

## GROUP 2

### RESPONDING TO ORGANIZED CRIME MEMBERS AND TERRORISTS IN CONTACT WITH THE CRIMINAL JUSTICE AND PENAL SYSTEMS

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## I. INTRODUCTION

Group 2 started its discussion on 4 September 2017. The group elected, by consensus, Mr. Carlos Vinicius Cabeleira as its chairperson, Mr. Adam Azim as its co-chairperson, Mr. Soufiane Ahoujil as its rapporteur, and Ms. Li Pui Ling as its co-rapporteur. The group was assigned to discuss the topic of “responding to organized crime members and terrorists in contact with the criminal justice and penal system”. Despite differences in each country’s penal and correctional systems, the group undisputedly agreed that alternative measures to incarceration have many advantages but are, nonetheless, difficult to implement considering the specific requirements they entail. In addition, all participants concurred that offenders’ reintegration through alternative measures necessitates the support of several stakeholders as well as sufficient financial resources.

## II. SUMMARY OF THE DISCUSSIONS

Throughout the discussions, the group identified two major themes pertaining to organized crime members and terrorists in contact with the criminal justice and penal systems, i.e. A) alternative measures to incarceration; B) reintegration into society: rehabilitation after release.

### A. Alternative Measures to Incarceration

Through the discussions, most participants agreed that many forms of alternative measures need to be taken to divert offenders from jail into the community. Hence, to confront the underlying causes of crime, and ensure offenders stay on track, it was suggested by all participants that courts should tailor sentences that fit offenders, protect citizens and provide suitable rehabilitation programmes.

During the discussion, the group considered both the use of this measure in the extra judicial phase, as an alternative to prosecution, and their assignment in the adjudication, as an alternative to imprisonment.

Alternative measures to incarceration may be used for some associates of criminal organizations or low-risk offenders. For terrorists, however, some difficulties were pointed out. Indeed, some participants believe that they should be jailed, but depending on the crime they perpetrated.

#### **Reasons why alternatives to incarceration are difficult implement:**

- a) Potential risk to society (reoffending, radicalize others etc.)
- b) Ideology-driven crime (need to address ideology itself)
- c) Security issues for the suspects/accused.

**Advantages of alternative measures:**

- a) Preventing sympathizers from joining terrorist organizations.
- b) Identifying low-risk offenders to avoid high-risk reoffending.

Upon discussion, the group concurred that alternative measures to incarceration can also involve terrorists, while considering:

- The severity of the crime charged
- The kind of organization they are affiliated with
- Acceptance of alternative measures by the victim and the community
- The level of radicalization to violence and commitment to violent extremism.
- The offender's receptiveness to intervention and treatment
- The likelihood of the person reoffending

1. Procedural Considerations: Pre-assessment

The group debated the necessity of creating a pre-assessment procedure to implement appropriate treatment of offenders. Some participants referred to one of the Global Counter Terrorism Forum (GCTF) recommendations, stating that "*alternative measures should be based on a comprehensive assessment process*<sup>1</sup>". Likewise, a participant contended that in the case of juvenile offenders, it is necessary "*to hold investigations using medical, psychological, pedagogical and other expert knowledge and, among other items, the findings of the assessment by the juvenile classification home*<sup>2</sup>". The above-mentioned participant also indicated that pre-assessment is not necessary for adult cases, considering that judges are entitled to decide a sentence based on the nature of the act committed rather than the person's characteristics. Nevertheless, all participants agreed that in some alleged terrorist-related crimes, pre-assessment is a viable means to help investigating prosecutors and judges impose appropriate treatment for offenders. Most participants agreed that probation officers involved in the implementation of alternative measures to incarceration should play a part in the pre-assessment process; given their ability to determine which alternative measures to incarceration best suits the offender. In addition, many participants emphasized the importance of intelligence gathering in the pre-assessment process.

2. Examples*(a) Community service*

During the discussion, most members of the group agreed that community-service can be a reparative sanction, in the sense that it defines responsibility of the offender for their crime and can reduce prison overcrowding. By contrast, some participants stated that judges can sentence defendants to perform unpaid community service under enhanced supervision, mainly on behalf of civic or non-profit organizations. Some group members, however, argued that serious crimes such as first-degree murder, firearms trafficking, conspiracy and terrorist-related cases should not be subject to community corrections. Most participants also pointed out that if the offender violates the terms set by the court, probation should be revoked, after which the offender is liable to a term of imprisonment. The group also suggested that the offender be given the opportunity to repair the damage caused by their crime.

*(b) Electronic Monitoring*

In parallel, most participants agreed that electronic monitoring can be a relevant community-based alternative measure to incarceration, mainly for low-risk offenders. Hence, upon discussion, it was asserted that proximity monitoring can identify offenders' locations using electronic ankle or wrist bracelets. However, from various viewpoints that have been expressed during the discussion, some participants were reluctant as to the use of that alternative. They argued that no such alternative is stipulated by their respective countries' constitutional texts, considering it a violation of privacy, mainly without the offender's prior consent. Nevertheless, all members of the group shared the view that if the offender violates conditions set by the court regarding that alternative measure (*ex*: taking off the bracelet), the offender should be denied the right to undergo electronic monitoring.

<sup>1</sup> The GCTF's "Recommendations on the Effective of Appropriate Alternative Measures for Terrorism-Related Offenses (Recommendation 6)".

<sup>2</sup> Article 9 of the Japanese Juvenile Law.

## **B. Reintegration into Society: Rehabilitation after Release**

### **1. The Role of the Community and Civil Society**

The group agreed that reintegration is of the utmost importance for organized crime group members or terrorists. Hence, with the exception of convicts sentenced to death, all offenders have to receive necessary support to go back to the community. All participants underscored that the reintegration process shall begin before an offender's release, by promoting interaction between reintegration partners and offenders before release.

In addition, the group called attention to the fact that reintegration is a fundamental approach in addressing recidivism, on account of the fact that offenders may well undergo rehabilitation programmes and yet unscrupulously reoffend all over again. Therefore, there was general agreement that community acceptance is the backbone of social reintegration. Accordingly, the group unanimously agreed on the following measures as being advantageous, mainly to organized crime members and terrorists:

#### *(a) Religious partners*

Group members discussed the situation in some countries, such as Morocco, Maldives and Singapore, where official bodies are in charge of religious education, notably the Ministry of Religious Endowment which works in collaboration with the correctional department in implementing peer education programmes and national religious contests (Quran memorization and recitation, prophetic Hadith memorization, etc.). In Brazil and Japan, however, official religious bodies or agencies are not permitted to undertake such activities. Despite all those differences, the group members highlighted the importance of religious guidance in reintegration.

#### *(b) Non-Governmental Organizations (NGOs)*

It was stated by visiting experts that in order to make good use of community resources, NGOs should provide support, counselling, recreational activities and visits to organized-crime members (OCMs) and terrorists. In this regard, most participants agreed that halfway houses are essential for supporting released offenders and an opportunity for them to learn the necessary skills to reintegrate into society. In addition, the group believes that halfway houses can bridge the gap between prison and community, thus enabling OCMs and terrorists to start afresh with the aid of community support networks.

#### *(c) Companies/Employers*

The group reached a consensus that providing OCM/terrorist offenders with an adequate income is fundamental to bringing them back into society. Hence, government policies are no less necessary in advocating and encouraging the public to employ OCMs/terrorists. Consequently, the overwhelming majority of the group stressed the significance of the governments' input in supporting companies or employers in hiring former OCMs and terrorists. Throughout the discussion, focus was placed on the "Incentive Payment" and "Guarantor" systems in Japan. Most participants called for encouraging the private sector to offer more job opportunities to offenders. Moreover, public campaigns in recognizing the contribution of such cooperative employers as well as promoting corporate social responsibility may also increase the number of cooperative employers.

#### *(d) Individuals*

The group discussed and expressed their interest in volunteer probation officers as being preponderant players in supporting rehabilitation of former offenders in the community and connecting them with welfare services. All agreed that volunteer probation officers (VPOs) play the most important role in the Japanese offenders' rehabilitation system. Furthermore, volunteers' active participation would assist former OCMs/terrorists and regular offenders in reintegration. The implementation of the VPO system was unanimously highly regarded by group members for giving support and advice as well as serving as a model to OCMs/terrorists.

#### *(e) Mass Media*

Most participants concurred that mass media is a public channel that not only helps with the transmission of positive messages, but also enhances the public's acceptance of offenders' rehabilitation. Self-reflection of former organized crime members and terrorists and interviews may be adopted for such objectives. Nevertheless, victims' feelings and consent should be taken into consideration when using the mass media.

## 2. Restorative Justice

Most participants agreed that restorative justice can repair harm and restore justice to the victims. They stated that the justice system can resort to victim-offender mediation and conferencing through joint meetings with the offender and the victim's family, with a view to reaching an agreement as to which option may best suit the victim's family and the community.

### III. CONCLUSION AND RECOMMENDATIONS

The recommendations outlined in this report are intended to demonstrate that organized crime members and terrorists should not be considered as an obstacle to the implementation of alternative measures, especially in the case of juvenile offenders, first-time offenders, etc. Nevertheless, balance needs be struck regarding the rights of individual offenders and those of the victims, as well as the concern for public safety. Therefore, at the end of the discussion, the group reached a consensus that the following should be recommended as possible measures. Key components in implementing alternative measures for OCMs and terrorists would be:

- Creating a pre-assessment procedure at the request of the court or authority in charge of the decision, by public officers involved in the supervision process or experts, with the objective of providing information regarding the proper assignment of alternative measures.
- In addition to the punitive scope, the judicial and criminal justice systems should consider the reintegration of organized crime or violent extremist offenders as one of the main objectives of incarceration.
- Providing close assistance to offenders in the community and connecting them with the community: (halfway houses, probation officers, etc.).
- Offering job opportunities to offenders and financial support to reintegration programmes, according to their corporate social responsibility, by providing government support to private companies.
- Providing religious assistance and guidance on behalf of ideologically driven violent extremists by official agencies or private religious organizations, according to each country's legal system.
- Particular attention should be given to reconciliation with victims and the community, to enable the offender to express regret and repentance through direct communication, written communication or videos, as well as mass and social media.

#### **References:**

- The GCTF's "*Recommendations on the Effective of Appropriate Alternative Measures for Terrorism-Related Offenses* (Recommendation 6)".
- *Article 9* of the Japanese Juvenile Law.