

What is the first step in delivering a programme on rehabilitation of women? It is knowledge. Before embarking on any sort of intervention or programme of work we ask ourselves: What is the situation on reoffending for women and here I point to Bangkok Rule 67 which calls for "...comprehensive, result-oriented research on the offences committed by women, the reasons that trigger women's confrontation with the criminal justice system, the impact of secondary criminalization and imprisonment on women, the characteristics of women offenders, as well as programmes designed to reduce reoffending by women..."

What are the typical barriers women in criminal justice systems face in a certain country or region? PRI's research has shown common barriers to rehabilitation are often different for men, or if not different, impact women in a unique way.

It is therefore important for rehabilitation to be gender-sensitive because if they are to be effective, they need to address the multiple, overlapping needs of the person, the root causes of criminal behaviour, and these include those that are specific to women.

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<sup>1</sup> <<https://www.penalreform.org/blog/addressing-the-105000-increase-in-the-global-female/>>.

### III. COMMON BARRIERS FOR WOMEN'S REHABILITATION

Based on PRI's extensive research, and supported by other evidence, the different gender-specific issues commonly include:

- *Violence*: there is ample evidence that high numbers of women in prison have experienced violence. And in some cases, this violence is linked to their offence. It is key to address consequences of such violence.
- *Stigma and rejection* of women who have been involved in crime or in prison is often felt disproportionately, mainly because they are deemed to have broken social norms as “mothers, carers”. Impacts of such stigma include child custody issues or relationships where, for example, women may accept bad relationships as they are rejected from their families.
- *Rate of mental health* conditions are generally higher among women in prison compared to their male counterparts. This is now exacerbated by the impacts of coronavirus measures in prisons.
- Another common barrier for women's rehabilitation is related to *their status as sole carers of children or dependents* – the anxiety, worry and consequences of separation while in prison are well-evidenced.
- Finally, *poverty and low social status* of all people in prison is certainly true in the case of women. Although with women we know that poverty is frequently connected to the offence, and in many cases the ability to get out of poverty is more difficult because of the issues I have just mentioned.

### IV. MEETING THE NEEDS OF WOMEN IN PRISON IN GEORGIA (IN RELATION TO REHABILITATION)

In Georgia, where we implemented a specific programme on the topic, a PRI survey and a subsequent study by UN Women documented the top three requirements that women identified as needing support with to build law-abiding lives after prison.

These were: health and counselling, employment, and help with childcare and family reunification. Our project was designed to provide these support needs and others identified. As a minority group (women make up about 3.7 per cent of the national prison population total of just over 10,000 people in Georgia), they needed a specific approach.

We teamed up with partner organizations to deliver rehabilitation and support services to female prisoners and their children over a two-year period. The identified support needs were met through interventions from work and training opportunities, business start-up grants to psychological counselling, financial support for health care and a dedicated nursery and childminder at the mother and baby unit in prison so women could participate in programmes (see table):

Identified need (PRI / UN Women)	Service delivered
Insufficient rehabilitation, vocational and employment opportunities	Vocational training, small business management skills
Experiences of violence	Opening of a shelter
Legal issues	Legal aid
Difficulties to find employment	Small grants and training
Practical issues	Mother and baby unit in prison, shelter post-release
Health-care issues (including mental health)	Psychological counselling

#### **A. Shelter**

The shelter was important as women leaving prison often face so much stigma and discrimination and this, coupled with the absence of a social network, criminal record and caring usually for young children, means they are in a vulnerable position. This vulnerability and economic reality may lead them to reoffend again. The shelter provided a safe place and helped those released from prison, especially after a longer sentence. It prevented them returning to violent relationships. Also wrap around services were provided at the shelter (for example, access to legal aid and health care).

#### **B. Legal Aid, Counselling and Psycho-Social Assistance**

Legal aid and psychological counselling proved pivotal in the rehabilitation process for some women, allowing them to overcome long-term problems such as obtaining custody of children, issues accessing identification documents or overcoming a lack of confidence due to the stigma from been in prison.

The project also supported 97 children of imprisoned mothers by providing them psycho-social assistance. Psychologists provided therapy to children experiencing behavioural disorders, and social workers facilitated rebuilding relationships between children and their mothers through joint sessions. Transportation for regular visits was

facilitated. They assisted children and their families in applying for relevant state programmes to increase their access to education and health care.

### **C. Economic Empowerment and Tackling Poverty**

Economic empowerment and tackling poverty were other central objectives for our project, as having no money when coming out of prison is one of the main drivers of reoffending. This is particularly the case with women where common offences are related to poverty. For instance, in Georgia, common offences committed by women attracting a prison sentence are theft or property related, and the second most common type is drug-related offences, often committed in a context of financial need. While interventions in prison cannot address the underlying gender inequalities for women in society, micro-level programmes can help women on the pathway to employment and independence.

As well as vocational training and small business management, the project also helped women to find employment and/or gave small grants so they could start their own business. This was deliberate in order to overcome the issues of high levels of unemployment and difficulties for former prisoners to find jobs. Training focused on the registration of an enterprise, legal regulations, taxes, marketing and budgeting, as well as developing a business plan.

These courses not only had a therapeutic effect, boosting self-esteem but it helps recipients regain their status as carers for their families, provided structure to their daily routines and gave them opportunities to socialize.

### **D. Coordination of Multi-Sectoral Stakeholders**

The programme involved multi-sectoral stakeholders including mental health, justice, civil society and women affected. This was key to its success as the approach ensured joined-up service provision, for example, women accessing one service could be referred on to other services as needed. There was also positive support from state institutions for this project.

## **V. CHALLENGES FACED AND SOLUTIONS TO MITIGATE OR OVERCOME**

As always with projects that seek to overcome complex problems, our work in Georgia faced some challenges that are common elsewhere. Firstly, regarding infrastructure there are limitations, for instance insufficient availability of spaces or rooms for rehabilitation programmes to take place in prison, or there is no conducive environment. We therefore took on the challenge, for instance, by refurbishing the mother and baby unit purchasing furniture and toys, etc. Similarly, with the shelter, the authorities allocated the premises, but it needed furniture. It is critical to allocate funds and energy early on in such efforts.

Secondly, for sustainability beyond the project life, some challenges were faced. Ensuring buy-in from the state was going well during the project; however, a major restructuring in the government involved significant staff changes. A political shift brought a reprioritization with women in prison no longer a key priority of government. We saw that it is important therefore to plan for all possibilities, and for donors and the international community to ensure pressure alongside civil society for sustainability.



Finally, another challenge in any project on women is in tackling gender norms. Programme design is important, and therefore in our work in Georgia we sought to contribute to gender equality by giving women in prison the sort of training and opportunities which will lead to jobs and not fall back into roles those traditionally seen as appropriate for women. We also sought to ensure that the job training and other support was in line with the reality of the labour market so that there were real job prospects.

## **VI. IMPACT OF THE PROJECT IN GEORGIA**

The project had significant success in terms of reoffending rates. 85 per cent of the beneficiaries of the project did not reoffend. Of the 121 out of 819 who did reoffend, 7 of these women were sentenced to prison and the rest were placed on probation or received another non-custodial sanction.

## **VII. GUIDANCE ON REHABILITATION OF WOMEN IN PRISON**

The lessons from this project in Georgia and many others around the globe are captured in guidance published in 2019 by PRI with the Thailand Institute of Justice, titled “Guide to the rehabilitation and social reintegration of women prisoners: Implementation of the Bangkok Rules”.<sup>2</sup>

The tool is designed for use by prison management, staff, policymakers and others involved in the criminal justice process, including legislators, judges and law enforcement officials. It aims to provide practical guidance on improving existing rehabilitation programmes and services and designing new ones, looking at different country contexts and considering location-specific challenges and opportunities. It outlines 10 key principles for gender-sensitive rehabilitation programmes.

It summarizes the importance of good prisoner rehabilitation and social reintegration programmes and identifies the main barriers to successful rehabilitation, including the barriers faced by female prisoners and by specific groups of female prisoners such as girls, foreign nationals and women from ethnic minority groups. Identifying these barriers provides an insight into why additional efforts are needed to assist the rehabilitation of women offenders.

Finally, it includes some of promising practices from around the world showcasing good prisoner rehabilitation and social reintegration.

## **VIII. GUIDANCE ON REHABILITATION OF WOMEN SERVING NON-CUSTODIAL SANCTIONS**

PRI’s work in Kenya with the Probation Service, and with the support of the Thailand Institute of Justice, showed that there are various issues faced by women serving probation or community service that are a barrier to their successful rehabilitation. For instance, the women struggled to save money to pay for transport to attend monthly appointments at the

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<sup>2</sup> <<https://www.penalreform.org/resource/guide-to-the-rehabilitation-and-social-reintegration-of/>>.

probation office and had issues getting to their placement; problems with the length and scheduling of community service work meant clashes with family obligations like fetching water or childcare, worsening the financial situation; safety issues when supervised by male officers, etc.

A key outcome of our work in Kenya showed, again, that economic empowerment of women was critical to their rehabilitation. A package of resources, including a guide, “Gender-sensitive community service and probation: Model for Reform”<sup>3</sup> documents the overall experiences and findings of the pioneering, multifaceted project that focused on the experiences of women completing non-custodial sentences in Kenya. It lays out 10 key steps to take when replicating the project in an international context, in order to introduce a gender-sensitive approach to non-custodial sentences.

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<sup>3</sup> <<https://www.penalreform.org/resource/gender-sensitive-approach-model-reform/>>.

# KRIMINELLAS REVANSCH I SAMHÄLLET (KRIS) / CRIMINALS RETURN INTO SOCIETY (CRIS)

*Ali Reunanen\**

## I. INTRODUCTION

Hi, my name is Ali, and I am an addict and a former criminal. I want to start with that presentation, which we do at every group meeting we have at our local KRIS association. We do this because it is important for us to identify that we are addicts and that our drug freedom is not guaranteed. It's something we work on every day, one day at a time.

I would like to thank you very much for inviting KRIS to come here and present our organization, and we hope that our experiences can be useful to you. I will tell you a little about my own experiences, but as an organization we are always a “we-association”. Quite simply explained, it means that – “what I cannot do alone, we can do together”.



## II. EVERY CRIMINAL ADDICT HAS A HISTORY

This is me as a child one day that I may not have been in my very best mood, so the picture may symbolize the feelings that I often lived with already during my early life. Those feelings of guilt, shame, fear, anger, sadness and anxiety followed me to my adult life and were growing the longer my addiction continued. I will try to explain to you that every addict and criminal has a history, and it can be filled with things like bullying, abuse, trauma, segregation, poverty, alcohol and drugs, violence, war, crime and much more.

For my personal part it was about bullying, trauma and abuse. The hardest thing for me personally was that I was bullied by older kids and sexually abused by a paedophile when I was 9 years old. That made me angry and hateful when I got older. When I was 14 years old and with my friends, we came in contact with alcohol which for me became my first drug and which made me feel happy, free and helped me to be the Ali I wanted. I soon learned that I could get that feeling when drinking, which then became an important part of my life. Unfortunately, there was also a lot of violence and other consequences in connection with my use.

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I felt sad and lonely and found alcohol and drugs the only way to help me deal with my life. I did not tell anyone about the sexual abuse that the paedophile did to me; it became a secret that I kept to myself for 30 years. This is something that no child should have to experience, and I feel sorry that there was no adult that I dared to talk to this about. I talked about it for the first time during my treatment in prison, and it made me understand what it means “to heal by sharing”. So what I mean is that every addict and criminal has a history and that I think it is more important to understand than to be understood.

### **III. IT OFTEN ENDS UP IN PRISON**

Many of our members have grown up with broken families or no families at all. They have often grown up in support families or orphanages and learned to survive but have not been taught to live. Many of our target group live or have lived a life with a criminal lifestyle, which also requires a lot of work to leave. When they come out of prison, it is usually the old friends and drugs meeting them, and it only leads them back to prison, institutions or death, unless something else enters life that can give purpose and meaning.

A lot of different bad consequences can bring you to end up in prison, and then it is up to yourself if you want to feed the white or the black wolf inside yourself. We in KRIS do believe that no one is hopeless and that if you get the right treatment and the right help anyone can succeed. Here are some of the ideas that can be useful in a life change.

### **IV. PRISON CAN BE A TURNING POINT**

A good beginning is if a person asks for help; that would be a really good start. Then we believe in treatment similar to the 12-step programme which can help you to change your mindset and give back hope and faith. Then you can work with self-help groups, to find a new supporting fellowship, and when you get out you will need a lot of support of people who already have done the change.

That’s what KRIS is offering. In KRIS, we see addiction as a lifelong and incurable disease that we can break, become drug-free and learn to live with one day at a time. We can change our criminal lifestyle with a programme called “challenging a criminal lifestyle”. I will return to this a little later in the presentation. For us, it is important to be drug-free one day at a time, and this applies to all drugs including alcohol. The more a person can work with himself already inside the prison, the easier it will be when he comes out.

### **V. A LITTLE ABOUT MY OWN EXPERIENCE**

I also want to take the opportunity to mention a little from my own life. I became drug-free and honest thanks to the police, the judicial system, the prison and the 12-step programme they offered at the institution where I served my last sentence. From 1 April 1994, when the police arrested me, I have not used any drugs or alcohol since, and I do it one day at a time. With that decision and the work I have done with my criminal lifestyle, I have lived honestly and tried to be a role model for others.

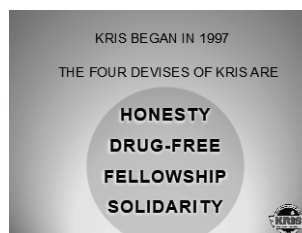
When I received my sentence, I was in custody, and I received the information that there was a prison that had started 12-step treatment. I got the possibility to apply for it, which I did. The decision came and I had to come to the institution and what was special about this institution was that not only rules and staff kept the institution drug-free, but also the inmates made sure that no drugs would enter the prison, which I was informed of by the prisoners' trust council.

In prison, I had to see how my addiction had taken over my life and that it had consequences in all areas of my life. I had turned my back on my family, I had no "real" friends left except some criminal addicts. I had come to the point where I accepted that I was a drug addict; I ignored it and basically was prepared to drug myself to death. It went so far that I started thinking about suicide. Fortunately, the police caught me before I had time to do something really, really stupid.

So when I came out and started to stand on my own two feet trying to live a normal life, many parts of life were difficult. I needed both time and support to be drug-free and honest. Then it was about housing, finances, education, family, social, physical, etc. And of course, to make amends for everything I had done during my active years. We grow as human beings by taking responsibility for our decisions and their consequences. When I do that, I start to gain self-respect, which in turn leads to self-esteem, and over time I start to trust myself and gain self-confidence as a human being. With the help of the 12-step programme, meetings, support groups and of course KRIS, I today have a fantastic life filled with both goals and meaning where I also can help others.

## VI. A NEW CHANCE

Prison with good content can be a really good opportunity to start a new drug-free and honest life. Then there will be more tasks and problems to solve when you are free. Then there will be a great need for support and help building a new life. And of course, KRIS is one of the supports that many really need as a complement to other efforts that a person may need to build a new and better life.



## VII. KRIMINELLAS REVANSCH I SAMHÄLLET (KRIS)

The reason KRIS started was due to a need for something that did not exist, which was some kind of group or association that understands our problems and that can both help and also set boundaries, not accepting all the lies addicts and criminals live with. CRIS in English means Criminals Return Into Society, and that means we get a second chance in society. Getting an opportunity to make amends for things we have done and the opportunity to be able to become role models in society and help others who want to leave

a life full of addiction and crime. Therefore, we have built our association based on four cornerstones which are:

**Honesty** – We do not commit crimes. We are honest with each other and with ourselves.

**Drug-free** – In KRIS we are completely drug-free, which also applies to alcohol, we use drug tests and breath tests to make our members feel safe.

**Fellowship** – We care about the well-being of our friends and respect our fellow human beings.

**Solidarity** – We help, respect and care for each other. 24 hours a day.

KRIS conducts institutional visitation activities where members from all our local associations make regular visits to give hope that there is a way out of addiction, crime and exclusion. In total we make about 1,500 – 1,600 visits a year, which are much appreciated by the inmates.

During these visits, there are different rules at the prisons. Sometimes we can meet whole wards with inmates and can then have nice group talks or lectures. At other times, it is the individual motivating conversation. Often it is the individual inmate who wants to get in touch with KRIS, which gives us an opportunity to meet them when they are released. It also happens that we get a possibility to hold study circles inside the institutions. Often, they include deep discussions about living honestly in society. I have not met any criminal addict who had as life plan – when he or she was young and curiously tried alcohol, drugs or snatched something in the store – to become a drug addict and criminal and would spend his or her life in prison.

KRIS local associations conduct daily structured activities where everyone has a responsibility to make it work. The associations organize specific study circles and groups in certain areas such as crime, violence, traditions, parent groups and also study circles on topics such as guilt, shame, anger, fear, grief, etc. We also organize KRIS days when we meet in pleasant conditions and socialize and work with those topics. When we are out visiting the local associations, they offer food which is always nice and is also part of belonging to a community; many of our members are not used to having food every day. We have some members who are homeless and who need special support, which we try to provide.

It has been and is a very unusual time in society in this last year when we cannot or may not get into the institutions, and we all hope that it will get better and that we can get back inside the institutions to give the inmates support and hope.

## **VIII. CHALLENGING A CRIMINAL LIFESTYLE**

Challenging the criminal styles of thinking and to see the motives and drives for a criminal lifestyle and giving the person a message of hope: There is a way to another lifestyle without criminality and the message is that you can have a new way of life and be a part of the society.

Most people commit some crimes during their childhood. For some, the problem becomes more serious, and they may need help to keep from going any further. Those who

have difficulty quitting, often despite severe consequences, can get trapped in a criminal lifestyle. In the end, it can be just as difficult to leave the criminal lifestyle as to break with a drug addiction. What characterizes a criminal lifestyle is, for the adult, irresponsibility, an image of oneself as an "outsider", criminal thought patterns and impulsive action patterns.

As early as the 1950s, researchers noticed that there were various ways in which criminals used to “speak to themselves” to silence their consciences. You could call it a form of a defence-mechanism. Later it came to be known as criminal thinking patterns. These thinking patterns are, according to Glenn Walters, the founder of the Criminal Lifestyle theory

- Justification
- Cut-off or shielding
- Power and control
- Entitlement
- Sentimentality
- Superoptimism
- Cognitive Indolence
- Inconsistent thoughts

The driving forces of crime are several. One basic thing is fear. Fear is about not believing in coping with life but what crime can bring: Belonging, status and confirmation. Other basic driving forces are lack of self-control, lack of inhibitions, emotional coldness and suspended emotions. In addition to these, there are other driving forces such as greed, shame, power and control, tension and lust. The goal of challenging the criminal lifestyle is to convey hope that there is another way of life.



## **IX. LIFE IS ABOUT MORE THAN JUST BEING DRUG FREE AND HONEST**

Getting a good start is to have a good home where there are no drugs and where there are people who have changed their life and one thing which is very important for a new life, that is to take care of themselves and to be able to make amends, to pay back the people you have hurt and to paying back continue society by helping others who need help and that's where our slogan is handy. It is simply, “Help yourself by helping others!”

Another important part of life is to support your self-confidence. You really have to wish for an honest job and be able to keep it. KRIS started some social businesses for our members, as a possibility to learn a trade and to do some good work. Of course, they will make mistakes, and it is better that they do them at KRIS, instead of in an ordinary workplace. Some of our members have never had a job, so we have to teach them from the beginning, to be in time, to follow rules, to listen to a boss and so on.

Many with our background have had or no experience with either education or work, so it is difficult for our members to be able to compete in the labour market. So in order to get a good job and with the life experiences we have, we have created our own education called Lifestyle Coordinator. It is a basic training in working with addiction and crime.

The training lasts for 1 year and includes a lot of internships, and the course is based on the 12-step programme and challenging a criminal lifestyle. It is a process education, which means that the students go through all the elements in their own lives which means that their own experiences come in handy. In addition to addiction and crime, we spend a lot of time on working with shame, guilt, anger, grief, violence, early sexual abuse and other trauma treatment. Over 65 per cent of the students are offered a job already during the education, which we are very proud of.



## **X. SUPPORT**

As an organization, we have a great need for support from important people in society, both from business and politics, and some of those who are honorary members are the royal family. Here are two of our honorary members H.M King Carl Gustav 16th and Queen Silvia. A nice memory with Queen Silvia is when KRIS celebrated its 20th anniversary, and the queen spontaneously went up on stage and told about her memories where she participated in various KRIS events and told us how important the organization is and what difference we can make for our target group.

Thank you so much for giving me the opportunity to come here to tell a little about KRIS and our activities. I also want to take the opportunity to thank the Swedish police, the legal system and the prison service for the efforts they made to stop me and then to help me to a new life. And in conclusion, I want to say again, hello my name is Ali, and I am a grateful recovering addict and former criminal. Thank you.



# MULTIFACETED APPROACH TO ENSURE CONTINUOUS SUPPORT AND SERVICES FOR REHABILITATION AND REINTEGRATION OF OFFENDERS

*Maria Cristina Mattei\**

## I. INTRODUCTION

Hedayah, the International Center of Excellence for Countering Violent Extremism (CVE) based in Abu Dhabi, developed an innovative technological tool for Monitoring, Measurement & Evaluation (MM&E) of rehabilitation and reintegration programmes for violent offenders. MASAR is a desktop and smartphone application that assists users in developing a step-by-step framework to evaluate and assess the results and project the long-term impact of CVE programmes,<sup>1</sup> including rehabilitation and reintegration programmes. MASAR specifically focuses on impact-evaluation and not on other types of evaluation (e.g. performance evaluation/process evaluation), it includes an indicators' generator, a library of existing case studies gathered worldwide and a section on lexicon and terminology related to MM&E. This app can support better design and impact-evaluation of rehabilitation and reintegration programmes for offenders and is available for free in iOS and Android.

## II. PRESENTATION

Hedayah is an international, apolitical and independent hub created in 2012 and based in Abu Dhabi (UAE), reporting to a steering board of 12 Governments. The organization was launched by the Global Counter Terrorism Forum (GCTF)<sup>2</sup> which is a governmental platform focused on developing solutions and identifying good practices to counter terrorism and counter violent extremism.<sup>3</sup> As part of its mission, Hedayah is mandated to develop tools for governments and practitioners, implement capacity-building programmes and gathers global good practices in the field of countering violent extremism, including on rehabilitation and reintegration of violent extremist offenders. Most of these practices are also relevant for rehabilitation and reintegration of mainstream criminal offenders.

As mentioned, one of the key tools developed by Hedayah is MASAR. Indeed, MM&E is a pressing challenge in rehabilitation and reintegration, for a number of reasons:

- There is a challenge in defining “success” and the vision of programmes, across practitioners and governments;
- Outcomes and impact require a long time, and immediate change is not always visible;

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<sup>1</sup> <[https://www.hedayahcenter.org/resources/interactive\\_cve\\_apps/masar/](https://www.hedayahcenter.org/resources/interactive_cve_apps/masar/)>.

<sup>2</sup> <<https://www.thegctf.org/>>.

<sup>3</sup> <<https://www.hedayahcenter.org/about/our-story/>>.

- In general there is a lack of specific resources dedicated to MM&E across governments and organizations.<sup>4</sup>

At the same time, effective MM&E practices are crucial to link overarching goals and objectives to the visible results of recipients (i.e. criminal offenders). MM&E is also the best mechanism to inform future practices and therefore should be prioritized, despite the challenges.

MASAR proposes a simple, yet comprehensive, framework inclusive of steps to guide governments and practitioners in developing effective impact-evaluation plans for a variety of programmes, including rehabilitation and reintegration. The steps include:

- 1) Evaluation of the context
- 2) Development of a Theory of Change
- 3) Identification of goals and activities
- 4) Key indicators and indicators' generator
- 5) Collection methods
- 6) Resources and limitations
- 7) Capturing results
- 8) Displaying results

These steps are included in a user-friendly interface that proposes examples, case studies and definitions to help the development of tailored evaluation plans. One of the key principles in MASAR is that MM&E needs to be embedded at the outset of programming and not as the final step of rehabilitation and reintegration. A proactive approach in designing the MM&E log-frame would ensure that evaluation could be run throughout all the phases of rehabilitation and reintegration, and not as a last step. Indeed, limiting evaluation at the end of a programme seriously affects the quality and feasibility of capturing results.

To showcase the applicability of MASAR, Hedayah proposed a case study on the Dutch Probation Service, based on information contained in a publicly available evaluation study (Der Heide & Schuurmann, 2018).<sup>5</sup>

The Dutch Probation Service is an independent organization focused on criminal justice in the Netherlands. Among its activities, it plays an advisory and supervisory role during court sessions and detention of convicted terrorists as well as individuals suspected of terrorism. Team TER (Terrorism, Extremism and Radicalization) is a unit embedded in the Dutch Probation Service and is mandated with supporting the rehabilitation and reintegration process of terrorist offenders; providing plans for after-care, upon offenders' release and; gather evidence-based practices to inform future programmes. Its stated overarching goal, according to the study, is *reducing likelihood of recidivism to Terrorism*.

Team TER was established based on a number of assumptions:

- It was deemed as the best entity to focus on effective rehabilitation and reintegration.

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<sup>4</sup> Mattei & Zeiger, Evaluate your CVE Results: Projecting your impact (2018). Available at <<https://www.hedayahcenter.org/wp-content/uploads/2019/11/File-16720189339.pdf>>.

<sup>5</sup> Der Heide & Schuurman: Reintegrating Terrorists in the Netherlands, Evaluating the Dutch Approach (2018)

- De-radicalization (narrative approach) was considered the best approach to reach a behavioural change (disengagement), in recipients.
- The programmes were based on an approach of incentives and prohibitions and focused on a variety of topics to include theological counselling and vocational training.

The study highlights that out of 189 clients between 2012 and 2018, only 8 returned back to terrorism. This corresponds to 4.2 per cent terrorism recidivism compared to the general Dutch rate of 45.3 per cent for mainstream inmates (2013).<sup>6</sup> However, no information is available on whether the individuals graduating from the programme were fully reinserted and reintegrated into society or were still at the fringes of society. The lack of this information raises a question on whether the programme could be still considered fully successful. In addition, the study highlights that competition with other entities and municipalities was also a serious challenge, especially at the beginning of Team TER's activities. Lack of information-sharing protocols and coordination was in fact one of the issues highlighted in the evaluation study.<sup>7</sup> This leads to questioning the initial assumption set by Team TER of being the natural entity to be in charge of rehabilitation and reintegration in the first place.

By applying MASAR's framework, the presentation aimed to demonstrate that it is possible to proactively develop an effective system that anticipates challenges and needs in designing and evaluating the programme. Notably, MASAR offers assistance to policymakers and programme designers in developing an effective structure that is conducive to better evaluations and capturing of results.

For instance, MASAR's STEP 1 (Evaluating the Context) provides a number of guiding questions that help the app users to reflect about the nature of the programme and the existing stakeholders involved in the same field. Through this step, it is possible to determine whether there are other competing organizations working on the subject and to better define the nature of the programme. This is key to also define what "success" means in the programme. As a matter of fact, several practitioners working in Team TER highlighted that one shortcoming was the lack of consensus on what can be defined as success. Was success defined as graduating the programme and being disengaged from violence or was success defined as full reinsertion and reintegration into society?<sup>8</sup> Furthermore this step also allows to better define and describe the recipients of the programme. Profiling recipients would have the advantage to see whether a narrative approach (deradicalization) could actually be the relevant rehabilitative approach, as in several cases ideology was not the preeminent reason for individuals to join terrorist groups.

STEP 2 guides the users to develop a theory of change which links the underlying assumptions gathered in STEP 1 and articulate them in a concise statement that maps the logical flow of inputs, activities, outcomes and projected impact. In its simplest form, a ToC Statement can be expressed through an "IF"... "THEN"... "BECAUSE" statement.<sup>9</sup>

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Mattei & Zeiger, Evaluate your CVE Results: Projecting your impact (2018). Available at <<https://www.hedayahcenter.org/wp-content/uploads/2019/11/File-16720189339.pdf>>.

This step is important as it helps the user to define the overarching vision of the programme and better determine what success means. It also includes the specific conditions that need to happen to ensure the programme is effective. The definitions of these conditions are crucial as these are often the externalities that impede the success of programmes. For instance, one necessary condition to ensure effectiveness of a programme is that clients need to be willing to participate and/or that staff is appropriately and adequately trained. Without these requirements/conditions satisfied, the programme would not be successful. It is therefore important that the ToC is rooted in a robust understanding of the context, resources and potential externalities. In the case of Team TER, a basic ToC could be defined as follows:

*IF Coordination mechanisms are put in place to share information with Team TER  
AND Practitioners are provided with adequate and continuous training and support to ensure full capacity  
AND Approaches implemented are suited to the individual's needs  
AND Clients are willing to accept the intervention  
AND Resources are allocated to ensure full monitoring upon release  
THEN Clients will increase their capacity and opportunity to live a functional, fulfilling pro-social life and resist joining terrorist groups  
BECAUSE Clients will be equipped with, skills, tools and tailored alternatives to live a pro-social life and resist recidivism;*

In other words, MASAR guides the user to write the ToC statement and help users reflect on the different conditions and externalities that are required to happen to see change in the recipients (i.e. violent extremist offenders). Some of these conditions can be managed by programme designers and implementers, while others are externalities that may not be predicted. Nonetheless, the latter are still important to be identified to ensure that mitigation strategies and alternatives can be developed.

After defining the ToC statement, STEP 3 guides the user in unpacking the vision of the programme into overarching goals, sub-goals and activities. MASAR also helps the user to frame the goal in a positive manner. For example, Team TER's initial objective "Reducing the likelihood of terrorism" could be redefined as "Increasing Clients' capacity and opportunity to live a functional life and resist joining terrorist groups". Reframing the goal has the advantage to ensure a facilitated evaluation of the progress, as it is much easier to measure progress towards an increase, rather than measuring reductions. It also strengthens the definition of success, defining it as full reintegration into society. This STEP also guides in breaking down ambitious and broad goals into sub-goals that are more measurable and manageable.

In MASAR, the broad goal can be in fact broken down into:

- 1) Clients' increased openness towards the programme;
- 2) Clients' progress towards pro-social ambitions and activities;
- 3) Clients' increased skills competencies to access alternatives in society.

Defining sub-goals has the potential to ensure a better monitoring of the violent extremist offenders' progress in the rehabilitation and reintegration programme. In turn,

these sub-objectives need to be mapped to specific activities (i.e. input) that can ensure concrete rehabilitation and reintegration.

STEP 4 and STEP 5 help the user identify the relevant indicators mapped to each sub-goal. Indicators are distinguished between qualitative indicators and quantitative indicators. Qualitative indicators are meant to capture the qualitative change in attitudes and behaviours, and quantitative indicators are meant to capture the output, meaning any change that can be measured numerically. Both types of indicators need to be mapped to the sub-goals. In other words, they need to be an expression of the progress towards the sub-goals and in turn, the overarching goal of the programme. MASAR also includes an indicators' generator function that allows the user to browse different types of indicators depending on the sub-goal. While this function does not automatically select the best indicators, it still helps the user reflect and identify the best indicator to capture positive changes and progress. This function can be very useful in those cases where evaluation specialists are not available in organizations.

In the case of Team TER, some of the indicators suggested by MASAR included:

Sub-goal 1: Clients' increased openness towards the programme

- *Indicator: Number of times the client proactively communicates, shows interest in participating in the activities*

Sub-goal 2: Clients' progress towards pro-social ambitions and activities

- *Indicator: Existing/number of activities he/she participates in (personal commitment)*
- *Indicator: Existing/number of pro-social interests, ambitions identified and mobilized.*

Sub-goal 3: Clients' increased skills competencies to access alternatives in society.

- *Indicator: Quality and Number of activities performed in the community*
- *Indicator: Quality employment opportunities after release*
- *Indicator: Quality and Number of pro-social activities after release.*

As mentioned, STEP 5 helps the app user to select the appropriate collection methods to capture the above-mentioned indicators. Direct observation, structured professional judgment, needs assessment, information sharing protocols across agencies, interviews and questionnaires are all valid collection methods that can help capture the relevant indicators of progress.

STEP 6 introduces a topic that is quite crucial for MM&E. This STEP is actually an underlying principle encompassing the whole evaluation and guides the user to reflect about the existing resources and limitations to carry out and complete the vision of the programme. In particular, the app helps the user reflect on:

1. *Available funding*
2. *Existing staff*
3. *Available facilities*
4. *Technical capabilities and materials*
5. *Timelines*

This STEP helps to bridge the gap between the reality of the programme implementation and the overarching vision behind it. Notably, if programme implementers recognize any challenges or gaps in any of the above-mentioned categories, the best course of action would be to reframe the overarching goal or the sub-goals, as they may be too ambitious, or select different indicators and collection methods.

STEP 7 AND STEP 8 helps the user to reflect on the collected indicators and distinguish them into results. Notably:

- *Outputs* are measurable products (usually quantitative) of a programme's activities or services. (e.g. number of clients "graduating" from the programme).
- *Outcomes* are intended qualitative results of programme activities or services (e.g. number of clients who enhanced their openness to different worldviews, showed interest and commitment towards pro-social activities.)
- *Impact* refers to the overall vision of the programme which in this case is clients' increased capacity and opportunity to live a functional life and resist joining terrorist groups. As actual impact is a long-term change in recipients, and oftentimes difficult to capture in the scope of the programme implementation, MASAR suggests that by successfully measuring intended outputs and outcomes, it can be presumed that violent extremist offenders will be successfully reintegrated and rehabilitated, in the long-term. This is also linked with the ToC statement previously defined in STEP 2. Measuring "impact" of rehabilitation and reintegration programmes can require time and additional resources that are not always available and often outside the legal scope of the programme itself. MASAR can help project the long-term impact by referring back to the ToC and to the requirements and conditions needed to occur, to ensure the vision is satisfied. By utilizing outcomes and outputs as proxy indicators of impact, MASAR offers a contribution to the pressing challenging of measuring the long-term impact of rehabilitation and reintegration programmes.

In conclusion, MASAR is a technological resource that can facilitate the development of an MM&E framework and build the vision of the programme. By doing so, evaluation is proactively embedded in programme design. MASAR has been developed by Hedayah, the Royal United Services Institute (RUSI) and 21Unicorns through the allocations of funds provided by the Governments of Canada, Spain, the United Kingdom and Australia. In Summer 2020, MASAR was updated with the inclusion of additional case studies, basic features in the Arabic language and inclusion of an indicator's generator. For more information, please visit [hedayahcenter.org](http://hedayahcenter.org).

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## WORKSHOP REPORT

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United Nations

A/CONF.234/L.4



# **Fourteenth United Nations Congress on Crime Prevention and Criminal Justice**

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### Agenda item 4

#### **Integrated approaches to challenges facing the criminal justice system**

1. Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, which is part of the United Nations crime prevention and criminal justice programme network, assisted the United Nations Office on Drugs and Crime (UNODC) in the preparation and organization of the workshop. The Committee had before it the following documents:

(a) Background paper prepared by the Secretariat for the workshop on reducing reoffending: identifying risks and developing solutions (A/CONF.234/9);

(b) Working paper prepared by the Secretariat on developments regarding crime prevention and criminal justice as a result of the coronavirus disease (COVID-19) pandemic (A/CONF.234/15);

(c) Discussion guide for the Fourteenth Congress (A/CONF.234/PM.1);

(d) Reports of the regional preparatory meetings for the Fourteenth Congress (A/CONF.234/RPM.1/1, A/CONF.234/RPM.2/1, A/CONF.234/RPM.3/1, A/CONF.234/RPM.4/1 and A/CONF.234/RPM.5/1).

2. At the 1st meeting of Committee II, on 8 March, the Chair of the Committee opened the workshop. Opening remarks were delivered by Kittipong Kittayarak of the Thailand Institute of Justice. The workshop was moderated by Seto Takeshi, Director of the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders. The keynote address was delivered by Fergus McNeill of the University of Glasgow, United Kingdom of Great Britain and Northern Ireland. Presentations were made by the following panellists: Vera Tkachenko, UNODC; Mariana Martin, Namibian Correctional Service; Emiliano Blanco, Latin America Chapter of the International Corrections and Prisons Association; and Heidi Bottolfs, Directorate for Correctional Services, Norway. Statements were made by the representatives of

Morocco, Mexico and the Philippines. Statements were also made by the observers for the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and the International Federation of Action by Christians for the Abolition of Torture.

3. At the 2nd meeting of Committee II, on 8 March, the keynote address for the workshop was delivered by the Chair of the Committee. Presentations were made by the following panellists: Jennifer Oades, Parole Board of Canada; Jana Špero, Ministry of Justice and Public Administration of Croatia; Teresia Matheka, High Court of Kenya; and Manuel Co, Parole and Probation Administration of the Philippines. Statements were made by the representatives of Japan, Honduras, France, the Philippines and Italy.

4. At the 3rd meeting of Committee II, on 9 March, presentations were made by the following panellists: Imafuku Shoji, Ministry of Justice of Japan; Sodiqa Williams, Safer Foundation; Olivia Rope, Penal Reform International; Ali Reunanen, Criminals Return into Society (KRIS); and Maria Cristina Mattei, Hedayah. Statements were made by the representatives of Canada, Japan, the United States of America and China.

#### **Chair's summary**

5. During the opening remarks, the importance of employing a holistic approach to reducing reoffending, including through multi-stakeholder cooperation, was stressed. The keynote speaker, in his opening of the first panel discussion, on creating rehabilitative prison environments, emphasized the principle of proportionality that should guide interventions aimed at the personal, judicial, moral and social rehabilitation of offenders. He recalled the importance of evaluating interventions, including the offenders' perspectives of them, with the aim of identifying barriers to reintegration. It was noted that the most vulnerable populations suffered the most as a result of the State's failure to prevent reoffending. He concluded with the suggestion that criminal justice systems should be assessed by their ability to enable social reintegration.

6. The first panellist highlighted the alarming rates of prison overcrowding in the world, identified measures that contributed to creating rehabilitative prison environments and shared the experiences of Kazakhstan and Kyrgyzstan. The second panellist shared the Namibian experience in applying the "risk-need-responsivity" model, which demonstrated potential for reducing reoffending. The third panellist discussed corruption in prisons as a major obstacle to rehabilitation efforts and the experience of Argentina in reducing corruption and the risk of corruption in prisons, including through the enhancement of the status of prison staff and integrity training. The fourth panellist shared the Norwegian experience in adopting the "principle of normality" in prison administration, by promoting continuity of service and community participation, and other efforts that increased the quality of life of prisoners.

7. During the discussion, several speakers highlighted the importance of establishing legislation and using non-custodial measures, combined with efforts to raise awareness of the benefits of such measures among criminal justice practitioners and the wider public. Some speakers shared national examples of rehabilitation programmes in prisons and described the health, educational and vocational training components of those programmes. One speaker noted that Governments

must keep detailed statistics in order to measure and monitor reoffending.

8. The second panel discussion, on community-based approaches that support desistance, began with a keynote speech in which it was emphasized that community-based approaches were less costly and often more effective than imprisonment in supporting desistance. It was noted that community-based approaches could strengthen implementation of the Sustainable Development Goals, for example, through improved access to social services, education, employment and reduced social inequality.

9. During the first presentation, the use of community-based approaches to reduce reoffending in Canada was shared, and the fundamental importance of effective partnerships within and outside the criminal justice system was stressed. The role of the parole board in Canada in reviewing the conditional release of offenders was also outlined. The second presentation covered the Croatian experience in creating a professional probation system, which had significantly increased the use of non-custodial measures and reduced the prison population since its establishment in 2009. The promotion of the concept, benefits and results of probation were mentioned as critical to its expanded use. In the third presentation, the panel heard about the judiciary-driven multi-agency approach in Kenya in cases involving children, which had led to more children benefiting from non-custodial measures and to reduced pretrial detention, increased provision of counselling and successful diversion from the criminal justice system. The focus of the fourth presentation was the *barangay* (village) justice system of the Philippines, under which the smallest unit of local government facilitated access to justice through restorative justice. Information was also shared on the parole and probation administration in that country.

10. During the discussion, many speakers highlighted that having a wide range of community-based approaches was effective in rehabilitating and reintegrating offenders. One speaker noted the efficacy of using community probation volunteers as a measure to involve the community and mobilize its resources in rehabilitating offenders. One speaker stressed the need to provide systemic support for children in conflict with the law, with a strong emphasis on prevention. Speakers stressed that providing fair and effective opportunities for rehabilitation to former offenders was the most effective way of reducing reoffending and promoting public safety.

11. The third panel discussion, on a multifaceted approach to ensure continuous support and services for the rehabilitation and reintegration of offenders, began with a presentation on the Japanese experience in preventing reoffending through identifying and meeting diverse needs for rehabilitation, including housing, employment and social welfare. The second presentation covered the disproportionate impact of criminal justice policies on minority communities and highlighted the need for government and private investment in effective rehabilitation and reintegration programmes. The third presentation was focused on a gender-sensitive approach to rehabilitation, covering identified needs, common barriers and appropriate services for rehabilitating women in prisons. In the fourth presentation, the importance of providing support that met the individual needs of the offender, including by understanding the offender's history and background, was highlighted. The role of civil society in that effort was also highlighted. The fifth presentation featured the panellist organization's step-by-step

monitoring and evaluation framework, called *masar* (“pathway” in Arabic), designed to help policymakers and practitioners design effective programmes for rehabilitation and reintegration.

12. During the discussion, several speakers shared their national experiences and reiterated the importance of employing a multi-stakeholder approach in reducing reoffending. It was noted that rehabilitation programmes should provide support that met individual needs, and that housing and employment opportunities were often the most critical needs of former offenders. One speaker noted the importance of collecting and maintaining detailed statistics on reoffending rates so as to inform the development of criminal justice policies. Another speaker stressed the importance of funding for community-based programmes that supported reintegration.

13. The Chair recalled that reducing reoffending was critical to building inclusive, sustainable societies as envisaged in the 2030 Agenda for Sustainable Development. He emphasized that criminal justice interventions should be in line with the principle of the least restrictive sanction and the principle of proportionality, with the aim of rehabilitating offenders in the community whenever possible, and that programmes to reduce reoffending needed to be multifaceted, involve all relevant stakeholders and ensure the necessary continuity of care within rehabilitative environments. In that context, he invited participants to consider the following points raised during the discussions:

(a) With a view to reducing reoffending, Member States should undertake to collect relevant statistics, identify the root causes of offending and reoffending, including the impact of poverty, unemployment, homelessness, discrimination and health – in particular mental health – issues, evaluate social reintegration approaches, and share data, research and evaluation outcomes nationally and internationally;

(b) Member States are encouraged to develop effective interventions for the rehabilitation and social reintegration of offenders, recognizing that this is crucial to public safety and social inclusiveness, applying a realistic, step-by-step approach that considers the availability of resources and the feasibility of steps to be taken within a certain time frame, refers to experiences in other jurisdictions and explores the cost-effective use of information technology;

(c) Member States are also encouraged to apply a multi-stakeholder approach towards the social reintegration of offenders, involving the public sector at both the State and local levels, the private sector, faith-based organizations, academia, volunteers and community members. Member States should seek to promote public-public and public-private partnerships, to ensure continuity of support and to help offenders to secure employment and housing and access to legal, social and medical services, as well as educational opportunities and vocational training;

(d) Acknowledging that public understanding and cooperation are key elements of the reintegration of offenders into society, Member States are invited to undertake awareness-raising activities directed at the general public, the private sector, non-governmental organizations, volunteers, employers and the family members of offenders to increase understanding of the impact of both imprisonment and non-custodial measures on victims, on the social reintegration of offenders and on

public safety, and elicit public support for the community reintegration of offenders;

(e) Member States are invited to recognize the effectiveness of rehabilitative community-based interventions and ensure that a mandated, sufficiently resourced and adequately staffed public entity, such as a dedicated probation service, is in place to manage, supervise and support offenders in the community. Member States are also invited to take inspiration from successful experiences with the involvement of community volunteers who support the reintegration of offenders;

(f) Member States are encouraged to implement penal responses guided by the principle of proportionality and assessed by their ability to enable the reintegration of offenders; use imprisonment as a last resort, recognizing that the prison environment is generally less conducive to rehabilitation and social reintegration than community-based measures; make use of an adequate and innovative array of non-custodial measures as alternatives to imprisonment and to pretrial detention, building on the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); and consider the use of gender-responsive, child-friendly and human rights-compliant restorative justice interventions, in view of their potential benefits for victims, their value for the community affected by crime and their positive impact on the social reintegration of offenders;

(g) Member States are invited to establish rehabilitative prison environments, in line with the Nelson Mandela Rules and the Bangkok Rules, by ensuring that prisoners are treated fairly, with the respect due to their inherent dignity as human beings, and supported in their personal, judicial, moral and social rehabilitation; ensuring that prisoners' lives in prison reflect life in the community; ensuring proper prison administration and case management and addressing overcrowding, poor prison conditions, violence in prisons and corruption; providing interventions, treatment programmes, education, vocational training and work that are responsive to each individual's specific risks and needs; enabling offenders to maintain their community and family ties; and ensuring the recruitment of prison staff who display an attitude supportive to the rehabilitation of offenders and investing in multidisciplinary training for staff;

(h) Member States are encouraged to tailor interventions and treatment to the needs of each offender, in particular for those with specific needs, such as young people, the elderly, persons with disabilities, the poor and marginalized groups, and eliminate barriers to social reintegration;

(i) Member States are also encouraged to develop and implement specific gender-responsive rehabilitation and reintegration policies and programmes in line with the Bangkok Rules, based on research on specific barriers faced by women in their rehabilitation, such as stigmatization, and on existing good practices;

(j) In dealing with alleged offenders who are children, Member States are further encouraged to widen the use of diversion from judicial proceedings and non-custodial measures and to ensure that deprivation of liberty is used as a measure of last resort and that any action taken promotes the rehabilitation and social reintegration of the child. Multisectoral

cooperation was identified as a key requirement for achieving those objectives;

(k) Member States are encouraged to share information on promising practices and consider the development, under the auspices of the Commission on Crime Prevention and Criminal Justice and with the support of UNODC, of model strategies to reduce reoffending that reflect, among others, the good practices discussed during the workshop;

(l) Member States are also encouraged to support capacity-building efforts for criminal justice practitioners aimed at reducing reoffending and are invited to consider seeking technical assistance from UNODC, the United Nations crime prevention and criminal justice programme network, other international and regional organizations and relevant non-governmental stakeholders.

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## ANNEX

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List of Participants (Chair, Scientific Moderator, Speakers and Panellists)

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Photographs





## **List of Participants (Chair, Scientific Moderator, Speakers and Panellists)**

### **Chair**

Dr. Matti Joutsen

Special Advisor  
Thailand Institute of Justice (TIJ)  
Bangkok, Thailand

### **Opening Remarks**

Dr. Kittipong Kittayarak

Former Executive Director  
Thailand Institute of Justice (TIJ)  
Bangkok, Thailand

### **Scientific Moderator**

Mr. SETO Takeshi

Director  
United Nations Asia and Far East Institute  
for the Prevention of Crime and the  
Treatment of Offenders (UNAFEI)  
Tokyo, Japan

### **PANEL I**

#### **Keynote Address**

Dr. Fergus McNeill

Professor  
University of Glasgow  
Glasgow, United Kingdom

### **UNODC**

Ms. Vera Tkachenko

Crime Prevention and Criminal Justice  
Officer  
Justice Section  
Division for Operation  
United Nations Office on Drugs and Crime  
(UNODC)  
Vienna, Austria

### **Namibia**

Ms. Mariana Martin

Deputy Commissioner-General:  
Rehabilitation and Reintegration  
Namibian Correctional Service  
Ministry of Home Affairs, Immigration,  
Safety & Security  
Windhoek, Namibia

**Argentina**

Dr. Emiliano Blanco

President  
International Corrections and Prisons  
Association (ICPA) Latin America  
(Former National Director of the Federal  
Prison Service of Argentina)

**Norway**

Ms. Heidi Bottolfs

Deputy Director General  
Directorate of Correctional Service  
Lillestrøm, Norway

**PANEL II****Keynote Address**

Dr. Matti Joutsen

Special Advisor  
Thailand Institute of Justice  
Bangkok, Thailand

**Canada**

Ms. Jennifer Oades

Chairperson  
Parole Board of Canada  
Ottawa, Canada

**Croatia**

Ms. Jana Špero

Assistant Minister  
Prison System and Probation of the  
Republic of Croatia  
Zagreb, Croatia

**Kenya**

Hon. Lady Justice Teresia Matheka

Judge  
High Court of Kenya  
Nakuru Law Courts  
Nakuru, Kenya

**Philippines**

Dr. Manuel Goloso Co

Former Administrator  
Parole and Probation Administration of the  
Philippines  
Manila, Philippines

### **PANEL III**

#### **Japan**

Mr. IMAFUKU Shoji

Director-General  
Rehabilitation Bureau  
Ministry of Justice  
Tokyo, Japan

#### **Safer Foundation**

Ms. Sodiqa Williams

General Counsel and Vice President of  
External Affairs  
Safer Foundation  
Chicago, Illinois, United States of America

#### **PRI**

Ms. Olivia Rope

Executive Director  
Penal Reform International (PRI)  
London, United Kingdom

#### **KRIS**

Mr. Ali Reunanen

Secretary General  
Criminals Return into Society (KRIS)  
Stockholm, Sweden

#### **Hedayah**

Ms. Maria Cristina Mattei

Program Manager  
Hedayah  
Abu Dhabi, United Arab Emirates



## PHOTOGRAPHS



The Congress Workshop



Opening by Dr. Matti Joutsen  
Chair of Committee II



Opening Remarks by Dr. Kittipong Kittayarak



Keynote Address by Dr. Fergus McNeill